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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.
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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 29

[TB-88-048]

Tobacco Inspection; Subpart C—Standards

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: These regulations modify the Official Standard Grades for flue-cured tobacco to more accurately describe tobacco as it presently appears at the marketplace. This modification will revise the specifications of seven grades of nodescript tobacco in order to consistently apply the descriptive terms injury and waste, as elements of quality, in making grade determinations and also make minor changes of a technical nature.

EFFECTIVE DATE: March 27, 1989.

FOR FURTHER INFORMATION CONTACT: Director, Tobacco Division, Agricultural Marketing Service, United States Department of Agriculture, P.O. Box 96456, Washington, DC 20090-6456, telephone: (202) 447-2567.

SUPPLEMENTARY INFORMATION: A proposed rule was published on September 16, 1988 (53 FR 36050) proposing a modification of the Office Standard Grades for Flue-Cured Tobacco, U.S. Types 11-14 and Foreign Type 92, pursuant to the Tobacco Inspection Act, as amended (7 U.S.C. 511-511q) and the Tobacco Adjustment Act of 1983 (7 U.S.C. 511r).

The current standards for flue-cured tobacco contain eight groups: these are B (leaf); H (Smoking Leaf); C (Cutters); X (Lugs); P (Primings); M (Mixed Group); N (Nondescript); and S (Scrap).

Nondescript tobacco is extremely common tobacco which does not meet the minimum specifications or which exceeds the tolerance of the lowest grade of any of the groups except Scrap. In the terminology used in the industry, nondescript tobacco is said to "come out of" the lowest grade of another group in which it would have been graded had it not exceeded the tolerance levels or otherwise failed to meet the minimum specifications for the grade. In order to consistently apply the appropriate grade to nondescript tobacco, the same factors should be considered which caused the tobacco to be placed in the nondescript group. The elements of quality "injury" and "waste" are the primary factors involved. Injury is defined as hurt or impairment from any cause except the fungus or bacterial diseases which attack tobacco in its cured state, but which is not serious enough to be classified as waste. Waste is defined as the portions of the web of tobacco leaves which are dead, lifeless and do not have sufficient strength or stability to hold together in the normal manufacturing process due to excessive injury of any kind.

The following modifications were proposed: (1) To revise grade N1K (Best Nondescript from the B or H Groups) which presently has a tolerance of 50 percent for waste but not tolerance for injury. Because tobacco grade N1K comes out of grades B5KR, B6L, B6F, B6FR, B6K, H6FR, and H6K, which have tolerances for injury or waste, N1K should also. In order to be consistent with the specifications for other nondescript grades, the tolerance should be 50 percent injury or waste; (2) to revise grade N1KV (Best, Variegated, Medium-bodied Greenish Nondescript from the B Group) which presently has a tolerance of 50 percent injury or waste. The tolerance should be limited to waste only because this tobacco comes out of grade B6KV (Poor Qualify Variegated Greenish Leaf), which has no injury tolerance; (3) to revise grade N1GL (Best, Thin, Crude Green Nondescript from the P or X Groups) which presently has a tolerance of 50 percent crude, injury or waste. The tolerance should be limited to crude or waste because this tobacco comes from 5th quality green tobacco from the P (Primings) and X (Lugs) groups, and these grades have no limit on injury; (4) to revise the specifications for grade N1GF (Best, Medium-bodied, Medium-colored, Crude Green Nondescript from the B and C Groups) to refer to the B (Leaf) group only because green tobacco from the C (Cutter) group moves through the X (Lugs) group and then to nondescript. For example, grades C4G and C4GK allow 20 percent injury, including 5 percent waste. When this tolerance is exceeded, tobacco would go to grades X4G or X4GK, which allows up to 30 percent of waste, then to 5th quality, which allows up to 40 percent, and then to nondescript. Also, nondescript tobacco may come out of the B (Leaf) group because it is lower than 6th quality, and some of the grades in the B (Leaf) group allow fleshy body. Since tobacco is more similar to N1GF (Best, Medium-bodied, Medium-colored, Crude Green Nondescript from the B Group) than to N1GR (Best, Heavy, Dark-colored, Crude Green Nondescript from the B Group) where it would presently be classified. Accordingly, the grade name and specification N1GF should be revised by replacing "medium body" with "fleshy body" (this would allow the presence of the higher quality medium body); (5) to revise grades N1PO (Oxidized Tobacco from the P Group) and N1XO (Oxidized Tobacco from the X or C Groups) which presently have tolerances of 50 percent injury or waste. These tolerances should be revised to 50 percent waste only because the grades in the P (Primings) and X (Lugs) groups below 3rd quality have no stated injury tolerance; (6) revise grade N2 (Poorest Nondescript of any Group or Color) to add that crude or green tobacco containing 10 percent of less of oxidized shall be graded N2. This provision is presently contained in Rule 25; and (7) to revise the authority citation for Subpart C by consolidating the authority citations to the beginning of Subpart C.

No comments were received on the proposal.

This final rule has been reviewed under USDA procedures established to implement Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be "nonmajor" because it does not meet any of the criteria established for major rules under the Executive Order. Review of the regulations contained in Subpart C of 7 CFR Part 29 for need, currentness, clarity and effectiveness has been completed.

Additionally, in conformance with the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), full consideration has been given to the potential economic impact upon small business of this final rule. The changes made by this rule will not affect the normal movement of the commodity in the marketplace. Compliance with this rule will not impose any substantial direct economic costs, recordkeeping or personnel workload changes on small entities, and would not alter the market share or competitive position of small entities relative to large entities. The Administrator, Agricultural Marketing Service, has determined that this action would have no significant economic impact upon a substantial number of small entities.

Therefore, after consideration of all relevant information, the Department hereby adopts the regulations as proposed.

Lists of Subjects in 7 CFR Part 29

Administrative practice and procedure, Tobacco.

Accordingly, the Department hereby amends the regulations at 7 CFR Part 29, Subpart C, as follows:

PART 29—TOBACCO INSPECTION

1. The separate authority citations throughout Subpart C are removed.

2. A new authority citation for Subpart C is added to read as follows:

Authority: 7 U.S.C. 511b, 511m, and 511r.

3. Section 29.1168 is revised to read as follows:

§ 29.1168 Nondescript (N Group).

Extremely common tobacco which does not meet the minimum specifications or which exceeds the tolerance of the lowest grade of any other group except Scrap.

Grades, Grade Names, Minimum Specifications, and Tolerances

N1L—
Best Nondescript from the P Group
Tolerance: 50 percent waste.

N1XL—
Best Nondescript from the X Group
Tolerance: 50 percent waste.

N1K—
Best Nondescript from the B or H Groups
Tolerance: 50 percent injury or waste.

N1R—
Best, Heavy, Dark-colored Nondescript from the B Group
Tolerance: 50 percent injury or waste.

N1KV—
Best, Variegated, Medium-bodied Greenish Nondescript from the B Group
Tolerance: 50 percent waste.

N1GL—
Best, Thin, Crude Green Nondescript from the P or X Groups
Tolerance: 50 percent crude or waste.

N1GF—
Best, Fleshy, Medium-colored, Crude Green Nondescript from the B Group
Tolerance: 50 percent crude, injury or waste.

N1GR—
Best, Heavy, Dark-colored, Crude Green Nondescript from the B Group
Tolerance: 50 percent crude, injury or waste.

N1GG—
Best, Crude, Gray Green Nondescript from the B Group
Tolerance: 50 percent crude, injury or waste.

N1PO—
Oxidized Tobacco from the P Group
Tolerance: 50 percent waste.

N1XO—
Oxidized Tobacco from the X or C Groups
Tolerance: 50 percent waste.

N1BO—
Oxidized Tobacco from the B or H Groups
Tolerance: 50 percent injury or waste.

N2—
Poorest Nondescript of any Group or Color
Tolerance: Over 50 percent crude, injury or waste.
Pursuant to Rule 25, this grade also includes crude or green tobacco containing 10 percent or less of oxidized.

Dated: February 21, 1989.

J. Patrick Boyle,
Administrator.

[FR Doc. 89-4343 Filed 2-23-89; 8:45 am]

BILLING CODE 3410-02-M

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7 CFR Parts 907 and 908

Expenses and Assessment Rates for Specified Marketing Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule authorizes expenditures and establishes assessment rates under Marketing Order Nos. 907 and 908 for the 1988–89 fiscal year established for each order. Funds to administer these programs are derived from assessments on handlers.

EFFECTIVE DATES: November 1, 1988, through October 31, 1989, for both orders.

FOR FURTHER INFORMATION CONTACT: Jacquelyn R. Schlatter, Marketing Specialist, Volume Control Programs, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456; telephone (202) 447–5120.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order Nos. 907 (7 CFR Part 907) and 908 (7 CFR Part 908), both as amended, regulating the handling of California-Arizona navel and Valencia oranges. Both orders are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

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

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

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

There are approximately 125 handlers of navel oranges and 115 handlers of Valencia oranges subject to regulation under the navel and Valencia orange marketing orders, and approximately 4,065 producers of navel oranges and 3,500 producers of Valencia oranges in their respective production areas. Small agricultural producers have been defned by the Small Business Administration (13 CFR 121.2) as those having average gross annual revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of California-Arizona navel and Valencia orange producers and handlers may be classified as small entities.

Marketing orders require that assessment rates for a particular fiscal year shall apply to all assessable commodities handled from the beginning of such year. An annual budget of expenses is prepared by each administrative committee and submitted to the Department of Agriculture for approval. The members of administrative committees are handlers and producers of the regulated commodities. They are familiar with the committees' needs and with the costs for goods, services, and personnel in their local areas and are thus in a position to formulate appropriate budgets. The budgets are formulated and discussed in public meetings. Thus, all directly affected persons have an opportunity to participate and provide input.

The assessment rate recommended by each committee is derived by dividing anticipated expenses by expected shipments of the commodity. Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the committees' expected expenses. Recommended budgets and rates of assessment are usually acted upon by the committees shortly before a season starts, and expenses are incurred on a continuous basis. Therefore, budget and assessment rate approvals must be expedited so that the committees will have funds to pay their expenses.

The Navel Orange Administrative Committee (NOAC) met on December 6, 1988, and unanimously recommended 1988–89 fiscal year expenditures of $1,247,455 and an assessment rate of $0.025 per carton of navel oranges. In comparison, 1987–88 fiscal year budgeted expenditures were $1,114,790 and the assessment rate was $0.026 per carton. Expenditure categories in the 1988–89 budget are $338,630 for program administration, $151,020 for compliance activities, $583,155 for the field department, $171,300 for direct expenses, and $3,350 for a salary reserve. Assessment income for 1988–89 is expected to total $1,087,500, based on shipments of 43.5 million cartons of oranges. Interest and incidental income is estimated at $50,000. The NOAC may expend operational reserve funds of $109,955 to meet budgeted expenses. Additional reserve funds may be used to meet any other unanticipated deficit in assessment income.

The Valencia Orange Administrative Committee (VOAC) met on December 6, 1988, and unanimously recommended 1988–89 fiscal year expenditures of $694,840 and an assessment rate of $0.028 per carton of Valencia oranges. In comparison, 1987–88 fiscal year budgeted expenditures were $526,590 and the assessment rate was $0.029 per carton. Expenditure categories in the 1988–89 budget are $166,785 for program administration, $74,380 for compliance activities, $287,225 for the field department, $164,800 for direct expenses, and $1,650 for a salary reserve. Assessment income for 1988–89 is expected to total $588,000 based on shipments of 21 million cartons of oranges. Interest and miscellaneous income is estimated at $30,000. The VOAC may expend operational reserve funds of $76,840 to meet budgeted expenses. Additional reserve funds may be used to meet any other unanticipated deficit in assessment income.

While this final action will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be significantly offset by the benefits derived from the operation of the marketing orders. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

This action adds new §§ 907.226 and 908.228 and is based on the committee's recommendations and other information. A proposed rule was published in the January 24, 1989, issue of the **Federal Register** (54 FR 3459). Comments on the proposed rule were invited from interested persons until February 3, 1989. No comments were received.

After consideration of the information and recommendations submitted by the committees and other available information, it is found that this final rule will tend to effectuate the declared policy of the Act.

This final rule should be expedited because the committees need to have sufficient funds to pay their expenses, which are incurred on a continuous basis. In addition, handlers are aware of the action, which was recommended by the committees in public meetings. Therefore, it is also found that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** (5 U.S.C. 553).

List of Subjects in 7 CFR Parts 907 and 908

Arizona, California, Marketing agreements and orders, Navel, Oranges, Valencia.

For the reasons set forth in the preamble, new §§ 907.226 and 908.228 are added as follows.

Note: These sections will not appear in the Code of Federal Regulations.

1. The authority citation for both 7 CFR Parts 907 and 908 continues to read as follows:

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

2. New §§ 907.226 and 908.228 are added to read as follows:

PART 907—NAVEL ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

§ 907.226 Expenses and assessment rate.

Expenses of $1,247,455 by the Navel Orange Administrative Committee are authorized, and an assessment rate of $0.025 per carton of navel oranges is established for the fiscal year ending October 31, 1989. Unexpended funds from the 1988–89 fiscal year may be carried over as a reserve.

PART 908—VALENCIA ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

§ 908.228 Expenses and assessment rate.

Expenses of $694,840 by the Valencia Orange Administrative Committee are authorized, and an assessment rate of $0.028 per carton of Valencia oranges is established for the fiscal year ending October 31, 1989. Unexpended funds from the 1988–89 fiscal year may be carried over as a reserve.

Dated: February 21, 1989.

William J. Doyle,

Associate Deputy Director, Fruit and Vegetable Division.

[FR Doc. 89–4344 Filed 2–23–89; 8:45 am]

BILLING CODE 3410–02–M

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7 CFR Part 989

[FV–89–018]

Raisins Produced from Grapes Grown in California; Final Free and Reserve Percentages for the 1988–89 Crop Year for the Natural (Sun-Dried) Seedless Raisins Varietal Type

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule invites comments on the establishment of final free and reserve percentages for Natural (sun-dried) Seedless raisins from California's 1988 raisin crop production. These percentages are intended to stabilize supplies and prices, and help counter the destabilizing effects of the burdensome oversupply situation facing the raisin industry. Raisins in the free percentage category may be shipped immediately to any market, while reserve raisins must be held by handlers in a reserve pool for the account of the Raisin Administrative Committee (Committee), the administrative agency responsible for local administration of the Federal marketing order regulating the handling of raisins produced from grapes grown in California. Under the order, reserve raisins may be: Sold at a later date by the Committee to handlers for free use; used in diversion programs; exported to authorized countries; carried over as a hedge against a short crop the following year; or disposed of in other outlets noncompetitive with those for free tonnage raisins.

EFFECTIVE DATE: Interim final rule effective February 24, 1989. Comments which are received by March 27, 1989 will be considered prior to any finalization of this interim final rule.

ADDRESS: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, Room 2525, South Building, P.O. Box 96456, Washington, DC 20090–6456. Comments should reference the docket number and the date and page number of this issue of the Federal Register and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Patricia A. Petrella, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, Room 2525, South Building, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 447–5697.

SUPPLEMENTARY INFORMATION: This interim final rule is issued under Marketing Agreement and Order No. 989 (7 CFR Part 989), as amended, hereinafter referred to as the "order", regulating the handling of raisins produced from grapes grown in California. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This interim final rule has been reviewed under Executive Order 12291 and Departmental Regulation No. 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

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

There are approximately 23 handlers of California raisins subject to regulation under the raisin marketing order, and approximately 5,000 producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of handlers and producers of raisins may be classified as small entities.

The order prescribes procedures for computing trade demands and preliminary and final percentages that establish the amount of raisins that can be marketed throughout the season. The regulations apply to all handlers of California raisins. While this action may restrict the amount of raisins that enter domestic markets, final free and reserve percentages are intended to lessen the impact of the oversupply situation facing the industry and promote stronger marketing conditions, thus stabilizing prices and supplies and improving grower returns. In addition to the quantity of raisins released under the preliminary percentages and to be released under the final percentages, the order specifies methods to make available additional raisins to handlers by authorizing sales of reserve pool raisins for use as free tonnage raisins under "10 plus 10" offers, export sales, and school lunch programs.

The U.S. Department of Agriculture's Guidelines for Fruit, Vegetable, and Specialty Crop Marketing Orders specify that 110 percent of recent years' sales be made available to primary markets each season. This requirement will be met by the establishment of final percentages which release 100 percent of the computed trade demand, and the additional release of reserve raisins to handlers under "10 plus 10" offers. The "10 plus 10" offers are two simultaneous sales of reserve pool raisins which are made available to handlers each season. For each such offer, at least 10 percent of the prior year's shipments are made available for free use.

Pursuant to § 989.54(a), the Committee met on August 12, 1988, to review shipment data, inventory data, and other matters relating to the supplies of raisins of all varietal types. The Committee computed, using a formula prescribed in that paragraph, a trade demand for each varietal type for which a free tonnage percentage might have been recommended. The trade demand is 90 percent of the prior year's shipments of free tonnage and reserve tonnage raisins sold for free use for each varietal type into all market outlets, adjusted by subtracting the carryin of each varietal type on August 1 of the current crop year and adding to the trade demand the desirable carryout for each varietal type at the end of that crop year. The order prescribes that the desirable carryout for the 1988–89 crop year shall be 60,000 tons for Natural (sun-dried) Seedless raisins. The carryin used for adjusting the trade demand was 27,973 tons for Natural (sun-dried) Seedless raisins.

In accordance with these provisions, the Committee computed and announced a trade demand of 262,487 tons for Natural (sun-dried) Seedless raisins, 8,861 tons for Dipped Seedless raisins, 3,856 tons for Oleate and Related Seedless raisins, 13,707 tons for Golden Seedless raisins, 134 tons for Sultanas, 0 tons for Muscat raisins, 3,154 tons for Zante Currant raisins, 160 tons for Monukka raisins, and 536 tons for Other Seedless raisins.

As required under § 989.54(b), the Committee met on October 4, 1988, and computed and announced a preliminary crop estimate and preliminary free and reserve percentages for Natural (sun-dried) Seedless raisins of 379,313 tons, and 59 percent free and 41 percent reserve, respectively. Handlers operate under the preliminary percentages until the industry is able to obtain a more accurate estimate of raisin production for that year. The field price for Natural (sun-dried) Seedless raisins had been established. Therefore, in accordance with § 989.54(b), the preliminary free and reserve percentages computed and announced by the Committee for Natural (sun-dried) Seedless raisins released 85 percent of the computed trade demand. Preliminary percentages were not announced for the other eight varietal types; therefore, the total available supply was released for each.

Pursuant to § 989.54(c), the Committee may adopt interim free and reserve percentages. Interim percentages may release up to 99 percent of the computed trade demand for each varietal type for which preliminary percentages have been computed and announced. Interim percentages for Natural (sun-dried) Seedless raisins of 69 percent free and 31 percent reserve were computed and announced on January 13, 1989. The interim percentages for Natural (sun-dried) Seedless raisins will release 98.5 percent of the computed trade demand.

Under § 989.54(d) of the order, the Committee is required to recommend to the Secretary, no later than February 15 of each crop year, final free and reserve percentages which, when applied to the final production estimate of a varietal type, will tend to release the full trade demand for any varietal type for which preliminary or interim percentages have been computed and announced. By that time, the Committee has more information available, including the final crop estimate and other information, on

which to base the determination of final free and reserve percentages.

On January 13, 1989, the Committee met and recommended final free and reserve percentages for the 1988–89 crop year and made its final production estimate for Natural (sun-dried) Seedless raisins. The Committee's final estimate of 1988–89 production of Natural (sun-dried) Seedless raisins totaled 374,623 tons, which includes the 1988 diversion tonnage of 50,000 tons (4,690 tons less than the preliminary estimate). Dividing the computed trade demand of 262,487 tons by the final estimate of production results in a final free percentage of 70.07 percent. The Committee rounded that percentage to 70 percent which results in a final reserve percentage of 30 percent.

Based on available information, the Administrator of the AMS has determined that the issuance of this interim final rule will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant information presented, including the Committee's recommendations, and other information, it is found that this regulation, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined that upon good cause it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) The relevant provisions of this part require that the percentages designated herein for the 1988–89 crop year apply to all Natural (sun-dried) Seedless raisins acquired from the beginning of that crop year; (2) handlers are currently marketing 1988–89 crop raisins of this varietal type and this action must be taken promptly to achieve its purpose of making the full trade demand quantity computed by the Committee available to handlers; and (3) handlers are aware of this action, which was recommended by the Committee at an open meeting, and need no additional time to comply with these percentages.

List of Subjects in 7 CFR Part 989

Marketing Agreements and Orders, Grapes, Raisins, and California.

For the reasons set forth in the preamble, 7 CFR Part 989 is amended as follows:

PART 989—RAISINS PRODUCED FROM GRAPES GROWN IN CALIFORNIA

1. The authority citation for 7 CFR Part 989 continues to read as follows:

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

2. Section 989.241 is added to Subpart—Supplementary Regulations to read as follows.

Note.—This section will not appear in the annual Code of Federal Regulations.

§ 989.241 Final free and reserve percentages for the 1988–89 crop year.

The final percentages of standard Natural (sun-dried) Seedless raisins acquired by handlers during the crop year beginning August 1, 1988, which shall be free tonnage and reserve tonnage, respectively, are designated as follows:

	Free percentage	Reserve percentage
Natural (sun-dried) Seedless	70	30

Dated: February 21, 1989.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 89–4345 Filed 2–23–89; 8:45 am]

BILLING CODE 3410-02-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL–3527–9; KY–035]

Approval and Promulgation of Implementation Plans; Jefferson County, KY; SOCMI Air Oxidation Processes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a regulation submitted by the Commonwealth of Kentucky pertaining to the Air Pollution Control District of Jefferson County (APCDJC). Regulation 6.38, "Standard of performance for existing air oxidation processes in synthetic organic chemical manufacturing industries," constitutes a revision to Kentucky's ozone State Implementation Plan (SIP) for Jefferson County, and is based on the Group III control techniques guideline (CTG) document for Synthetic Organic Chemical Manufacturing Industry (SOCMI) Air Oxidation Processes. The intent of the regulation is to apply reasonably available control technology (RACT) to reduce volatile organic compound (VOC) emissions from SOCMI air oxidation processes.

DATE: This action will become effective on March 27, 1989.

ADDRESSES: Copies of the material submitted by Kentucky may be examined during normal business hours at the following locations.

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

Commonwealth of Kentucky, Division of Air Pollution Control, Natural Resources and Environmental Protection Cabinet, 18 Reilly Road, Frankfort, Kentucky 40601.

Air Pollution Control District of Jefferson County, 914 East Broadway, Louisville, Kentucky 40204.

Public Information Reference Unit, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Brenda Johnson, Air Programs Branch, EPA Region IV, at the above address and telephone number (404) 347–2864 or FTS 257–2864.

SUPPLEMENTARY INFORMATION: In accordance with the Kentucky Division of Air Pollution Control's commitment to adopt Group III CTG regulations, the Commonwealth of Kentucky submitted on March 20, 1987, as a revision to the Jefferson County ozone SIP, Jefferson County Regulation 6.38. The regulation is consistent with the Group III document, "Control of Volatile Organic Compound Emissions from Air Oxidation Processes in the Synthetic Organic Chemical Manufacturing Industry" (EPA–450/3–84–015).

Specifically, Regulation 6.38 requires the use of combustion to reduce the total organic compound emissions to 98 percent by weight or to 20 ppm by volume, or maintenance of a total resource effectiveness index value (TRE) greater than 1.0. The TRE is calculated in accordance with Appendix H of the CTG. Final compliance with the regulation must be demonstrated no later than December 31, 1987.

On September 1, 1988 (53 FR 33826), EPA proposed to approve Jefferson County Air Pollution Control District Regulation 6.38, "Standard of Performance for existing air oxidation processes in synthetic organic chemical manufacturing industries". The public was invited to submit written comments on the proposed action. However, no comments were received.

Final Action

EPA is today approving Jefferson County, Kentucky's Group III regulation for SOCMI air oxidation processes. This regulation is consistent with the requirements specified in the CTG document EPA–450/3–84–015.

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

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 25, 1989. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Note: Incorporation by reference of the State Implementation Plan for the Commonwealth of Kentucky was approved by the Director of the **Federal Register** on July 1, 1982.

Date: February 17, 1989.

William K. Reilly,

Administrator.

Part 52 of Chapter I, Title 40, Code of Federal Regulations, is amended as follows:

PART 52—[AMENDED]

Subpart S—Kentucky

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. Section 52.920 is amended by adding paragraph (c)(57) to read as follows:

§ 52.920 Identification of plan.

* * * * *

(c) * * *

(57) Jefferson County Air Pollution Control District Regulation 6.38 was submitted to EPA on March 20, 1987 by the Kentucky Natural Resources and Environmental Protection Cabinet.

(i) Incorporation by reference.

(A) Jefferson County Air Pollution Control District Regulation 6.38, "Standards of performance for existing air oxidation processes in the synthetic organic chemical manufacturing industry", which became effective December 17, 1986.

(B) Letter of March 20, 1987, from the Kentucky Natural Resources and Environmental Protection Cabinet.

(ii) Other materials—none.

[FR Doc. 89–4298 Filed 2–23–89; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 52

[FRL–3528–1; KY–036]

Approval and Promulgation of Implementation Plans; Jefferson County, KY; SOCMI Air Fugitive Emissions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a regulation submitted by the Commonwealth of Kentucky pertaining to the Air Pollution Control District of Jefferson County (APCDJC). Regulation 6.39, "Standard of performance for equipment leaks of volatile organic compounds in existing synthetic organic chemical and polymer manufacturing plants," constitutes a revision to Kentucky's ozone State Implementation Plan (SIP) for Jefferson County, and is based on the Group III control techniques guidelines (CTG) document for Synthetic Organic Chemical Manufacturing Industry (SOCMI) Equipment Leaks. The intent of the regulation is to apply reasonably available control technology (RACT) to reduce volatile organic compound (VOC) emissions from synthetic organic chemical and polymer manufacturing equipment.

DATE: This action will become effective on March 27, 1989.

ADDRESSES: Copies of the materials submitted by Kentucky may be examined during normal business hours at the following locations:

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

Commonwealth of Kentucky, Division of Air Pollution Control, Natural Resources and Environmental Protection Cabinet, Frankfort Office Park, 18 Reilly Road, Frankfort, Kentucky 40601.

Air Pollution Control District of Jefferson County, 914 East Broadway, Louisville, Kentucky 40204.

Public Information Reference Unit, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Brenda Johnson, Air Programs Branch, EPA Region IV, at the above address and telephone number (404) 347–2864 or FTS 257–2864.

SUPPLEMENTARY INFORMATION: On August 7, 1984, the Kentucky Division of Air Pollution Control committed to adopt a regulation for sources covered by Group III CTG document, "Control of Volatile Organic Compound Leaks from Synthetic Organic Chemical and Polymer Manufacturing Equipment" (EPA–450/3–83–006), which was issued by EPA in March 1984. On March 20, 1987, Kentucky submitted a revision to the Jefferson County SIP to add Regulation 6.39.

The regulation adopts the measures of 40 CFR Part 60, Subpart VV, the new source performance standard (NSPS) for SOCMI equipment leaks. Specifically, Regulation 6.39 incorporates by reference the provisions of the federal regulation. Furthermore, the Jefferson County regulation also regulates the production of methyl tert-butyl ether, polyethylene, polypropylene, and polystyrene, in addition to the chemicals listed in 40 CFR Part 60, Subpart VV, § 60.489. The regulation applies to sources which commenced construction on or before January 5, 1981.

On September 7, 1988 (53 FR 34550), EPA proposed to approve Jefferson County Air Pollution Control District Regulation 6.39, "Standard of performance for equipment leaks of volatile organic compounds in existing synthetic organic chemical and polymer manufacturing plants." The public was invited to submit written comments on the proposed action. However, no comments were received.

Final Action

EPA is today approving Jefferson County, Kentucky's Group III regulation for SOCMI equipment leaks. This regulation is consistent with the requirements specified in the NSPS regulation (40 CFR Part 60, Subpart VV).

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

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 25, 1989. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Note.—Incorporation by reference of the State Implementation Plan for the Commonwealth of Kentucky was approved

by the Director of the Federal Register on July 1, 1982.

Date: February 17, 1989.

William K. Reilly,

Administrator.

Part 52 of Chapter I, Title 40, Code of Federal Regulations, is amended as follows:

PART 52—[AMENDED]

Subpart S—Kentucky

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. Section 52.920 is amended by adding paragraph (c)(58) to read as follows:

§ 52.920 Identification of plan.

* * * * *

(c) * * *

(57) Jefferson County Air Pollution Control District Regulation 6.39 was submitted to EPA on March 20, 1987, by the Kentucky Natural Resources and Environmental Protection Cabinet.

(i) Incorporation by reference.

(A) Jefferson County Air Pollution Control District Regulation 6.39, "Standard of performance for equipment leaks of volatile organic compounds in existing synthetic organic chemical and polymer manufacturing plants", which became effective December 17, 1986.

(B) March 20, 1987, letter from the Kentucky Natural Resources and Environmental Protection Cabinet.

(ii) Other materials—none.

[FR Doc. 89–4299 Filed 2–23–89; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 86–294; RM–5029, RM–5155 and RM–5560]

Radio Broadcasting Services; Blackshear, Richmond Hill and Folkston, GA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document grants petitions for reconsideration filed by Hinesville Broadcasting Corporation and Mattox-Guest, Inc. directed against the *Report and Order* in this proceeding which allotted Channel 222A to Folkston, Georgia, Channel 286A to Richmond Hill, Georgia, and denied a proposal by Mattox-Guest, Inc. to substitute Channel 286C2 in lieu of Channel 285A at Blackshear, Georgia. Specifically, this document substitutes Channel 223A in lieu of Channel 222A at Folkston, and Channel 287A in lieu of Channel 286A at Richmond Hill. The Richmond Hill substitution enables this document to modify the license of Station WKUB, Channel 285A, Blackshear, Georgia to specify operation on Channel 286C2. The Folkston substitution enables the Commission to consider in a separate proceeding a proposal to substitute Channel 222C2 in lieu of Channel 221A at Hinesville, Georgia. With this action, the proceeding is terminated.

EFFECTIVE DATE: April 3, 1989.

FOR FURTHER INFORMATION CONTACT: Robert Hayne, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Memorandum Opinion and Order*, MM Docket No. 86–294, adopted January 26, 1989, and released February 16, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments, is amended under Georgia by deleting Channel 222A and adding Channel 223A at Folkston.

3. Section 73.202(b), the Table of FM Allotments, is amended under Georgia by deleting Channel 286A and adding Channel 287A at Richmond Hill.

4. Section 73.202(b), the Table of FM Allotments, is amended under Georgia by deleting Channel 285A and adding Channel 286C2 at Blackshear.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89–4271 Filed 2–23–89; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 88–383; RM–6337]

Radio Broadcasting Services; Hinesville, GA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 284A to Hinesville, Georgia, as that community's second local FM service, at the request of E.D. Steel, Jr. ("petitioner"). The channel can be allotted to Hinesville in compliance with the minimum distance separation requirements. The transmitter site must be located at least 0.6 kilometers (0.4 miles) west of the city to meet the spacing requirements to a pending application for Channel 286A at Richmond Hill, Georgia. The coordinates for this allotment at the restricted site are 31–50–59 and 81–36–11. With this action, this proceeding is terminated.

DATES: Effective April 3, 1989; the window period for filing applications will open on April 4, 1989, and close on May 4, 1989.

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 88–383, adopted January 25, 1989, and released February 16, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments is amended under Georgia by adding Channel 284A at Hinesville.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89–4270 Filed 2–23–89; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 88-314; RM-6266]

Radio Broadcasting Services; Kahalu'u, HI

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 291A to Kahalu'u, Hawaii, at the request of Timothy D. Martz, as the community's first local FM service. Channel 291A can be allotted to Kahalu'u in compliance with the Commission's minimum distance separation requirements. The coordinates for this allotment are 19–35–00 and 155–58–09. With this action, this proceeding is terminated.

DATES: Effective April 3, 1989. The window period for filing applications will open on April 4, 1989, and close on May 4, 1989.

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 88–314, adopted January 25, 1989, and released February 16, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments is amended under Hawaii by adding Kahalu'u, Channel 291A.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89–4272 Filed 2–23–89; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 88-323; RM-6268]

Radio Broadcasting Services; Kawaihae, HI

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 295A to Kawaihae, Hawaii, at the request of Timothy D. Martz, as the community's first FM service. Channel 295A can be allotted to Kawaihae, Hawaii, in compliance with the Commission's minimum distance separation requirements. The coordinates for this allotment are 20–02–30 and 155–50–06. With this action, this proceeding is terminated.

DATES: Effective April 3, 1989. The window period for filing applications will open on April 4, 1989, and close on May 4, 1989.

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 88–323, adopted January 25, 1989, and released February 16, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments, is amended under Hawaii by adding Kawaihae, Channel 295A.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89–4273 Filed 2–23–89; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 88-189; RM-6284]

Radio Broadcasting Services; Highlands, NC

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Mountain-High Broadcasters, Inc., allots Channel 283A to Highlands, NC, as the community's first local FM service. Channel 283A can be allotted to Highlands in compliance with the Commission's minimum distance separation requirements with a site restriction of 1 kilometer (0.6 miles) northeast to avoid a short-spacing to Channel 281A at Clayton, GA, for which there are applications pending. With this action, this proceeding is terminated.

DATES: Effective April 3, 1989. The window period for filing applications will open on April 4, 1989, and close on May 4, 1989.

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 88–189, adopted January 17, 1989, and released February 16, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the FM Table of Allotments for North Carolina, is amended by adding Highlands, Channel 283A.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89–4274 Filed 2–23–89; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 216

Taking and Importing of Marine Mammals; Yellowfin Tuna From Spain

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

ACTION: Notice of rescinding a ban on tuna imports.

SUMMARY: The Assistant Administrator for Fisheries, NMFS announces that the Government of Spain has submitted information which demonstrates that Spain is now in conformance with U.S. marine mammal regulations. As a result of this finding, the ban on importation of yellowfin tuna from Spain is rescinded and yellowfin tuna from Spain may be imported into the United States.

DATES: This notice is effective February 21, 1989, and remains in effect until superceded.

FOR FURTHER INFORMATION CONTACT: E. Charles Fullerton, Regional Director, or J. Gary Smith, Deputy Regional Director, Southwest Region, NOAA Fisheries, at (213) 514–6196.

SUPPLEMENTARY INFORMATION: On March 18, 1988 (53 FR 8910), the NMFS promulgated interim final rules concerning the importation of yellowfin tuna caught by purse seines in the eastern tropical Pacific Ocean (ETP). Under this rule, in order to import yellowfin tuna into the United States, any nation which has purse seine vessels of 400 tons carrying capacity or greater operating in the ETP must supply documentary evidence that it has a regulatory program governing the incidental taking of marine mammals (porpoise) in the tuna fishery and a resultant mortality rate of marine mammals which are comparable to that of the United States.

On October 16, 1988 (53 FR 39743) NMFS prohibited importation of yellowfin tuna into the United States from foreign nations that are subject to the interim final import rule, action against Spain was delayed. It was unclear at that time whether the single purse seine vessel under Spanish flag in the ETP was operating under the laws of Spain or Ecuador, where it is based.

With assistance from the U.S. Department of State, NMFS inquired whether an official charter agreement existed between the Governments of Ecuador and Spain that would make this vessel subject to Ecuadorian marine mammal laws while fishing in the ETP. After receiving no documentation that indicated that such an agreement existed, yellowfin tuna imports from Spain were prohibited entry into the United States starting on December 14, 1988 (53 FR 50420).

The Government of Spain and the Government of Ecuador now have provided documentation establishing that the two nations have entered into an agreement relating to Spanish-flag tuna purse seine fishing vessels operating in the ETP in joint ventures with Ecuadorian interests. This agreement stipulates that the one Spanish-flag tuna purse seine vessel of 400 tons or greater carrying capacity operating out of Manta, Ecuador, will operate under the marine mammal protection laws of Ecuador. By this action, Ecuador has accepted the ultimate responsibility for ensuring that the Spanish-flag vessel in question conforms to Ecuador's marine mammal regulations. The Republic of Ecuador currently has a marine mammal finding of conformance.

The Assistant Administrator finds, after consultation with the Department of State, that the Spanish-flag vessel and any other vessels of Spanish flag covered by this agreement between the two nations will operate as certified charter vessels of Ecuador for the purposes of the U.S. marine mammal regulations. The vessel will become part of the Inter-American Tropical Tuna Commission (IATTC) observed fleet, and data based on reports from observers placed aboard this fishing vessel will be included with observed data reported by Ecuador as required for renewal of its finding of comparability with the U.S. marine mammal program.

This certified charter agreement establishes Ecuador as the harvesting nation for Spanish-flag tuna purse seine vessels operating from Ecuador and removes Spain as an active harvesting nation in the ETP. Therefore, Spain no longer need meet the requirements for an ETP harvesting nation to have its yellowfin tuna imported into the United States. The ban on importation of yellowfin tuna from Spain is rescinded.

Date: February 16, 1989.

James W. Brennan,

Assistant Administrator for Fisheries.

[FR Doc. 89–4328 Filed 2–23–89; 8:45 am]

BILLING CODE 3510–22–M

50 CFR Part 675

[Docket No. 81131–9019]

Groundfish of the Bering Sea and Aleutian Islands Area

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

ACTION: Notice of prohibition of receipt of groundfish.

SUMMARY: NOAA announces prohibition of receipt by foreign processors in the exclusive economic zone (EEZ) of rock sole taken in directed fisheries for rock sole in the Bering Sea and Aleutian Islands Management Area (BSAI). This action, taken under provisions of the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP), limits joint venture processing (JVP) to the amount of rock sole specified for JVP, assures optimum use of groundfish, and promotes orderly conduct of the groundfish fisheries.

DATES: Effective 2359 g.m.t. February 21, 1989 (1459 Alaska Standard Time, February 21, 1989) through the remainder of 1989. Comments will be accepted through March 8, 1989.

ADDRESSES: Comments should be mailed to Steven Pennoyer, Director, Alaska Region, National Marine Fisheries Service, P.O. Box 1668, Juneau, AK 99802, or be delivered to Room 453, Federal Building, 709 West Ninth Street, Juneau, Alaska.

FOR FURTHER INFORMATION CONTACT: Pat Peacock, Fishery Management Specialist, NMFS, 907–586–7654.

SUPPLEMENTARY INFORMATION: The FMP, which governs the groundfish fishery in the EEZ of the BSAI under the Magnuson Fishery Conservation and Management Act, is implemented by rules appearing at 50 CFR 611.93 and Part 675. For other actions in 1989 concerning JVP rock sole in the Bering Sea and Aleutian Islands Management Area, see the notice filed at 54 FR 3605 (January 25, 1989).

Notice of Closure to Directed Fishing

Under § 675.20(a)(7), the Regional Director has determined that 2,000 mt of the total 9,605 mt of rock sole allocated to JVP will be needed for bycatch in other JVP fisheries for yellowfin sole and "other flatfish" after the closure of the directed fishery for rock sole. To preserve this bycatch amount, foreign processors must cease receiving rock sole caught by U.S. fishermen in

directed fisheries for rock sole, effective 2359 GMT, February 21, 1989. Directed fishing is defined at § 675.2.

Classification

This action is taken under the authority of 50 CFR 675.20(b) and complies with Executive Order 12291.

The Assistant Administrator for Fisheries finds for good cause that it is impractical and contrary to the public interest to provide prior notice and opportunity for comment. Immediate effectiveness of this notice is necessary to prevent the harvest of rock sole from exceeding the JVP amount.

Interested persons are invited to submit comments in writing to the address above for 15 days after the effective date of this notice.

List of Subjects in 50 CFR Part 675

Fish, Fisheries, Reporting and recordkeeping requirements.

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

Dated: February 21, 1989.

Richard H. Schaefer,

Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 89–4357 Filed 2–21–89; 4:35 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 54, No. 36
Friday, February 24, 1989

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 Parts 911 and 915

[Docket No. FV-89-021]

Expenses and Assessment Rates for the Marketing Orders Covering Limes and Avocadoes Grown in Florida

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would authorize expenditures and establish assessment rates under Marketing Orders 911 and 915 for the 1989–90 fiscal year for each marketing order program. These proposed expenditures and assessment rates are needed by the administrative committees established under these orders to pay program expenses and collect assessments from handlers to pay those expenses. The proposed action would enable these committees to perform their duties and the programs to operate.

DATE: Comments must be received by March 27, 1989.

ADDRESS: Interested persons are invited to submit written comments concerning this rule to: Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456. Three copies of all written material shall be submitted, and they will be made available for public inspection in the office of the Docket Clerk during regular business hours. All comments should reference the docket number and the date and page number of this issue of the Federal Register.

FOR FURTHER INFORMATION CONTACT: Gary D. Rasmussen, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 2525–S, Washington, DC 20090–6456; telephone: (202) 475–3918.

SUPPLEMENTARY INFORMATION: This proposed rule is issued under the Marketing Agreements and Marketing Order Nos. 911 (7 CFR Part 911) regulating the handling of limes grown in Florida, and 915 (7 CFR Part 915) regulating the handling of avocados grown in South Florida. These agreements and orders are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

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 criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this proposed rule on small entities.

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

There are about 26 handlers of Florida limes and 34 handlers of Florida avocados subject to regulation under these marketing orders, and about 260 lime producers and 300 avocado producers in Florida. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of these handlers and producers may be classified as small entities.

Each marketing order administered by the U.S. Department of Agriculture (Department) requires that the assessment rate for a particular fiscal year shall apply to all assessable commodities handled from the beginning of such year. An annual budget of expenses is prepared by each administrative committee and submitted to the Department for approval. The members of administrative committees are handlers and producers of the regulated commodities. They are familiar with the committees' needs and with the costs for goods, services, and personnel in their local areas and are thus in a position to formulate appropriate budgets. The budgets are formulated and discussed in public meetings. Thus, all directly affected persons have an opportunity to participate and provide input.

The assessment rate recommended by each administrative committee is derived by dividing anticipated expenses by the expected shipments of the commodity (e.g., pounds, tons, boxes, cartons, bushels, etc.). Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the committees' expected expenses. Recommended budgets and rates of assessment are usually acted upon by the committees shortly before a season starts, aand expenses are incurred on a continuous basis. Therefore, budget and assessment rate approvals must be expedited so that the committees will have funds to pay their expenses.

The Florida Lime Administrative Committee (FLAC) met January 11, 1989, and unanimously recommended a 1989–90 budget with expenditures of $233,000 and an assessment rate of $0.15 per bushel (55 pounds) of assessable limes shipped under M.O. 911. In comparison, 1988–89 fiscal year budgeted expenditures were $233,500 and the assessment rate was $0.15 per bushel. Major expenditure items budgeted for the 1989–90 fiscal year, compared with those budgeted in 1988–89 (in parentheses), are $105,300 ($107,900) for program administration, $102,700 ($100,600) for production research, and $25,000 ($25,000) for market development and public relations. To cover the 1989–90 proposed expenses, assessment income is estimated at $225,000 based on shipments of 1,500,000 bushels of assessable limes, and interest income at $8,000. The FLAC also unanimously recommended that excess 1988–89 assessments estimated at $15,000 be placed in its reserve, creating a reserve of about $151,000, an amount well within the maximum authorized.

The Avocado Administrative Committee (AAC) met January 11, 1989, and unanimously recommended a 1989–90 budget with expenditures of $200,000 and an assessment rate of $0.16 per bushel (55 pounds) of assessable

avocados shipped under M.O. 915. In comparison, 1988–89 fiscal year budgeted expenditures were $193,500 and the assessment rate was $0.11 per bushel. Major expenditure items budgeted for the 1989–90 fiscal year, compared with those budgeted in 1988–89 (in parentheses), are $113,800 ($107,300) for program administration, $61,200 ($61,200) for production research, and $25,000 ($25,000) for market development and public relations. To cover the 1989–90 proposed expenses, assessment income is estimated at $195,200 based on shipments of 1,220,000 bushels of assessable avocados, and interest income at $4,800. The AAC expects to have about $59,000 in its reserve at the beginning of the 1989–90 fiscal year, an amount well within the maximum authorized.

While this proposed action would impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be significantly offset by the benefits derived from the operation of the marketing orders. Therefore, the Administrator of AMS has determined that this action would not have a significant economic impact on a substantial number of small entities.

List of Subjects in 7 CFR Parts 911 and 915

Marketing agreements and orders, limes, avocados, Florida.

For the reasons set forth in the preamble, it is proposed that 7 CFR Parts 911 and 915 be amended as follows:

1. The authority citation for 7 CFR Parts 911 and 915 continues to read as follows:

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

2. New §§ 911.228 and 915.228 are added to read as follows:

PART 911—LIMES GROWN IN FLORIDA

§ 911.228 Expenses and assessment rate.

Expenses of $233,000 by the Florida Lime Administrative Committee are authorized, and an assessment rate of $0.15 per bushel (55 pounds) of assessable limes is established for the fiscal year ending March 31, 1990. Any unexpected funds from the 1988–89 fiscal year shall be carried over as a reserve.

PART 915—AVOCADOS GROWN IN SOUTH FLORIDA

§ 915.228 Expenses and assessment rate.

Expenses of $200,000 by the Avocado Administrative Committee are authorized, and an assessment rate of $0.16 per bushel (55 pounds) of assessable avocados is established for the fiscal year ending March 31, 1990. Any unexpected funds from the 1988–89 fiscal year shall be carried over as a reserve.

Dated: February 21, 1989.

William J. Doyle,

Deputy Director, Fruit and Vegetable Divison.

[FR Doc. 89–4349 Filed 2–23–89; 8:45 am]

BILLING CODE 3410–02–M

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7 CFR Part 980

[FV–89–008]

Irish Potatoes Imported Into the United States; Proposed Rule to Clarify Exemption for Certified Seed

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would clarify the exemption for certified seed in the potato import regulation. This action would clarify that such potatoes are exempt from the size, quality, and inspection requirements of the import regulation, when used for the purpose intended and are not sold in fresh market channels.

DATES: Comments must be received by March 27, 1989.

ADDRESS: Interested persons are invited to submit written comments concerning this proposal. Comments should be sent to: Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2085–S, Washington, DC 20090–6456. Three copies of all written material shall be submitted, and they will be made available for public inspection at the office of the Docket Clerk during regular business hours. All comments should reference the date and page number of this issue of the Federal Register.

FOR FURTHER INFORMATION CONTACT: Martha Sue Clark, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456, telephone (202) 447–2020.

SUPPLEMENTARY INFORMATION: This rule would amend 7 CFR Part 980 regulating Irish potatoes imported into the United States. The potato import regulation is authorized by the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601–674], hereinafter referred to as the Act.

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 criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this proposal on small entities.

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

There are approximately 20 potato importers subject to the requirements of the potato import regulation. The Small Business Administration [13 CFR 121.2] has defined small agricultural producers as those having annual gross revenue for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of importers of potatoes may be classified as small entities.

Section 8e of the Act requires that when certain domestically produced commodities, including Irish potatoes, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality, or maturity requirements. Section 8e also provides that whenever two or more marketing orders regulating a commodity produced in different areas of the United States are concurrently in effect, the Secretary shall determine which of the areas produces the commodity in most direct competition with the imported commodity. Imports then must meet the quality standards set for that particular area.

In the case of potatoes, the current import regulation [§ 980.1, 37 FR 8059, April 25, 1972] specifies that import requirements for long types be based on those in effect for potatoes grown in certain designated counties in Idaho, and Malheur County, Oregon [7 CFR Part 945] during each month of the year. The import requirements for round white types are based on those in effect for potatoes grown in the Southeastern States from June 5 to July 31 [7 CFR Part

953], and on those in effect for potatoes grown in Colorado Area 3 for the remainder of the year [7 CFR Part 948]. The import requirements for round red types are based on those in effect for potatoes grown in Washington during the months of July and August [7 CFR Part 946], and on those in effect for potatoes grown in Colorado Area 2 for the remainder of the year [7 CFR Part 948].

The handling requirements established under the marketing orders are intended to provide that potatoes shipped to the fresh market meet standards of acceptable size and quality for that market. Exemptions are provided for potatoes used in certain other outlets to recognize that there are situations in which it is unnecessary or unreasonable to require potatoes to meet fresh market requirements. To the extent practicable, comparable exemptions are provided in the import regulation.

Under each marketing order regulation, an exemption is provided for potatoes used as seed because the requirements for this outlet differ markedly from those for the fresh market. Seed potatoes are grown and handled under special conditions to ensure that they possess the necessary attributes for seed, such as being free from disease. Each major potato producing State operates a seed certification program under which requirements for seed potatoes are established. If these requirements are met, seed potatoes are certified and identified as such by the State's certifying agency. Marketing order exemptions for seed potatoes specify that in order to qualify for the exemption, potatoes must be officially certified as seed. Further, the potatoes must actually be used as seed.

The import regulation also exempts potatoes that are officially certified as seed. However, it does not specify that these potatoes must be utilized as seed to qualify for the exemption. To certify this provision, the import regulation would be revised to expressly state that the exemption for certified seed potatoes applies only to potatoes which meet the requirements for such potatoes and are used for such purpose. This revision would make the import regulation's exemption provision comparable to domestic regulations.

In addition, all potatoes imported into the United States are currently grown in Canada, which operates a seed certification program similar to those existing in the United States. The current import regulation incorrectly identifies the official Canadian seed certifying agency. Accordingly, a revision would be made in the regulation to correctly identify that agency as the Plant Health Directorate, Food Production and Inspection Branch, Agriculture Canada.

Based on the above, the Administrator of AMS has determined that this action would not have a significant economic impact on a substantial number of small entities.

A 30-day comment period is provided to allow interested persons sufficient time to respond to this proposal. All written comments timely received in response to this request for comments will be considered before a final determination is made on this matter.

List of Subjects in 7 CFR Part 980

Marketing agreements and orders, Imports, Potatoes.

For the reasons set forth in the preamble, it is proposed that 7 CFR Part 980 be amended as follows:

PART 980—VEGETABLES: IMPORT REGULATIONS

1. The authority citation for 7 CFR Part 980 continues to read as follows:

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

2. Section 980.1 is amended by revising paragraph (e) to read as follows:

§ 980.1 Import regulations; Irish potatoes.

* * * * *

(e) *Certified seed.* Certified seed potatoes shall include only those potatoes which are officially certified and tagged as seed potatoes by the Plant Health Directorate, Food Production and Inspection Branch, Agriculture Canada, and which are subsequently used as seed.

* * * * *

Dated: February 21, 1989.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 89–4350 Filed 2–23–89; 8:45 am]

BILLING CODE 3410–02

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7 CFR Part 985

[FV–89–023]

Expenses and Assessment Rate for Far West Spearmint Oil

AGENCY: Agricultural Marketing Service.

ACTION: Proposed rule.

SUMMARY: This proposed rule would authorize expenditures and establish an assessment rate under Marketing Order No. 985 for the 1989–90 marketing year established for the spearmint oil marketing order. Funds to administer this program are derived from assessments on handlers.

DATES: Comments must be received by March 6, 1989.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal, comments must be sent in triplicate to the Docket Clerk, F&V, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Jacquelyn R. Schlatter, Marketing Specialist, Volume Control Programs, Marketing Order Administration Branch, F&V, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456; telephone: (202) 447–5120.

SUPPLEMENTARY INFORMATION: This rule is proposed under Marketing Agreement and Order No. 985 (7 CFR Part 985), regulating the handling of spearmint oil produced in the Far West. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This proposed rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "nonmajor" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

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

There are approximately 9 handlers of Far West spearmint oil subject to regulation under the spearmint oil marketing order, and approximately 253 producers of Far West spearmint oil in the production area. Small agaricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having average gross

annual revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of Far West spearmint oil producers and handlers may be classified as small entities.

The spearmint oil marketing order requires that the assessment rate for a particular marketing year shall apply to all assessable spearmint oil handled from the beginning of such year. An annual budget of expenses is prepared by the Spearmint Oil Administrative Committee (SOAC) and submitted to the U.S. Department of Agriculture for approval. The members of the SOAC are handlers and producers of regulated spearmint oil. They are familiar with the SOAC's needs and with the costs for goods, services, and personnel in their local area and are thus in a position to formulate an appropriate budget. The budget is formulated and discussed in public meetings. Thus, all directly affected persons have an opportunity to participate and provide input.

The assessment rate recommended by the SOAC is derived by dividing anticipated expenses by the expected amount of spearmint oil to be handled. Because that rate is applied to the actual volume of spearmint oil handled, it must be established at a rate which will produce sufficient income to pay the SOAC's expected expenses. The recommended budget and rate of assessment are usually acted upon by the SOAC shortly before a season starts, and expenses are incurred on a continuous basis. Therefore, the budget and assessment rate approval must be expedited so that the SOAC will have funds to pay its expenses.

The SOAC met on January 26, 1989, and unanimously recommended 1989–90 marketing order expenditures of $176,800, and an assessment rate of $0.10 per pound of Far West spearmint oil. In comparison, 1988–89 marketing year budgeted expenditures were $182,500 and the assessment rate was $0.09 per pound. Expenditure categories in the 1989–90 budget are $67,200 for program administration, $83,600 for salaries, and $26,000 for expenses, which includes travel and compensation. Assessment income for 1988–89 is expected to total $160,986.50 based on shipments of 1,609,685 pounds of spearmint oil. Interest and incidental income is estimated at $5,000. The SOAC may expend operational reserve funds of $10,831.50 to meet budgeted expenses. Additional reserve funds may be used to meet any deficit in assessment income.

While this proposed action would impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be significantly offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action would not have a significant economic impact on a substantial number of small entities.

Based on the foregoing, it is found and determined that a comment period of less than 30 days is appropriate because the budget and assessment rate approval for the program need to be expedited. The SOAC needs to have sufficient funds to pay its expenses, which are incurred on a continuous basis.

List of Subjects in 7 CFR Part 985

Far West, Marketing agreements and orders, Spearmint oil.

For the reasons set forth in the preamble, it is proposed that 7 CFR Part 985 be amended as follows:

PART 985—MARKETING ORDER REGULATING THE HANDLING OF SPEARMINT OIL PRODUCED IN THE FAR WEST

1. The authority citation for 7 CFR Part 985 continues to read as follows:

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

2. New § 985.309 is added to read as follows:

§ 985.309 Expenses and assessment rate.

Expenses of $176,800 by the Spearmint Oil Administrative Committee are authorized, and an assessment rate payable by each handler in accordance with § 985.41 is fixed at $0.10 per pound of salable spearmint oil for the 1989–90 marketing year ending May 31, 1990. Unexpended funds may be carried over as a reserve.

Dated: February 21, 1989.

William J. Doyle,

Associate Deputy Director, Fruit and Vegetable Division.

[FR Doc. 89–4351 Filed 2–23–89; 8:45 am]

BILLING CODE 3410–02–M

7 CFR Part 1040

[Docket No. AO–225–A39; DA–88–047]

Milk in the Southern Michigan Marketing Area; Recommended Decision and Opportunity To File Written Exceptions on Proposed Amendments to Tentative Marketing Agreement and to Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This decision recommends changes in the plant location adjustments to prices under the Southern Michigan order. The proposed amendments were proposed by four dairy farmer cooperatives that supply about 87 percent of the market's milk.

The recommended changes would replace the current seven pricing zones with just three zones (zero, minus five cents, and minus seven cents) and increase the rate of adjustment at plants outside the zones from one cent to 2.25 cents per hundredweight per 10 miles or fraction thereof. The zone and location adjustments apply to Class I milk prices to handlers and to uniform prices to producers.

Also, a larger direct-delivery differential payment of 10 cents per hundredweight would be required for milk delivered to pool plants in a three-county area (metropolitan Detroit). Currently, two rates are applicable in portions of two counties.

Another recommendation would change from 0.113 to 0.115 the factor that is multiplied times a specified butter price to determine the butterfat differential used for pricing milk under the order.

These changes are warranted due to changes in marketing conditions that have occurred since 1977, and are based on industry proposals considered at a public hearing held in Romulus, Michigan on May 24, 1988.

DATE: Comments are due on or before March 17, 1989.

ADDRESS: Comments (four copies) should be filed with the Hearing Clerk, Room 1079, South Building, United States Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Richard A. Glandt, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 447–4829.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12291.

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities. The amendments would promote orderly marketing of milk by producers and regulated handlers.

Prior documents in this proceeding:

Notice of Hearing: Issued April 29, 1988; published May 4, 1988 (53 FR 15851).

Extension of Time for Filing Briefs: Issued July 19, 1988; published July 22, 1988 (53 FR 27699).

Preliminary Statement

Notice is hereby given of the filing with the Hearing Clerk of this recommended decision with respect to proposed amendments to the tentative marketing agreement and the order regulating the handling of milk in the Southern Michigan marketing area. This notice is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900).

Interested parties may file written exceptions to this decision with the Hearing Clerk, U.S. Department of Agriculture, Washington, DC 20250, by the 21st day after publication of this decision in the **Federal Register.** Four copies of the exceptions should be filed. All written submissions made pursuant to this notice will be made available for public inspection at the office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)).

The proposed amendments set forth below are based on the record of a public hearing held at Romulus, Michigan, on May 24, 1988, pursuant to a notice of hearing issued April 29, 1988 (53 FR 15851).

The material issues on the record of hearing relate to:

1. Changing the location adjustment and direct-delivery differential zones in the order.

2. Changing the rate used to determine location adjustments at locations outside the zoned area.

3. Changing the factor used in the computation of the butterfat differential.

Findings and Conclusions

The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof:

1. *Changing the location adjustment and direct-delivery differential zones in the order.* The order should be amended to provide a single direct-delivery zone and three zones for pricing milk at Class I and uniform prices.

The Producers' Equalization Committee (PEC) proposed changing the structure of the existing pricing zones and direct-delivery differential zones.

The PEC is composed of four cooperative associations, namely, Independent Cooperative Milk Producers Association, Michigan Milk Producers Association (MMPA), National Farmers Organization, and Southern Milk Sales. Together, these four associations market approximately 87 percent of the milk pooled on Order 40 and supply about 87 percent of the market's fluid milk sales.

The PEC proposed that the present seven zones, all in the lower portion of Michigan, be replaced with three zones.

The lower portion of Michigan is currently divided into seven geographically specified zones consisting of bands of counties grouped essentially on the basis of distance from the heavily populated corridor which encompasses Detroit, Flint and Bay City.

The above pricing structure has been in effect for the Southern Michigan market since September 1, 1977. The Class I price to handlers and the uniform price to producers is adjusted as follows:

Zone	Adjustment
1	No adjustment.
2	Minus 5 cents.
3	Minus 7 cents.
4	Minus 9 cents.
5	Minus 11 cents.
6	Minus 14 cents.
7	Minus 17 cents.

The PEC proposed that the lower portion of Michigan be comprised of three zones, as follows: Zone 1, a large southeastern segment, would contain the counties of Clinton, Genesee, Gratiot, Hillsdale, Huron, Ingham, Jackson, Lapeer, Lenawee, Livingston, Macomb, Monroe, Oakland, Saginaw, Sanilac, St. Clair, Shiawassee, Tuscola, Washtenaw, Wayne, and Bay (except Gibson, Mount Forest, Pinconning, Garfield and Fraser townships);

Zone 2, a large southewestern segment, would include Allegan, Barry, Berrien, Branch, Calhoun, Cass, Eaton, Ionia, Kalamazoo, Kent, Montcalm, Muskegon, Ottawa, St. Joseph, and Van Buren Counties; and

Zone 3, north of Zones 1 and 2, would be comprised of Bay County (all townships excluded from Zone 1, and the counties of Alcona, Alpena, Antrim, Arenac, Benzie, Charlevoix, Cheboygan, Clare, Crawford, Emmet, Gladwin, Grand Traverse, Isabella, Iosco, Kalkaska, Lake, Leelanau, Manistee, Mason, Missaukee, Mecosta, Midland, Montmorency, Newaygo, Oceana, Ogemaw, Osceola, Oscoda, Otsego, Presque Isle, Roscommon and Wexford. The Class I prices to handlers and the uniform price to producers would be adjusted as follows:

Zone	Adjustment
1	No adjustment.
2	Minus 5 cents.
3	Minus 7 cents.

The PEC also proposed expanding the area in which the direct-delivery differential is applicable from two counties (Wayne and Oakland Counties) to include Macomb County. The rate of the direct-delivery differential would be 10 cents in all three counties. At the present time, a 10-cent rate applies to milk received at pool plants in Wayne County and parts of Oakland County. A 4-cent rate presently applies to most of Oakland County.

Also proposed by the PEC was a proposal to increase the location adjustment rate from 1 cent to 2.25 cents applicable at plants located outside the marketing area. Both the direct-delivery differential and the location adjustment rate applicable to distant plants will be discussed following a discussion dealing with the restructure of the present location adjustment zones.

A witness for the PEC testified that the proposed changes to the pricing structure of the Southern Michigan order are necessary because of the substantial changes that have occurred in the past decade. He said that a 21-cent difference (17 cents for Zone 7 plus a 4-cent direct-delivery differential) was created in September 1977 to facilitiate the movement of milk from western Michigan to southeast Michigan. Also a 27-cent difference was created at that time (17 cents for Zone 7 plus a 10-cent direct-delivery differential) to move milk from northern Michigan to southeast Michigan. In 1977, he said, these differences in prices fairly reflected the cost of transporting milk to a market (Detroit metropolitan area) that was considered to be a deficit production area.

The PEC spokesman said that packaged milk sales by handlers located in the proposed Zone 1 (21 counties) was approximately 156.0 million pounds and that milk production for this same area was about 160 million pounds. He said that handlers also require milk for non-fluid milk products such as cottage cheese and yogurt. This 21-county area in 1977, he said, included four supply plants at Adrian, Ovid, Chesaning and Sebewaing, Michigan, which processed reserve milk supplies for Class III products.

The witness for the PEC said that the period from 1977 to 1987 can be described as a period of deteriorating packaged fluid milk sales by Order 40 pool plants. Fluid milk sales for this period, he said, decreased from approximately 2.218 billion pounds per year to 1.976 billion pounds or a decrease of 242 million pounds.

Proponent's spokesman testified that this decline in sales can be attributed to a depressed economy, declining propulation, and declining per capita consumption. Local plants today, he said, are not distributing fluid milk products into as many distant markets as in the past.

The witness for the PEC said that the distribution of fluid milk sales within Southern Michigan has also changed. Exhibit No. 9, for example, shows that in 1977, plants located in the two counties where the direct-delivery differential applies, accounted for 57 percent of Order 40's sales. Plants located within the present base zone and the minus 5-cent zone accounted for 25 percent of the total sales and the balance of sales (18 percent) were by plants in the minus 9-cent, minus 11-cent and beyond zones. By December 1987, he said, for these same zones, the percentages were 41, 27 and 32, respectively.

Proponent's witness testified that during this 10-year period, annual sales volume is the area now comprising the plus 10-cent direct-delivery differential declined by 445 million pounds whereas sales in the minus 9-cent and beyond zones increased by 217 million pounds resulting in a net loss of 242 million pounds of fluid milk sales for the entire market. He said that this redistribution of the local market's fluid milk sales represents a reversal of the previous trend in sales. Less packaged milk is being supplied to other in-state markets by Detroit metropolitan handlers, via distributors, and more of the packaged sales in the Detroit metropolitan area is being supplied by plants located outside the plus 10-cent direct-delivery differential area. The closing of two large distributing plants during the last 10 years, he said, has also contributed to the reduced fluid milk sales by plants located in the plus 10-cent direct-delivery differential area.

The PEC witness testified that milk production for the entire Southern Michigan market and by county has also changed during the last 10 years. He said that Exhibit 15 shows that for December 1987, milk production in the proposed Zone 1 area was within one percent of the production level of December 1977 and that in the proposed minus 5- and minus 7-cent zones, production had increased 14 percent when compared to 1977. He indicated that although milk production has remained fairly constant in the counties proposed for Zone 1, the monthly fluid milk needs of this area have decreased by almost 39 million pounds since 1977.

The spokesman for the PEC testified that more of the milk production in the proposed Zone 1 area is available to supply the fluid market today than there was in 1977. In his view, this is because of the closing of two manufacturing plants located in Sebewaing and Chesaning, Michigan. These two facilities, he said, acquired the majority of their milk supply from farms located in the central zone. His belief is that the central zone should no longer be considered a deficit production area and therefore, the spread in prices paid to producers located in different areas of the market should be reduced.

The PEC witness indicated that changes in the location adjustment rates should also be made to more properly align Class I prices between adjoining markets. Furthermore, it is his belief that prices within the market should be aligned to ensure comparable pricing treatment for plants which are similarly located but regulated by another Federal order.

The spokesman for the PEC expressed the view that because of the daily and monthly fluctuation in sales, it is necessary to design location adjustments so that the seasonal and operating reserves of the fluid market can be handled in an efficient manner with the least cost to those producers who are balancing the market.

The PEC witness indicated that the location adjustment rate for the proposed Zone 2 of minus 5 cents results in a Class I differential of $1.70 that applies to regulated handlers in the northern zone of the Indiana market (Order 49). He said that a minus 5-cent location adjustment also more closely aligns the producer uniform prices for Orders 40 and 49 in southwest Michigan. A minus 7-cent location adjustment in Zone 3, he said, recognizes the fact that the plants are located further from the major consumption areas of Lansing, Flint, and Bay City-Saginaw.

The PEC proposal, in the witness' view, would expand the central zone to include the cities of Lansing and Jackson in order to recognize the overlapping of route distribution and the competition for fluid milk sales among plants located in Lansing and Jackson with other plants presently included in the central zone. In his view, a zero location adjustment for Lansing and Jackson better aligns the Class I price among the competing handlers in the local markets and also better aligns the Order 40 Class I differential at these locations with the Order 33 (Ohio Valley) Class I differential of $1.80 for northwest Ohio.

The witness for the PEC testified that, in his opinion, the proposed reduction in the location adjustment rates for the more distant zones acknowledges that there is an increasing demand for milk by processing plants located in those areas which were previously considered secondary markets.

The PEC, he said, believes that these location adjustment rates should be designed so that producer supplies will move to plants when needed in the most efficient way. The propsed minus 5-cent location adjustment rate for Zone 2 will provide better inter-market price alignment. Furthermore, the witness said, the historical price relationship between Order 40 and surrounding markets was altered when the Class I differentials were changed pursuant to the Food Security Act of 1985. The PEC proposal, in his view, will result in more equity among fluid milk plants.

On cross-examination the PEC witness stated that this organization is not saying that the cost of transportation is any cheaper today than it was in 1977. He said that milk is not being moved into the central zone on a routine basis from outisde this zone. The plants located in the minus 7-cent zone, he said, would have a fairly local procurement area and they do not utilize all the milk produced in the counties that would make up the minus 7-cent zone. Furthermore, he said, some of the milk produced in this area will move either to a fluid milk plant in the central zone or to the minus 5-cent zone or it may move to the MMPA balancing plant at Ovid, Michigan.

The PEC witness on cross-examination testified that the population west of Lansing has grown whereas the population in the Detroit metropolitan area as well as in Flint, Bay City-Saginaw has declined because of their reduced employment associated with the auto industry.

On cross-examination, the spokesman for the PEC indicated that a manufacturing plant under construction at Allendale (Ottawa County) that will be supplied by MMPA, would become operational late in 1989. He said that MMPA will still have a commitment to supply the local fluid milk plants.

The PEC proposal was supported at the hearing by a witness for the Borden Company that operates a fluid milk plant located at Madison Heights, Michigan. This witness said that the proposal would not affect their costs and that none of their competitors would have their costs lowered.

A witness for Kraft, Inc. (Kraft), testified in opposition to the proposal. He said that Kraft operates supply plants at Pinconning and Clare, Michigan. The Clare plant, he said, now is subject to a minus 11-cent location adjustment and the Pinconning plant currently is subject to a minus 7-cent location adjustment.

The Kraft witness said that the two supply plants qualify as fully regulated supply plants because of the unit system of pooling administered by MMPA. The Pinconning plant, he said, receives milk from nonmember producers, one-third of whom are located in Huron, Tuscola and Sanilac Counties, Michigan, and the remaining two-thirds of the producers are located in counties north of Pinconning. He said the milk supply for the Clare plant comes from the central part of the state from Traverse City of Lansing.

Kraft's witness expressed the view that the current pricing structure of Order 40 reflects the sound principles applied throughout the milk order system such as: (1) The location price for milk should be reduced in direct proportion to the distance from the primary market, (2) the price of milk in major milk production areas should be lower than the price in principal consuming areas and, (3) similar prices should apply to similarly situated handlers.

The witness for Kraft testified that the proposal as it relates to their Pinconning plant would put their plant at a competitive disadvantage. This, he says, is because the producer pay price in Sanilac County would increase by 7 cents in a county where a competing supply plant is located at Marlette that would have a zero location adjustment.

Kraft's witness said that the proposal would do nothing to encourage the movement of milk from Sanilac or Huron Counties to the metropolitan Detroit area. He said that the proposal would discourage such shipments since the price difference between the "thumb" area and the Detroit metropolitan area would be reduced from 17 cents (10 cent direct-delivery differential plus 7 cents) to 10 cents.

The Kraft witness testified that the proposal would eliminate the incentive to move milk from the "thumb" area to distributing plants located at Port Huron, Flint, Saginaw and Bay City. This, he says, is because a zero price difference is proposed between the production area and these plants in contrast to a 7-cent incentive that now exists.

Kraft's witness said that the proposal would provide the MMPA butter-powder plant at Ovid, Michigan, with an ability (7 cents) to attract milk supplies located in the "thumb" area away from Kraft's Pinconning plant. He said that the proposal will make Kraft the only purchaser of milk in the "thumb" area with a minus location adjustment and that this additional expense of 7 cents will cost Kraft approximately $33,000 per year.

The witness for Kraft expressed the view that the proposal will be disruptive in the western part of the State between manufacturing plants. He said that in Ottawa County the blend price would increase 6 cents (minus 11 to minus 5 cents) and the impact will apply to a cheese plant being built by Leprino Foods, (Leprino) at Allendale, Michigan (Ottawa County). The plant when completed, he said, will have a capacity to manufacture two- to two-and-a-half million pounds of milk per day and that this price increase of 6 cents on this volume of milk will reduce the pool about $500,000 per year. Furthermore, he said, the blend price at Allendale would be 2 cents higher than the blend price at Clare. At the present time, he said, the two locations are priced the same. He said that the two cents on the expected volume at Allendale would result in a $144,000 procurement advantage per year to Leprino.

Kraft's witness said that the proposal is contrary to the historical policy and recent decisions by the Secretary. In his view, the proposal does less to reflect the cost of transporting milk from the production areas to the consuming areas than do the current provisions of the order. He said that the Secretary should be consistent and not adopt the proposal because it would increase prices in the State's major production areas in order to provide a competitive advantage for one manufacturing plant.

At the hearing and in their brief, Lansing Dairy, located at Lansing, Michigan, opposed the PEC proposal. Their spokesman said that transportation costs have gone up in the six counties surrounding Detroit. He said that the proposal would cost their plant about half a cent per gallon and, on their volume of sales, $1,500–$1,600 per week. He said that the proposal will help MMPA's relationship with the Leprino cheese plant at Remus, Michigan, and with the Leprino plant under construction at Allendale.

Frigo Cheese Corporation (Frigo) opposed the proposal. The Frigo witness testified that Frigo operates three supply plants pooled on Order 40 that are located at Carney, Michigan, and at Lena and Wyocena, Wisconsin. He said that Frigo has been associated with Order 40 for over 18 years through the unit pooling provisions administered by Dean Foods Company (Dean). The witness said that the PEC proposal would be disruptive to producers located in the Upper Peninsula, and, therefore, Frigo was proposing a modification to the proposals.

The spokesman for Frigo proposed adding to the PEC proposals two more zones applicable to the Upper Peninsula with fixed location adjustments. He would add a Zone 4 with a minus 20-cent location adjustment and a Zone 5 with a minus 40-cent location adjustment. He said that Zone 4 would include the area outside of the marketing area but located in the Upper Peninsula that contains the counties of Alger, Baraga, Chippewa, Houghton, Keweenaw, Luce, Mackinac, Marquette and Schoolcraft. Zone 5, he said, would include the area outside the marketing area but located in the Upper Peninsula and would include the counties of Delta, Dickinson, Gogebic, Iron, Menominee and Ontonagon. Although offered as a modification of proposal No. 1, this proposal must be considered as more directly related to the PEC proposal to change the rate for computing location adjustments at plants outside the specified zones.

As indicated previously, the PEC proposed adding Macomb County to the area now subject to the direct-delivery differential. The proposed direct-delivery differential rate would be 10 cents and would apply to all of Wayne, Oakland and Macomb Counties.

The PEC witness testified that the proposal would increase the cost to one fluid milk plant located in Novi Township of Oakland County. He said that approximately 20 miles separates the Novi plant that is subject to a plus 4-cent direct-delivery differential from three large fluid milk plants located in the plus 10-cent area and that this minor difference in distance does not justify a 6-cent difference in the location value of producer milk.

The spokesman for the PEC said that the plus 10-cent direct-delivery

differential is needed to induce needed milk deliveries to the present plants or any future plant that may be built in this three-county area. This expansion, he says, parallels the extension of the residential Detroit metropolitan area since the order was amended in 1977.

Proponent's witness testified that rapid urban development in Oakland and Macomb Counties has virtually eliminated milk production in these counties. He noted that within a 60-mile radius of the Detroit area, in the counties adjacent to the tri-county area, milk production in December 1977 was 40 million pounds and that by December 1987 milk production within the same radius had decreased to about 35 million pounds.

The PEC witness expressed the view that the direct-delivery differentials for this market have, over time, helped to provide milk supplies for milk plants located in the Detroit metropolitan area. He said that the additional 10 cents still fairly reflects the additional hauling cost paid on the majority of the milk moving to the Detroit area versus the cost of moving milk to other local markets in the central zone.

The changes in the plant location adjustment zones proposed by the PEC should be adopted. These changes will produce a flatter Class I and uniform price structure within the marketing area that will better reflect the need to move less milk under current market conditions. Instead of two direct-delivery zones (plus four cents and plus ten cents) and seven location adjustment zones (ranging from no adjustment to a minus 17 cents adjustment), there should be one direct-delivery zone (plus ten cents) and three location adjustment zones (ranging from zero to minus seven cents).

The current zone pricing structure has been in place since 1977. Since then, numerous changes have occurred in the market that warrant fewer zones and less incentive to move milk toward the Detroit metropolitan area from the outlying production areas. These changes include population shifts, plant closings, and increased milk production.

The metropolitan Detroit area (principally Macomb, Oakland and Wayne Counties) is still the market's largest single population center. However, population in Wayne County declined more than 12 percent (300,000) from July 1976 to July 1986.[1] Although the population in Oakland and Macomb Counties increased during this period, the three-county area combined had 5.5 percent fewer inhabitants as of July 1986 than there were in July 1976. These three counties, which make up the proposed direct-delivery differential zone, contained 46.8 percent of the marketing area population in July 1976, but only 44.0 percent in July 1986. The net decline for the three counties combined was more than 225,000 persons.

Data in exhibits show that annual Class I packaged milk dispositions from plants located in the direct-delivery differential zone (Wayne and Oakland Counties—there are no milk plants in Macomb County) declined by 35.5 percent, from 1.255 billion pounds in 1977 to 810.3 million pounds in 1987. The difference, 455.2 million pounds, represents the annual average milk production of nearly 500 Michigan dairy farms in 1987, based on daily deliveries per farm of 2,500 pounds of milk. This number simply serves to emphasize how much less Class I milk is currently used by plants in this zone than was needed ten years ago.

Milk production in the direct-delivery differential zone dropped by over 44 percent (from 4.8 million to 2.6 million pounds) between December 1977 and December 1987. However, within this zone, two large distributing plants have closed. To the extent that there is a need for milk at plants in the direct-delivery differential zone, the 10-cent differential, which is paid directly to producers and therefore is not pooled, is viewed by the supplying cooperatives as adequate to cover the additional cost of delivering milk to plants located in the three-county area. No one opposed expanding the direct-delivery differential zone to include all three counties and fixing a uniform rate of 10-cents per hundredweight for the direct-delivery differential. The direct-delivery differential has no impact on the pooled value of milk and thus no impact on the uniform price.

The balance of the proposed "zero" zone consists of all or a portion of 18 counties, covering approximately the southeastern one-third of the lower portion of the State of Michigan. In this larger area, population increased slightly (2.2 percent) between 1976 and 1986, while milk production increased 0.8 percent (1.26 million pounds) over the same period of time. This zone includes several population centers, including Flint, Lansing, Saginaw and Bay City, all of which are Metropolitan Statistical Areas (MSA's) as defined by the Bureau of the Census. Two of these MSA's, and Flint and Lansing, experienced population declines from 1976 to 1986, while the Saginaw and Bay City area population increased by over 16 percent, or more than 57,000 persons.

The population of the entire zero zone (which includes the direct-delivery differential zone) overall dropped by 2.75 percent (175,200) from 1976 to 1986. Three supply plants and four distributing plants (including the two mentioned earlier in the direct-delivery differential zone) have closed in the zero zone since 1977. Slightly more than 70 percent of the market's population resides in these 21 counties. Plants located in this zone received two-thirds of the market's producer milk in December 1987 and accounted for 68 percent of the market's Class I milk.

Milk produced in the 21-county zero zone and pooled during December 1987 amounted to 158.9 million pounds. Class I sales by plants located in these counties totaled 119.7 million pounds for the same month. Thus, Class I use amounted to about 75 percent of the milk that was produced in these counties. Overall, it appears that there is a good balance between production and Class I use in this area. Nevertheless, there may be some need to attract limited amounts of additional milk to plants in this zone from other zones. To this extent the proposed five cents Class I price difference between Zones 1 and 2, and the seven cents difference between Zones 1 and 3, should be adequate to attract such supplies.

Zone 2, the minus five cents zone, had 21 percent of the marketing area population in July 1986, an increase of 8.5 percent (146,400) from 10 years earlier. Milk production in this area in December 1987 was up about four percent from 10 years earlier. December 1987 pooled milk produced in counties in this zone totaled 102 million pounds, while plants in the zone had Class I uses of about 35 million pounds. Thus, there appears to be plenty of milk to serve this area. The two-cent Class I price difference between Zones 2 and 3 would cover only movements of milk from a short distance into Zone 3.

There are four MSA's in Zone 2. They include Battle Creek, Grand Rapids, Kalamazoo, and Muskegon. Of these, only the Grand Rapids MSA experienced growth from 1976 to 1986. The others declined from 0.1 percent (Muskegon) to 25 percent (Battle Creek).

[1] Official notice is taken of the following sources of population data: Press Release, CB 87-116, released July 24, 1987, by the Bureau of the Census, United States Department of Commerce. Estimates of the Population of Michigan Counties and Metropolitan areas: July 1, 1976 (Revised) and 1977 (Provisional), Current Population Reports, Series P-26, No. 77-22, Issued September 1978 by the Bureau of the Census, United States Department of Commerce. Provisional Estimates of the Population of Counties: July 1, 1986, Current Population Reports, Series P-26, No. 86-A, Issued August 1987 by the Bureau of the Census, United States Department of Commerce.

Many of the counties in this proposed zone currently are in a minus nine-cent or minus 11-cent zone. Such lower prices may encourage milk to move to higher-priced areas where it is not now needed.

Another consideration of the proposed five-cent lower Class I price in this zone is that it will improve price alignment with the northern tier of counties in the Indiana Federal milk order. The Class I price differential in the no-adjustment zone of the Indiana order is $2.00 per hundredweight. However, the four Michigan counties that are in the Indiana Federal order marketing area, along with other counties in northern Indiana, are in a minus 30-cent location adjustment zone. Under the current Southern Michigan order, the zero adjustment Class I differential is $1.75 per hundredweight, with location adjustments of minus nine cents and minus 11 cents applicable to plants in Michigan counties along the Michigan-Indiana border. This arrangement results in misalignment of Class I prices between the two orders. Thus, a minus five-cent zone in southwestern Michigan will provide Class I price alignment in the four Michigan counties that are part of the Indiana marketing area.

The third zone proposed, with a minus seven-cent adjustment, is much more a rural area than are the other two zones. On a percentage basis, the population increase in this zone was the largest, showing an 11 percent (75,000) gain from 1976 to 1986. However, the 1986 population of this zone is the smallest, comprising only 8.4 percent of the marketing area's total population. This zone also appears to be self-sufficient with respect to milk supply and demand. In December 1987, pooled milk produced in this zone amounted to 86.7 million pounds. Class I use by plants in this zone and outside the marketing area amounted to 20.4 million pounds.

The counties that comprise this minus seven-cent zone currently are in one of five different zones ranging from minus seven cents to minus 17 cents. Only two distributing plants are located in this zone, one at Cheboygan, which is near the northern tip of the lower peninsula, and one at Evart, which is more nearly in the center of the lower peninsula. Currently, the Cheboygan plant is in the minus 17-cent zone, while the Evart plant is in the minus 11-cent zone.

The record does not reveal the sizes of the two distributing plants in the proposed Zone 3, but an exhibit requested by Kraft, Inc., and prepared by the market administrator indicates that total Class I use by Southern Michigan handlers in all the territory outside proposed Zones 1 and 2 amounted to 20.5 million pounds in December 1987. Thus, it is safe to assume that each of the two plants in Zones 3 had less Class I milk than the 20.5 million pounds. It is noted that in December 1987, pooled milk production in the Michigan Counties of Newaygo, Mecosta, Isabella, Gladwin, Clare, Osceola, and Missaukee totaled more than 50 million pounds. Since the plant at Evart is in Osceola County, and the counties just noted are either adjacent to it or nearby, there seems to be no need for a higher price at Evart to attract milk from the Cheboygan area.

The justification for fewer pricing zones is further reinforced by looking at the marketing situation overall. From 1976 to 1986, the population of the lower peninsula grew by only .5 percent, or about 46,000 persons. While the population remained static in size, major changes were going on as population shifts occurred. Some of these have already been noted. At the same time, total Class I packaged milk sales by Southern Michigan order pool handlers actually declined, from about 2,218 million pounds in 1977 to 1,976 million pounds in 1987, a 10.9 percent drop. However, milk production pooled under the order increased by nearly 10.5 percent over the same period. Thus, the percent of available milk used for Class I purposes declined from 53.9 percent in 1977 to 43.4 percent in 1987.

Moreover, Class I sales from plants in the Detroit metropolitan area have declined while sales from plants in more outlying areas have increased. These changes call for eliminating some of the highly structured zone pricing that has been operational since 1977. It is no longer needed.

The opposition by Kraft, Inc. and Lansing Dairy, Inc. has been noted. Lansing Dairy objected because its costs would be increased due to the higher applicable Class I price, which would have a negative economic impact on the operation. Lansing also expressed a view that it was indirectly being asked to subsidize the economic relationship between the cooperative and the Leprino Cheese operations.

Under the changed zone structure, Lansing Dairy will be affected two ways. First, the Class I price under the order at Lansing will be five cents higher than it now is. However, Lansing Dairy is one of four distributing plants in what is now a minus five-cent zone that will be in the new zero zone. Two of the other plants are in Lansing and one is in Jackson. Thus, plants in the same general area will be treated alike and pricing equity among these competing handlers will continue.

Second, Lansing Dairy's witness indicated that the handler procures some milk from independent producers north of Lansing, as far away as McBain in Missaukee County. Currently, the zone price difference between McBain and Lansing is six cents. Under the new structure, it will be seven cents. Thus, there will be greater recovery of hauling costs under the order for the handler's independent producers. This may work to the handler's advantage in procuring milk supplies.

Two proprietary handler supply plants would be similarly affected by the changes. The Kraft plant at Clare, which is now in a minus 11-cent zone, would be in a minus seven-cent zone. Diehl, Inc., which operates a supply plant in Charlotte, Michigan (Eaton County), now is in a minus seven-cent zone, but will be in a minus five-cent zone. Aside from MMPA's plant in Adrian, the only other supply plant in lower Michigan that will not have a higher blend price at its location is the Kraft plant at Pinconning, Michigan, which is now and will continue to be in a minus seven-cent zone.

Kraft objected to higher blend prices at the MMPA plant at Ovid and the NFO plant at Marlette since its Pinconning plant competes for part of its milk supplies in a common production area. All three plants are now in the same pricing zone. Kraft's principal objection is that it believes it will have to pay its producers the higher blend price that would be applicable at the Marlette plant in order to compete with NFO for milk supplies. Kraft contends that it would have to absorb the price difference of 7 cents per hundredweight, which would amount to about $33,000 per year. If it does not do this, Kraft implies its producers will look for another buyer.

Kraft further argues (in its brief) that in 1977 it proposed higher prices at a manufacturing plant in Saginaw County and for the Kraft plant in Pinconning for essentially the same reasons that PEC now proposes higher prices at the Marlette and Ovid plants. However, Kraft's proposal was denied. The Kraft belief argues that a higher price (at any plant) cannot now be adopted for the same area without the expression of a reversal of past policy. Kraft, in its brief, asked that Official Notice be taken of the Deputy Assistant Secretary's Interim Final Decision, Docket No. AO–361–A24 et al., published in the **Federal Register** on July 8, 1986 (51 FR 24677). The requested document involved the issue of appropriate location adjustments in several orders, including Indiana, but not the Southern Michigan order. However, since the request does not indicate how Official Notice of that

document would be useful in this proceeding, the request is denied.

In opposing Class I price increases in southwestern Michigan, Kraft points to the fact that the Class I differential at a Kalamazoo County distributing plant under the Indiana order would be $1.66. Kraft maintains that PEC's proposals do not, as PEC claims, improve price alignment between the Southern Michigan and Indiana orders. Kraft's brief also maintains that the PEC's proposed increase in the blend prices in southwestern Michigan will tend to encourage milk supplies to remain at manufacturing plants such as the MMPA plant under construction at Allendale (Ottawa County), rather than being delivered to deficit Class I markets. Kraft claims that MMPA admittedly plans to serve the Allendale plant with milk now sold to out-of-area customers.

Kraft's point about alignment of prices between the Southern Michigan and Indiana orders in Kalamazoo County, Michigan, is correct. However, four Michigan counties (Berrien, Cass, St. Joseph, and Branch) and 14 northern Indiana counties are in the minus 30-cent zone of the Indiana order. At plant locations in the four Michigan counties in this pricing zone of the Indiana order, Class I prices would be aligned under PEC's proposal. Kraft's claim that the PEC proposals diminish price alignment is correct at some locations while the PEC's claim that their proposals improve price alignment with Indiana is true at other locations.

Kraft expressed a view that higher Class I prices at plant locations in the proposed base zone and the minus five-cent zone are not needed because the plants are located in major milk producing areas where milk production is more than ample. Kraft holds that such increases will send a signal to producers to increase production. Instead, Kraft's brief suggests that the base zone (no adjustment) price could be lowered since the PEC maintains that there is now less need than there was in prior years to attract milk to Zone 1. However, there were no proposals submitted nor any testimony offered in support of any lowering of the Class I price. Moreover, the price changes are not of sufficient magnitude to have any measurable production response.

With regard to Kraft's concern that the PEC proposal would not result in a higher blend price at its Pinconning plant, the PEC witness indicated that the majority of the "thumb" milk supply is delivered to fluid milk plants in Flint, Port Huron, and Detroit. This certainly indicates that milk from the "thumb" area moves southward and therefore the zero adjustment zone should include the "thumb" counties. On the other hand, the record fails to establish that the Pinconning plant of Kraft has a particular association with the proposed new Zone 1 or that it now serves as a balancing plant for other plants that would be in the proposed new "no-adjustment" zone. While it is true that the plants at Ovid (MMPA), Marlette (NFO) and Pinconning (Kraft) have been in the same zone since at least 1977, there is no basis in the record to conclude that Pinconning should be included in the new no-adjustment zone along with the other two plants at Ovid and Marlette.

It also should be noted that Kraft's plant at Clare will be in the same pricing zone as MMPA's plant at Remus. Currently, the Remus plant is in the minus 9-cent zone while the Clare plant is in the minus 11-cent zone. In this case, Kraft's ability to compete for milk supplies should be improved.

Finally, the change from seven pricing zones to three pricing zones is not tied to the cost of moving milk. Transportation costs were the main consideration when the current zone structure was adopted in 1977. Given the changes that have occurred since then, the new pricing structure will reflect three basically self-sufficient pricing zones with recognition that some limited movements of milk between zones may be needed. Also, these changed zones allow the cooperatives that operate market-balancing manufacturing facilities an opportunity to operate those plants without being unduly influenced by differences in location adjustments.

2. *The location adjustment rate applicable to plants located outside location adjustment zones.* The order should be amended to specify 2.25 cents per hundredweight per 10 miles as the rate to be used for computing Class I and uniform price differentials at plants located outside the defined location adjustment zones.

As indicated previously, the PEC proposed changing the location adjustment rate on Class I milk and the uniform price applicable to plants located outside the marketing area. The PEC proposed changing the present rate from 1 cent to 2.25 cents per ten miles or fraction thereof.

The PEC witness testified that the present one-cent rate does not result in very close alignment of either the Order 40 Class I price or the Order 40 uniform price as it relates to prices in other markets in the Upper Midwest.

Proponent's witness said that the Chicago order's Class I differential at Green Bay, Wisconsin, for example, is $1.12; whereas, the Order 40 Class I differential at this location using the present one-cent rate would be $1.40.

The spokesman for the PEC said that the difference in the blend price for a producer who is pooled at an Order 40 plant versus an Order 30 plant is even more dramatic. For example, he stated that for 1987, the Order 30 uniform price zoned out to Oconto, Wisconsin, averaged $11.44. The 1987 uniform price for milk pooled by an Order 40 plant also located in Oconto County, he said, averaged $11.71. The Frigo Cheese Company plant at Lena, Wisconsin, is in Oconto County.

The proponent's witness said that other examples of blend price differences could be demonstrated and that this degree of price difference creates disorderly market conditions. He said that this much of a difference in price creates an incentive for distant milk supplies to attempt to become pooled in a market with a higher Class I utilization while the supplier has no desire to supply the fluid market that is generating the higher blend price. Such activities, he said, dilute the returns from the Class I market for other producers who are actively involved in supplying the Class I and Class II processors.

The PEC spokesman said that milk from producers located in 16 Wisconsin counties was pooled as producer receipts on Order 40 for one or more during 1987. In December 1977, he said, 10.6 million pounds of Wisconsin milk was pooled on Order 40 and for December 1987, 16.4 million pounds of Wisconsin milk was pooled on this order. The witness said that the PEC is concerned that this tend will escalate.

Proponent's witness said that in 1987 the producer delivery provisions and the diversion limitation provisions were relaxed. These changes, he said, were necessary to avoid uneconomic movements of milk but they also made it easier for distant producers to pool milk on Order 40 and divert that milk to nonpool plants. The witness said that under the current provisions, during the months of September through February each Order 40 producer is required to deliver only one day's production to a pool plant and that for the months of March through August, 100 percent of a producer's milk may be diverted to a nonpool plant.

The PEC witness testified that increasing the mileage rate as proposed will minimize the economic advantage that may be realized by such activities and therefore prevent the dilution of the uniform price. The mileage computation, he said, would be determined by the market administrator using the shortest

highway distance between such a plant and the nearest point in the Southern Michigan marketing area.

On cross-examination, the proponent's witness testified that the PEC, in arriving at their proposed rate of 2.25 cents, considered the fact that within the State of Michigan, MMPA can haul milk at less cost than outside the State. He said that the State permits hauling tandem units with a payload of 100,000 pounds in the Upper Peninsula. The proposed rate, he says, covers the cost of transporting milk within the State of Michigan but not outside the State.

At the hearing a witness for Chicagoland Dairy Sales, Inc. (CDS), testified in support of the PEC proposal.

The CDS witness said that this organization is comprised of four cooperative associations, namely, Alto Cooperative Creamery, Lake-to-Lake Dairy Cooperative (division of Land O'Lakes, Inc.), Outagamie Producers Cooperative and Wisconsin Dairies Cooperatives. This organization, he said, has 12 reserve supply plants pooled on Order 30.

The CDS spokesman said that their organization is experiencing problems meeting Order 40's producer pay prices in the common procurement areas of Michigan and Wisconsin. He said that the higher pay prices result from the higher Class I utilization in the Southern Michigan market relative to the Chicago Regional market.

The witness said that there is a common overlapping procurement area in the State of Wisconsin and in Menominee County in Michigan. He said that when comparing May 1977 with May 1987, the amount of Wisconsin milk procured by Order 40 plants increased by 44 percent and for December 1987 the increase was 54 percent.

The spokesman for CDS also testified that the Order 40 uniform price for January 1988 was $11.98 at the zero zone and for Chicago the zero zone blend price was $11.47, or 51 cents lower. He said that the adjusted uniform price at Wyocena, Wisconsin (where a Frigo plant is located), would be $11.64 ($11.98 minus a 34cent location adjustment) for Order 40 and that under the Chicago order the uniform price at the same location (Zone 9) would be $11.26, or 38 cents less. The witness said that this pricing advantage enjoyed by plants pooled on Order 40 is due to the low location adjustment rate contained in that order. He said that Order 30 uses a location adjustment rate of 1.6 cents per 10 miles.

The CDS witness said that for the years of 1985 through 1987, the Order 40 uniform price averaged 21, 17 and 25 cents higher, respectively, than the Order 30 price at Wyocena. For 1988, he said, the spread for the months of January through April was 38, 41, 36 and 30 cents, respectively.

At Lena, Wisconsin (where another Frigo plant is located), he said, for the years of 1985 through 1987, the Order 40 uniform price averaged 26, 22 and 30 cents higher, respectively, than the Order 30 price at that same location. For 1988, he said, the spread for the months of January through April was 43, 46, 41 and 35 cents, respectively.

The CDS spokesman said that for the years of 1985 through 1987, the Order 40 uniform price averaged 35, 31 and 39 cents higher, respectively, than the Order 30 price at Carney, Michigan (the location of a third Frigo plant). For 1988, he said, the spread for the months of January through April was 52, 55, 50 and 44 cents, respectively.

The Frigo witness presented testimony to modify the PEC proposal. He said that the locaton adjustment rates for Order 33 (Ohio Valley) and Order 36 (Eastern Ohio-Western Pennsylvania) are 1.5 cents per 10 miles, for Order 30 it is 1.53 cents, and 2.0 cents for Order 49 (Indiana). The witness said that the location adjustment rate for Order 40 should be somewhere between 1.5 and 2.0 cents per ten miles. He said that Frigo preferred a 1.5–cent rate. Furthermore, he said, § 1040.52(a)(2) of the order should be changed by deleting the language that reads "the nearest point in such territory" to read "the state line."

The Frigo spokesman said that the milk supply in the Upper Peninsula is closely aligned with Order 40 either through the efforts of MMPA or Frigo. He said that the PEC proposals would lower returns to dairy farmers located in the Upper Peninsula and also limit the economic viability of their Carney plant. In his opinion, there are no realistic alternatives for the Carney plant should it become unprofitable under Order 40. He said that reserve plant status under Order 30 is not possible.

On cross-examination he said that using a 1.5–cent location adjustment rate, as Frigo proposed, would produce minus location adjustments of 40 cents at Carney, 49 cents at Lena and 39.5 cents at Wyocena. He said that the current minus location adjustments at these same locations are 35, 41 and 34 cents, respectively. This would mean blend price decreases of 3, 8 and 5.5 cents, respectively.

On cross-examination, he said that about three percent of their total milk supply moves to an Order 40 distributing plant. He said that very little milk moves from their Lena plant to Liberty Dairy, a distributing plant located at Evart, Michigan (Osceola County) and owned by Dean. The witness said that the unit pooling provisions do not require Frigo to ship any milk from any particular plant. He said that milk from their Wyocena plant is moved the 320 miles around the south side of Lake Michigan to Liberty Dairy at a cost of $1.60 per hundredweight. From the Carney plant, he said, the milk moves north around Lake Michigan and that they pay various rates for hauling.

The Frigo modification was supported at the hearing by Dean. A witness for Dean testified that their distributing plant at Evart acquires, each month, up to 10 percent of their milk supply from Frigo. He said that the majority of their milk supply comes from the Upper Peninsula. The Dean witness testified that if the location adjustment for the MMPA supply plant at Sault Ste. Marie is 22 cents then the Frigo plant at Carney should have a 27–cent location adjustment.

The Dean spokesman expressed the view that after MMPA and Leprino build their new cheese plant at Allendale that he would have some reservation about milk supplies being made available for distributing plants. He said that if you look at Frigo from the standpoint of being a cheese operation and compare it to other cheese operations in the state, then you would have to conclude that Frigo is supplying more of their milk to the fluid market than any of the other cheese operations.

Farmers Union Milk Marketing Cooperative (FUMMC) also presented testimony to modify the PEC proposal. Their witness said that the FUMMC represents approximately 238 producers shipping to three supply plants pooled on Order 40 (Frigo plants). He said that the PEC proposal would adversely affect a group of Wisconsin and Michigan Upper Peninsula producers who have been associated with Order 40 for 20 years. The proposal, he said, would result in the shifting of about 30 million pounds of milk from the Order 40 pool to the Order 30 pool, thereby reducing the Order 30 blend price which is already lower than the Order 40 blend price.

The FUMMC witness said that they want the PEC proposal to coincide with neighboring markets and that they prefer the Order 30 location adjustment rate of 1.53 cents. He said that the location adjustment rate should be calculated from the Michigan State line and that the present rate of one cent represents the cost of moving milk.

Manitowoc Milk Producers Cooperative (Manitowoc) also supported a modification of the PEC

proposal. Their witness said that their organization represents approximately 2500 members shipping milk to Orders 30, 40, 68 (Upper Midwest) and Order 79 (Iowa). He said that about 130 of their members are shipping milk to the Frigo plants located at Carney and Lena. The Manitowoc witness suggested a location adjustment rate of 1.5 cents per 10 miles. This rate, he said, would provide uniformity and equity among producers as Order 40 relates to other orders.

The proposal to change the rate for computing location adjustments to Class I and uniform prices at locations outside the territory specified in the location adjustment zones should be adopted. The current location adjustment rate of 1 cent per hundredweight per 10 miles seriously overstates the value of milk to the Southern Michigan pool at locations considerably distant from the central market.

Location adjustments to Class I and uniform prices at plants located outside the zones specified for lower Michigan, which includes the marketing area and other territory, are based on distance from the plant to the nearest point in such zoned territory. The location adjustment is computed by adding to the price differential applicable at such nearest point an amount computed by multiplying the number of 10-mile increments by one cent.

There are four supply plants pooled under the order at which such location adjustments are applicable. They are located at Sault Ste. Marie and Carney, both in the Upper Peninsula of Michigan, and at Lena and Wyocena, Wisconsin. The current location adjustments at those plants are: Sault Ste. Marie, —23 cents; Carney, —35 cents; Lena, —41 cents; and Wyocena, —34 cents.

The nearest point in the zoned territory for the plants in the Michigan Upper Peninsula and at Lena, Wisconsin, is Mackinaw City. For the Wyocena, Wisconsin, location, the mileage is computed from Grand Beach (Berrien County), Michigan. From the point of measurement, the mileages to the plants are as follows: Sault Ste. Marie, 51–60 miles; Carney, 171–180 miles; Lena, 231–240 miles; and Wyocena, 221–230 miles.

The current location adjustment rate is outdated. It's use results in Class I and uniform prices at the various locations that are too high relative to the prices of milk in the marketing area because the rate does not reflect the cost of hauling milk. The record indicates that it costs about 2.25 cents per hundredweight per 10 miles to move milk within Michigan, and 3.6 cents or more to move milk into Michigan from plants outside Michigan. These numbers are based on the testimony of the PEC witness, who stated that the proposed 2.25-cent rate "—fairly well reflects the cost of transporting milk within Michigan." The witnesses for Frigo Cheese and Farmers Union Co-op indicated rates of $1.60 per hundredweight for a 320-mile haul, and $1.60 to $1.80 per loaded mile, respectively. These rates vary from about 3.4 cents to 5 cents per ten miles per hundredweight, assuming a 47,000-pound load of milk for the per loaded mile figure. Thus, it is clear that a transportation rate of 1.0 cents per 10 miles per hundredweight is seriously inadequate to reflect hauling costs incurred under current conditions.

Various proposed modifications of the PEC proposal should not be adopted. After a thorough analysis of the issue, it is concluded that the best fit of location adjustments outside the zoned area results from the PEC proposal.

The proposal by Frigo to extend the zoning concept to include two additional zones for the Michigan Upper Peninsula was not supported by testimony or other evidence other than an expression of concern for the well-being of producers in that area. In that regard, such a modification would provide a lesser location adjustment to producer blend prices at the Frigo supply plants than would be proposals of the PEC. Along with this modification Frigo proposed that location adjustments at plants outside Michigan be based on the distance from the plant to the State line as determined by the Market Administrator, and that the rate per hundredweight per 10 miles should be somewhere between 1.5 and 2.0 cents. Under this proposed modification, the location adjustment at Carney would be —40 cents, with adjustments at Lena and Wyocena of —52 cents —51 cents, respectively.

The modifications suggested by FUMMC and Manitowoc would use 1.50–1.53 cents as the location adjustment rate. Additionally, FUMMC would prefer measuring distances to plants from the Michigan State line. The basis for these modifications was to improve uniformity of location adjustment rates among orders. It is noted that these modifications also would result in smaller negative location adjustments and, therefore, higher blend prices to producers at the Frigo plants.

The proposal by the PEC would produce location adjustments of —20.5 cents at Sault Ste. Marie and —47.5 cents, —61 cents, and —57 cents at the Carney, Lena, and Wyocena plants, respectively.

The record in this proceeding, as previously indicated, does not contain detailed hauling cost information. But there is a basis for concluding that it costs more than 2.25 cents per hundredweight per 10 miles to move milk outside the State of Michigan. Therefore, there is no sound basis to consider further the alternative rates of 1.5 to 2.0 cents as suggested by several parties.

The value of milk at locations considerably distant from the central market must be related to the transportation costs that would be incurred in moving that milk to market. All the distributing plants that are fully regulated under the Southern Michigan order are located in the lower part of the State, mostly in the southern half of the State. Moreover, there is plenty of milk produced in this portion of the State to meet the market's needs. Since location adjustments at distant supply plants outside this area currently do not realistically reflect transportation costs, the blend prices applicable under the order at such locations overstate the value of the milk to the Class I market. Thus, the producers in the southern part of the State are subsidizing producer incomes in the Upper Peninsula and Wisconsin areas that supply milk to those supply plants. This situation would continue under the PEC proposals, but not to as great a degree as it now does.

The two supply plants in Michigan's Upper Peninsula are located in the marketing area defined under the Michign Upper Peninsula order and the two Wisconsin supply plants are located in the Chicago Regional order marketing area. Ideally, location adjustment rates under the Southern Michigan order would provide Class I prices at the plant locations equal to the applicable Class I price at such locations for the order marketing area in which the plans are located. The plant at Wyocena, Wisconsin, has a Class I differential of $1.188 under the Chicago Regional order. The PEC rate of 2.25 cents yields a Southern Michigan Class I differential at Wyocena of $1.75 minus 57 cents, or $1.18. Similarly, although not quite as close, the Chicago order Class I differential ta Lena, Wisconsin is $1.073, whereas the 2.25 cents rate proposed under the Southern Michigan order would result in a Class I differential of $1.14.

Under the Michigan Upper Peninsula order, the Class I differential at Carney is $1.15, compared to the proposed $1.275 under the Southern Michigan order. At Sault Ste. Marie, the Class I differentials would not match up closely. The difference would be 19.5 cents. However, even with these differences Class I price alignment under the orders would be more nearly achieved using

the 2.25-cent rate than with any of the proposed modifications. Thus, the best fit is provided using this rate.

There was some testimony on this issue concerning misalignment of blend prices at the Carney, Michigan, and Wisconsin supply plants. The location adjustment rate change will result in lower blend prices under the Southern Michigan order at these locations and thus in a closer alignment with blend prices under the Chicago order for the Wisconsin locations. However, it must be noted that the desire to achieve blend price alignment is not a sufficient basis for revising the location adjustment rate. Instead, the location adjustment rate should more nearly reflect the cost of transporting milk. Even if Class I prices are perfectly aligned, blend price differences may continue due to different levels of Class I use between two orders.

The proposed changes in the location pricing provisions (both the zoning and rate issues) will change the total value of pooled milk by a small amount. An exhibit introduced by the market administrator shows recomputed uniform prices for the zero adjustment zone for May 1987 through April 1988 as being only one cent per hundredweight lower for eight months and no change for the other four months. For example, had the proposed changes been in place in December 1987, the value of Class I milk in the pool would have been, at most, about $40,000 higher. However, in a 379 million pound market, the impact of the $40,000 on the uniform price for the zero zone would have been about one cent per hundredweight.

There would be changes in the distribution of the location adjustment money among the market's producers. In general, producers in the western and northern part of the state will receive higher returns for their milk, while producers delivering their milk to plants located outside the marketing area will receive less for their milk. Not enough detailed information is available to be able to determine how much more or less will be paid to producers for delivering milk to plants in the specific zones. The amounts by which prices would change at the various locations have already been described.

3. *Changing the factor used in the computation of the butterfat differential.* The order should be amended to provide for the use of a factor of 0.115, rather than 0.113, times the butter price specified in the order in the computation of the butterfat differential.

The order presently provides that for milk containing 3.5 percent butterfat, the uniform price shall be increased or decreased for each one-tenth percent butterfat variation from 3.5 percent by a butterfat differential and rounded to the nearest one-tenth cent. The butterfat differential is determined by multiplting 0.113 times the simple average of the wholesale selling prices (using the midpoint of any grade range as one price) of Grade A (92-score) bulk butter per pound at Chicago, as reported by the Department for the month.

The PEC witness proposed that in the computation of the butterfat differential, a factor of 0.115 be used. He said that in 39 of 42 marketing orders, a factor of 0.115 is used in the computation of the butterfat differential.

Butterfat produced in the State of Michigan, he said, is marketed throughout most of the eastern half of the United States either as part of fresh liquid product or as a component of a manufactured dairy product. The witness said that at different times of the year, butter produced in the Far West is shipped into Midwest markets. He testified that the cost of butterfat to all processors of dairy products should be similar, particularly since the market for butterfat is national.

A witness for Lansing Dairy testified that they were opposed to this proposal. The witness, however, never indicated why.

In its brief, Frigo stated that their organization supported the PEC proposal.

This proposal should be adopted. Marketing orders adjacent to the Southern Michigan market are using the a factor of 0.115 in the computation of the butterfat differential. The adoption of this factor will promote orderly marketing of butterfat in the Southern Michigan market and in adjacent markets.

Rulings on Proposed Findings and Conclusions

Briefs and proposed findings and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings and conclusions and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

General Findings

The findings and determinations hereinafter set forth supplement those that were made when the Southern Michigan order was first issued and when it was amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) The tentative marketing agreement and the order, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(b) The parity prices of milk as determined pursuant to section 2 of the Act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the marketing area, and the minimum prices specified in the tentative marketing agreement and the order, as hereby proposed to be amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(c) The tentative marketing agreement and the order, as hereby proposed to be amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, a marketing agreement upon which a hearing has been held.

Recommended Marketing Agreement and Order Amending the Order

The recommended marketing agreement is not included in this decision because the regulatory provisions thereof would be the same as those contained in the order, as hereby proposed to be amended. The following order amending the order, as amended regulating the handling of milk in the Southern Michigan marketing area is recommended as the detailed and appropriate means by which the foregoing conclusions may be carried out.

List of Subjects in 7 CFR Part 1040

Milk marketing order, Milk, Diary products.

PART 1040—[AMENDED]

1. The authority citation for 7 CFR Part 1040 continues to read as follows:

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

2. In § 1040.52, revised paragraph (a)(1) to read as follows:

§ 1040.52 Plant location adjustments for handlers.

(a) * * *

(1) *Zone rates.* For a plant located within the following described territory,

including the cities located therein, the applicable zone rates shall be as follows:

Michigan Counties

Zone I—No Adjustments

Clinton, Genesee, Gratiot, Hillsdale, Huron, Ingham, Jackson, Lapeer, Lenawee, Livingston, Macomb, Monroe, Oakland, Saginaw, Sanilac, St. Clair, Shiawassee, Tuscola, Washtenaw and Wayne.

Bay (except Gibson, Mount Forest, Pinconning, Garfield and Fraser Townships).

Zone II—5 Cents

Allegan, Barry, Berrien, Branch, Calhoun, Cass, Eaton, Ionia, Kalamazoo, Kent, Montcalm, Muskegon, Ottawa, St. Joseph and Van Buren.

Zone III—7 Cents

Bay (all townships excluded from Zone I), Alcona, Alpena, Antrim, Arenac, Benzie, Charlevoix, Cheboygan, Clare, Crawford, Emmet, Gladwin, Grand Traverse, Isabella, Iosco, Kalkaska, Lake, Leelanau, Manistee, Mason, Missaukee, Mecosta, Midland, Montmorency, Newago, Oceana, Ogemaw, Osceola, Oscoda, Otsego, Presque Isle, Roscommon and Wexford.

§ 1040.52 [Amended]

3. Amend § 1040.52(a)(2) by changing "once cent" to "2.25 cents."

§ 1040.74 [Amended]

4. Amend § 1040.74 by changing "0.113" to "0.115".

5. Amend § 1040.74 by removing and reserving paragraph (a)(2) and revising paragraph (a)(3) to read as follows:

§ 1040.75 Plant location adjustments for producers and on nonpool milk.

(a) * * *

(3) Shall add not less than 10 cents per hundredweight with respect to milk received from producers and cooperative associations pursuant to § 1040.9(c) at a pool plant located within the Michigan counties of Macomb, Oakland, and Wayne.

Signed at Washington, DC, on February 21, 1989.

J. Patrick Boyle,

Administrator.

[FR Doc. 89-4353 Filed 2-23-89; 8:45 am]

BILLING CODE 3410-02-M

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7 CFR Part 1049

[DA-89-007]

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

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed suspension of rule.

SUMMARY: This notice invites written comments on a proposal to suspend for the months of March through May 1989 a portion of the Indiana Federal milk marketing order. The proposed suspension would make inoperative the requirement that a pool distributing plant dispose of as Class I route disposition not less than 50 percent of certain specified Grade A milk receipts at such plant during the month. A cooperative association requested the suspension in order to maintain pool status for one or more distributing plants associated with the market.

DATE: Comments are due on or before March 10, 1989.

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

FOR FURTHER INFORMATION CONTACT: Richard A. Glandt, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 447-4829.

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 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 1291 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 Indiana marketing area is being considered for March through May 1989:

In § 1049.7(a)(1) the minimum route disposition requirement of 50 percent of receipts specified in such paragraph.

All persons who want to send written data, views or arguments about the proposed suspension should send two copies of them to the USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456, by the 14th day after publication of this notice in the **Federal Register.** The period for filing comments is limited to 14 days because a longer period would not provide the time needed to complete the required procedures and include March 1989 in the suspension period.

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

Statement of Consideration

The proposed suspension would make inoperative for the months of March through May 1989 the requirement that a pool distributing plant dispose of as Class I route disposition not less than 50 percent of certain specified Grade A milk receipts at such plant. The proposal was submitted by National Farmers Organization, Inc. (NFO), a cooperative association of producers.

NFO, in support of its proposal, says that without this suspension, it is likely that one or more longtime distributing pool plants under the Indiana order will not qualify for pool status. This, they say, could jeopardize the association of the plants' producer milk supplies with the Indiana pool. The 50-percent requirement would be difficult to meet because the volume of ice cream and other Class II products produced at distributing plants increases in the spring months of the year.

NFO stated that in prior years, the qualification of these plants has been maintained by other supply organizations through the diversion of producer milk from other distributing plants to these distributing plants. The diverted volume of milk, says NFO, is qualified for pooling by association with the plant from which diverted and, therefore, the qualifications of the recipient plants are retained. NFO maintains that qualification on that basis for the spring months of 1989 is neither economic nor realistically possible because NFO does not have the flexibility to qualify milk at one plant for diversion to another plant without extraordinary and uneconomic milk movements.

NFO also stated that they will be requesting that this provision be amended. This, they say, is because the Indiana order pool plant qualification provisions are more stringent than several nearby orders and because the ratio of Class II uses to total uses at pool plants in Order 49 is relatively higher than in these nearby orders.

The Milk Foundation of Indiana (MFI) sent a letter in support of the proposed suspension. MFI is composed of seven

pool distributing plants associated with the Indiana order.

MFI stated that four of the handlers have experienced difficulty meeting the 50-percent route disposition requirement. These four plants, say MFI, have been able to meet this pooling requirement for many months only by receiving diverted milk from a cooperative association. MFI says that receiving diverted milk involves much unproductive milk handling practices.

The Indiana order provides that a pool distributing plant have total route disposition, exclusive of packaged fluid milk products received from other plants and filled milk, of not less than 50 percent of Grade A milk received at such plant (excluding receipts of milk diverted from another plant pursuant to § 1049.13) during the month from dairy farmers, supply plants, and handlers pursuant to § 1049.9(c).

If the 50-percent route disposition requirement is suspended, cooperative associations and proprietary handlers would find it easier to pool milk supplies during a time when milk production is expected to be higher.

List of Subjects in 7 CFR Part 1049

Milk marketing orders, Milk, Dairy products.

The authority citation for 7 CFR Part 1049 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 21, 1989

J. Patrick Boyle,

Administrator.

[FR Doc. 89–4354 Filed 2–23–89; 8:45 am]

BILLING CODE 3410–02–M

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7 CFR Part 1137

[DA–89–008]

Milk in the Eastern Colorado Marketing Area; Proposed Suspension of Certain Provisions of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed suspension of rule.

SUMMARY: This notice invites written comments on a proposal to continue through August 1989 a suspension from the Eastern Colorado order of the "touch-base" requirement that each producer's milk be received at least three times each month at a pool distributing plant. Continuation of the suspension was requested by a cooperative association representing producers supplying the market in order to prevent uneconomic movements of milk.

DATE: Comments are due on or before March 3, 1989.

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

FOR FURTHER INFORMATION CONTACT: Constance M. Brenner, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 447–7183.

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 signficant 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 would continue to have their milk priced under the order and thereby receive the benefits that accure from such pricing.

This proposed rule has been reviewed under Executive Order 12291 and Department 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 Eastern Colorado marketing area is being considered for the months of March through August 1989;

In the first sentence of § 1137.12(a)(1), the words "from whom at least three deliveries of milk are received during the month at a distributing pool plant".

All persons who want to send written data, views or arguments about the proposed suspension should send two copies of them to the 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 1989 in the suspension period.

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

Statement of Consideration

Mid-America Dairymen, Inc. (Mid-Am), an association of producers that supplies some of the market's fluid milk needs and handles some of the market's reserve milk supplies, requested the suspension. The suspension would continue to remove for the months of March through August 1989 the requirement that three deliveries of each producer's milk be received at a pool distributing plant each month. The suspension currently in effect applies to milk deliveries through February 1989. The provisions proposed to be suspended have been suspended since September 1985.

Mid-Am observes that suspension of the "touch-base" provisions of the Eastern Colorado Order will not allow for additional milk supplies to be pooled, but rather will provide for more efficient disposition of producer milk not needed for the fluid requirements of Eastern Colorado distributing plants. According to the cooperative, producer milk pooled under the order during 1988 increased 5.6 percent over 1987 while Class I sales increased only 1.9 percent. Mid-Am states that present projections indicate that there will be ample supplies of locally produced milk to meet the fluid requirements of Eastern Colorado distributing plants without requiring that each producer's milk be received at least three times each month at a pool distributing plant. The cooperative notes that continuation of the present suspension would allow milk to be diverted directly to nearby manufacturing plants instead of requiring each producer's milk to be received three times each month at pool distributing plants for the sole purpose of qualifying it for pooling under the order.

Without the requested continued suspension, the cooperative expects to incur substantial unnecessary costs for the uneconomical and inefficient movement of its milk solely for the purpose of pooling the milk of its members currently associated with the Eastern Colorado market.

List of Subjects in 7 CFR Part 1137

Milk marketing orders, Milk, Dairy products.

PART 1137—[AMENDED]

The authority citation for 7 CFR Part 1137 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 21, 1989.

J. Patrick Boyle,

Administrator.

[FR Doc. 89–4290 Filed 2–23–89; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 211 and 216

[INS Number: 1134–88]

Documentary Requirements; Immigrants; Waivers; Conditional Basis of Lawful Permanent Resident Status for Certain Alien Spouses and Sons and Daughters

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Proposed rule.

SUMMARY: On August 10, 1988 the Immigration and Naturalization Service ("the Service") published regulations in the **Federal Register** at 53 FR 30011 relating to the Immigration Marriage Fraud Amendments of 1986. Among the provisions set forth in those regulations were requirements relating to the filing of a Joint Petition to Remove the Conditional Basis of Alien's Permanent Resident Status and an Application for Waiver of Requirement to File Joint Petition to Remove Conditional Basis of Status. This proposed rulemaking would amend those regulations to allow individuals who are outside the United States to file the petition. It would also clarify the regulation relating to travel outside the United States once the petition has been filed and the applicant is in possession of a receipt for filing.

DATES: Written comments must be submitted on or before March 27, 1989.

ADDRESS: Please submit comments in duplicate to the Director, Office of Policy Directives and Instructions, Immigration and Naturalization Service, 425 I Street NW., Room 2011, Washington, DC 20536.

FOR FURTHER INFORMATION CONTACT: Michael L. Shaul, Senior Immigration Examiner, Immigration and Naturalization Service, 425 I Street NW., Washington, DC 20536, Telephone: (202) 633–3946.

SUPPLEMENTARY INFORMATION: Federal regulations at 8 CFR 211.1(b)(1) provide that an alien who has been admitted to the United States as a conditional permanent resident may present an Alien Registration Receipt Card in lieu of an immigrant visa if he or she is returning after a temporary absence not exceeding one year (or as a crewman under certain circumstances) to an unrelinquished lawful permanent residence prior to the second anniversary of the date on which he obtained permanent residence. The regulation also provides that once the alien has filed either a Joint Petition to Remove the Conditional Basis of Alien's Permanent Status (Form I–751) or an Application for Waiver of Requirement to File Joint Petition for Removal of Conditions (Form I–752) he or she shall be allowed to present that Alien Registration Receipt Card in combination with a receipt for filing the Form I–751 or I–752 in lieu of an immigrant visa for a period of up to six months after such filing. This provision is made because the statute allows the Service up to 180 days to adjudicate the petition (up to 90 days to conduct an interview and an additional 90 days thereafter to make a final adjudication). Since the petitioners may file Form I–751 at any time within the 90 days immediately preceding the second anniversary of the date on which the alien became a conditional permanent resident, many aliens will not receive a decision on their petitions until well after the second anniversary. The regulation therefore facilitates international travel while the petition is pending before the Service. This proposed rulemaking provides that the six month continuation period begins with the filing of the petition or application, and not with the second anniversary of the date of residence, so that the continuation period and the statutory time limit on the adjudication of the petition will coincide.

Furthermore, the proposed rulemaking would remove the requirement that the alien be physically present within the United States at the time of filing the joint petition. Presently, only those aliens who are outside the United States pursuant to official U.S. government travel orders (either civilian or military) are allowed to file from outside the country. However, upon further examination, it has been determined that the requirement is extremely difficult to police (since petitioners outside the United States could simply forward the petition to an associate in the United States for mailing) and that the requirement does not significantly reduce the probability of fraud. Also the requirement causes undue hardship to petitioners with a bona fide marriage who are temporarily outside the United States. The proposed rulemaking, therefore, would remove the requirement for the physical presence at time of filing. However, the proposed rulemaking would also clearly state that it is the responsibility of the petitioners to ensure that they, their dependent children and any witnesses that they wish to present are made available for an interview at the Service office in the United States having jurisdiction over this case.

In accordance with 5 U.S.C. 605(b), the Commissioner of Immigration and Naturalization certifies that this rule would not, if promulgated, have significant adverse economic impact on a substantial number of small entities. This rule is not a major rule within the meaning of section 1(b) of E.O. 12291, nor does this rule have federalism implications warranting the preparation of a Federal Assessment in accordance with E.O. 12612.

The information collection requirements contained in this rule have been approved by the Office of Management and Budget in accordance with provision of the Paperback Reduction Act and are cited under 8 CFR 299.5.

List of Subjects

8 CFR Part 211

Immigration, Passports and visas, Reporting and recordkeeping requirements.

8 CFR Part 216

Administrative practice and procedure, Aliens, Immigration, Reporting and recordkeeping requirements.

Accordingly, Chapter I of Title 8, Code of Federal Regulations, is proposed to be amended as set forth below:

PART 211—DOCUMENTARY REQUIREMENTS: IMMIGRANTS; WAIVERS

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

Authority: 8 U.S.C. 1101, 1103, 1181, 1182, 1186a, 1203, 1225, 1257.

2. In § 211.1, paragraph (b)(1) is revised to read as follows:

§ 211.1 Visas.

* * * * *

(b) * * *

(1) *Alien Registration Receipt Card (Form I–151 or I–551)*—(i) *Alien not travelling pursuant to government orders.* An Alien Registration Receipt Card may be presented in lieu of an immigrant visa by an immigrant alien who is returning to an unrelinquished lawful permanent residence in the United States, is returning prior to the second anniversary of the date on which

he or she obtained such residence to the second anniversary of the date on which he or she obtained such residence if subject to the provisions of section 216 of the Act, or within six months of the date of filing a Joint Petition to Remove the Conditional Basis of Alien's Permanent Resident Status (Form I–751) or an Application for Waiver of Requirement to File Joint Petition for Removal of Conditions (Form I–752) pursuant to Part 216 of this Chapter if the alien is in possession of a Service-issued receipt for such filing, and:

(A) Is returning after a temporary absence abroad not exceeding one year, or

(B) Is an alien crewman regularly serving abroad an aircraft or vessel of American registry who is returning after a temporary absence abroad in connection with his/her duties as a crewman.

(ii) *Alien traveling pursuant to government orders.* An Alien Registration Receipt Card, including an expired Alien Registration Receipt Card issued to a conditional permanent resident may be presented in lieu of an immigrant visa by an immigrant alien who is returning to an unrelinquished lawful permanent residence in the United States, and:

(A) Is a civilian employee of the United States government returning from a foreign assignment pursuant to official orders; or

(B) Is a spouse or child of a civilian employee of the United States government or member of the United States Armed Forces, provided that the spouse or child resided abroad while the employee or serviceperson was on overseas duty, and the spouse or child is preceding or accompanying the employee or serviceperson, or is following to join the employee or serviceperson within four months of his or her return to the United States.

* * * * *

PART 216—CONDITIONAL BASIS OF LAWFUL PERMANENT RESIDENCE STATUS FOR CERTAIN ALIEN SPOUSES AND SONS AND DAUGHTERS

3. The authority citation for Part 216 is revised to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1154, 1184, 1186a.

§ 216.4 [Amended]

4. In § 216.4, paragraph (a)(4) is revised to read as follows:

(a) * * *

(4) *Physicial presence at time of filing.* A petition may be filed regardless of whether the alien is physically present in the United States. However, if the alien is outside the United States at the time of filing, he or she must return to the United States, with his or her spouse and dependent children, to comply with the interview requirements contained in the Act. Furthermore, if the documentation submitted in support of the petition includes affidavits of third parties having knowledge of the bona fides of the marital relationship, the petitioner must arrange for the affiants to be present at the inteview, at no expense to the government. Once the petition has been properly filed, the alien may travel outside the United States and return if in possession of documentation as set forth in § 211.1(b)(1) of this chapter, provided the alien and the petitioning spouse comply with the interview requirements described in § 216.4(b). An alien who is not physically present in the United States during the filing period but subsequently applies for admission to the United States shall be processed in accordance with § 235.11 of this chapter.

* * * * *

Dated: February 2, 1989.

Richard E. Norton,

Associate Commissioner, Examinations, Immigration and Naturalization Service.

[FR Doc. 4292 Filed 2–23–89; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 88–NM–217–AD]

Airworthiness Directives; Boeing Model 737 Series Airplane

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes a new airworthiness directive (AD), applicable to certain Model 737 series airplanes, which would require ultrasonic inspections of the bonded waffle doublers for delamination between body station (BS) 360 and BS 1016. This proposal is prompted by reports of delamination of the bonded waffle doublers on several airplanes. This condition, if not corrected, could lead to inability of the airplane to carry fail-safe loads, which may result in rapid decompression.

DATES: Comments must be received no later than April 21, 1989.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM–103, Attention: Airworthiness Rules Docket No. 88–NM–217–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168. The applicable service information may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara J. Mudrovich, Airframe Branch, ANM–120S; telephone (206) 431–1927. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

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, Transport Airplane Directorate, ANM–103, Attention: Airworthiness Rules Docket No. 88–NM–217–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

Discussion

Recently, the FAA has received reports that a group of Model 737 airplanes delivered in early 1979 have

developed delamination of the fuselage skin bonded doublers. The delaminations have been attributed to possible processing problems during manufacture. Should the fuselage skin crack for any reason, the bonded doublers provide fail-safety by retarding crack growth and causing the crack to turn. Rapid uncontrolled decompression is thereby avoided. However, if the doublers are disbonded, the airplane may be unable to carry fail-safe loads, and this could result in rapid decompression.

A study by the manufacturer has indicated that airplanes with delaminated doublers are limited to airplanes, line numbers 520 through 750.

The FAA has reviewed and approved an ultrasonic inspection method contained in Boeing Non-Destructive Test Manual, Document D6-37239, Chapter 4, subparagraph 53-30-01, which describes procedures for externally inspecting skin panels for doubler bond integrity.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would require external ultrasonic inspection of all skin panel bonded doublers for disbond, and repair, if necessary. Additionally, operators would be required to submit a report of their findings to the FAA.

Information collection requirements contained in this regulation have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511) and have been assigned OMB Control Number 2120-0056.

There are approximately 230 Model 737 series airplanes of the affected design in the worldwide fleet. It is estimated that 75 airplanes of U.S. registry would be affected by this AD, that it would take approximately 20 manhours per airplane to accomplish the required inspections, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $60,000.

The regulations proposed herein would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

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 737 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.

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.

§ 39.13 [AMENDED]

2. By adding the following new airworthiness directive:

Boeing: Applies to Model 737 series airplanes, line numbers 520 through 750, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To prevent the inability of the airplane to carry fail-safe loads due to disbonded doublers, and to reduce the consequent possibility of rapid decompression, accomplish the following:

A. Within the next 12 months after the effective date of this AD, conduct an external ultrasonic inspection for disbonding of bonded waffle doublers not mechanically fastened to the fuselage skin between body station (BS) 360 and BS 1016, in accordance with Boeing Non-Destructive Test Manual, Document D6-37239, Chapter 4, subparagraph 53-30-01.

B. In areas where disbond is detected, prior to further flight, perform a high frequency eddy current inspection for cracks along the upper rivet row of the lower lap splice for the entire length of the affected panel, in accordance with Boeing Alert Service Bulletin 737-53A1039, Revision 4, dated April 14, 1988. If cracks are found, accomplish paragraph C., below, prior to further flight. If no cracks are found, accomplish paragraph C., below, within the next 4,500 cycles following inspection.

C. As directed by paragraph B., above, for the affected panel, accomplish the lap splice modification, which includes installation of oversize protruding head solid fasteners in the upper rivet row, in accordance with Boeing Alert Service Bulletin 737-53A1039, Revision 4, dated April 14, 1988. In addition, repair doubler disbond in accordance with an FAA-approved method using mechanical fasteners.

D. Within 48 hours after completion of any inspection required by this AD, submit a report of findings, positive or negative, to the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, through the Principal Maintenance Inspector. The report must include the line number of the airplane inspected, the number of cycles, and the inspection method used.

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

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Seattle Aircraft Certification Office.

F. 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.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on February 14, 1989.

Leroay A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-4236 Filed 2-23-89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 89-AGL-3]

Proposed Transition Area Establishment; Chetek, WI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish the Chetek, WI, transition area to accommodate a new VOR/DME Runway 17 Standard Instrument Approach Procedure (SIAP) to Chetek

Municipal-Southworth Airport, Chetek, WI. The intended effect of this action is to ensure segregation of the aircraft using approach procedures in instrument conditions from other aircraft operating under visual weather conditions in controlled airspace.

DATES: Comments must be received on or before March 31, 1989.

ADDRESS: Send comments on the proposal in triplicate to: Federal Aviation Administration, Regional Counsel, AGL-7, Attn: Rules Docket No. 89-AGL-3, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Regional Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

An informal docket may also be examined during normal business hours at the Air Traffic Division, Airspace Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 89-AGL-3." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of Regional Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 426-8058. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to establish a transition area airspace near Chetek, WI.

The development of a new VOR/DME Runway 17 SIAP requires that the FAA designate airspace to insure that the procedure will be contained within controlled airspace. The minimum descent altitude for this procedure may be established below the floor of the 700-foot controlled airspace.

Aeronautical maps and charts will reflect the defined area which will enable other aircraft to circumnavigate the area in order to comply with applicable visual flight rule requirements.

Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6D dated January 4, 1988.

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

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

The Proposed Amendment

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

PART 71—[AMENDED]

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

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

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Chetek, WI [New]

That airspace extending upward from 700 feet above the surface within a 5-mile radius of the Chetek Municipal-Southworth Airport (lat. 45°18'24" N., long. 91°38'18" W.); within 1.25 miles each side of the Rice Lake VOR (lat. 45°28'33" N., long. 91°43'30" W.) 159 radial extending from the 5-mile radius to 12.5 miles northwest of the Chetek Municipal-Southworth Airport, excluding that portion which overlies the Rice Lake, WI, transition area.

Issued in Des Plaines, Illinois, on February 10, 1989.

Teddy W. Burcham,

Manager, Air Traffic Division.

[FR Doc. 89-4237 Filed 2-23-89; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 943

[Docket No. 80851-8151]

Flower Garden Banks National Marine Sanctuary Regulations

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule.

SUMMARY: The National Oceanic and Atmospheric Administration, by the proposed Designation Document contained in this notice, proposes to designate two areas of marine waters over the East and West Flower Garden Banks in the northwestern Gulf of Mexico as the Flower Garden Banks

National Marine Sanctuary. The area proposed for designation at the East Bank, located approximately 120 nautical miles south southwest of Cameron, Louisiana, encompasses 19.20 square nautical miles, and the area proposed for designation at the West Bank, located approximately 110 nautical miles southeast of Galveston, Texas, encompasses 22.50 square nautical miles. The total area of the proposed Flower Garden Banks National Marine Sanctuary is 41.70 square nautical miles.

By the proposed regulations, also contained in this notice, NOAA intends to implement the proposed designation and regulate activities in the sanctuary consistently with the provisions of the Designation Document. The notice also announces the public availability of the draft environmental impact statement and management plan prepared for the proposed designation, summarizes the draft management plan prepared for the sanctuary, and invites public comments on the proposal, proposed regulations, and draft management plan.

After the comments received during the comment period have been considered, a final environmental impact statement and management plan will be prepared, and a notice of designation together with final regulations implementing the designation will be published in the **Federal Register**. The designation will become final after the close of a 45-day period for Congressional review unless Congress passes a joint resolution of disapproval.

DATE: Comments will be considered if received by April 25, 1989.

ADDRESSES: Send comments to Joseph A. Uravitch, Chief, Marine and Estuarine Management Division, Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration, 1825 Connecticut Avenue, NW., Washington, DC 20235. Copies of the draft management plan and the draft environmental impact statement are available upon request to the Office of Ocean and Coastal Resource Management.

FOR FURTHER INFORMATION CONTACT: Rafael Lopez, 202/673–5122.

SUPPLEMENTARY INFORMATION:

I. Background

Title III of the Marine Protection, Research, and Sanctuaries Act, as amended ("Act"), 16 U.S.C 1431 *et seq.*, authorizes the Secretary of Commerce to designate discrete areas of the marine environment as national marine sanctuaries if, as required by section 303 of the Act (16 U.S.C. 1433), the Secretary finds, in consultation with Congress, a variety of fulfill the purposes and policies of Title III (set forth in section 301(b) of the Act (16 U.S.C. 1431(b)) and: (1) The area proposed for designation is of special national significance due to its resource or human-use values; (2) existing state and Federal authorities are inadequate to ensure coordinated and comprehensive conservation and management of the area, including resource protection, scientific research, and public education; (3) designation of the area as a national marine sanctuary will facilitate the coordinated and comprehensive conservation and management of the area; and (4) the area is of a size and nature that will permit comprehensive and coordinated conservation and management.

Before the Secretary may designate an area as a national marine sanctuary, section 303 (16 U.S.C. 1433) requires him or her to make the above described findings and section 304 (16 U.S.C. 1434), setting forth the procedures for designation, requires him or her to issue in the **Federal Register** this notice of the proposal, proposed regulations, and a summary of the draft management plan.

The authority of the Secretary to designate national marine sanctuaries and administer the other provisions of the Act has been delegated to the Assistant Administrator for Ocean Services and Coastal Zone Management in the National Oceanic and Atmospheric Administration (DOC/DAO 25–5A, § 3.01(z), Aug. 26, 1985, as amended; NOAA Circular 83–38, Sept. 21, 1983, as amended).

The Flower Garden Banks are two of over thirty major outer-continental shelf structures in the northwestern Gulf of Mexico. The East and West Flower Garden Banks, separated by eight nautical miles of open water, sustain the northernmost living coral reefs on the U. S. continental shelf. The complex and biologically productive reef communities that cap the Banks are in delicate ecological balance because of the fragile nature of coral and the fact that the Banks lie on the extreme northern edge of the zone in which extensive reef development can occur. In addition to their coral reefs, the Banks harbor the only known oceanic brine seep in continental shelf waters of the Atlantic Ocean. Because of these features, the Flower Garden Banks offer a combination of esthetic appeal and recreational and research opportunity matched in few other ocean areas.

In April 1979, NOAA published proposed regulations (44 FR 22081) and a draft environmental impact statement (DEIS) on the proposed designation of the East and West Flower Garden Banks as a national marine sanctuary. However, a final EIS was not prepared. NOAA withdrew the DEIS in April 1982, and removed the site from the list of areas being considered for designation. One of the major reasons for this action was that a Fishery Management Plan (FMP) for coral in the Gulf of Mexico was about to be implemented. It was expected that the FMP and its implementing regulations would protect the coral formations in the area of the proposed national marine sanctuary form being damaged by large-vessel anchoring. However, the final regulations implementing the FMP (49 FR 29607 (1984)) did not include the expected "no anchoring" provision.

The continued lack of a ban on large-vessel anchoring led to renewed interest in ensuring the site's protection by designating it as a national marine sanctuary, and on August 2, 1984 NOAA announced (49 FR 30988) that the Flower Garden Banks had again become an Active Candidate for sanctuary designation. On June 24, 1986, NOAA sponsored a public scoping meeting in Galveston, Texas, to solicit public comment on the scope and significance of issues involved in designating the sanctuary. Again the response was generally favorable to proceeding with the evaluation.

II. Summary of the Draft Management Plan

The draft management plan for the proposed Flower Garden Banks National Marine Sanctuary recognizes the need for a balanced approach to management that reflects the multiple use character of the area as well as the need to protect its resources. The plan is designed to guide management of the sanctuary for the first five years after implementation. After describing the proposed sanctuary's location, resources and uses, the management plan discusses proposed programs for resource protection, research, and interpretation and details agency administrative roles and responsibilities.

The proposed designation of the Flower Garden Banks as a national marine sanctuary focuses attention on the value of the area's resources. To ensure that these resources are protected, the sanctuary .esource protection program includes: (1) Coordination of policies and procedures among the agencies sharing responsibility for resource protection; (2) participation by interested agencies and organizations in the development of procedures to address specific

management concerns (e.g., monitoring and emergency-response programs); and (3) the enforcement of sanctuary regulations in addition to other regulations already in place.

Effective management of the sanctuary requires the initiation of a sanctuary research program that addresses management issues. The sanctuary research program will be directed to improving knowledge of the sanctuary's resources and environment and of how they may be affected by various types of human activity. To avoid duplication of effort and achieve maximum benefits from the research, NOAA will coordinate its research efforts with those of other agencies.

Increased public understanding and appreciation of the value of Flower Garden Bank natural resources is essential for their protection. The interpretation program for the proposed Flower Garden Banks National Marine Sanctuary will be directed to developing public awareness of the sanctuary, its resources, and the regulations designed to protect them.

Under the preferred management alternative, the proposed Flower Garden Banks National Marine Sanctuary would be managed, at least initially, by NOAA's Marine and Estuarine Management Division in Washington, DC. Sanctuary enforcement personnel will be headquartered locally.

III. Proposed Designation Document

Section 304(a)(4) of the Act requires that the proposed designation include the geographic area proposed to be included within the sanctuary; the characteristics of the area that give it conservation, recreational, ecological, historical, research, educational, or esthetic value; and the types of activities that will be subject to regulation by the Secretary to protect these characteristics. The section also specifies that the terms of the designation may be modified only by the same procedures by which the original designation was made. Thus the terms of the designation serve as a constitution for the sanctuary.

Proposed Designation Document for the Flower Garden Banks National Marine Sanctuary

Under the authority of Title III of the Marine Protection, Research, and Sanctuaries Act of 1972, as amended (Act), 16 U.S.C. 1431 *et seq.*, the waters over the East and West Flower Garden Banks in the Gulf of Mexico, as described in Article 2, are hereby designated as a National Marine Sanctuary for the purpose of protecting and conserving these two highly productive marine areas and the waters over them and ensuring the continued availability of the areas and the waters as ecological, recreational, research and educational resources.

Article 1. Effect of Designation

Regarding the area designated as the Flower Garden Banks National Marine Sanctuary (Sanctuary), described in Article 2, the Act authorizes the promulgation of such regulations as are necessary and reasonable to protect the characteristics of the Sanctuary that give it conservation, recreational, ecological, historical, research, educational, or esthetic value. Restrictions on activities may be imposed only by specific regulation. Section 2 of Article 4 of this Designation Document lists those activities which have been identified as activities that may require regulation now or in the future in order to protect Sanctuary resources. Listing does not by itself imply that an activity will be regulated. However, activities not listed may be regulated, other than on an emergency basis under Section 3 of Article 4, only by amending Section 2 of Article 4 by the same procedures through which the original designation was made.

Article 2. Description of the Area

The Sanctuary boundaries encompass a total of 41.70 square nautical miles (143.02 square kilometers): 19.20 square nautical miles (65.85 square kilometers) at the East Bank and 22.50 square nautical miles (77.17 square kilometers) at the West Bank. The precise boundaries are defined in the regulations.

Article 3. Characteristics of the Area That Give It Particular Value

The Flower Gardens sustain the northernmost living coral reefs on the U.S. continental shelf. They are isolated from other reef systems by over 300 n.m. (550 km) and exist under hydrographic conditions generally considered marginal for tropical reef formation. The composition, diversity and vertical distribution of benthic communities on the Banks are strongly influenced by this physical environment. Epibenthic populations are distributed among several interrelated biotic zones, including a *Diploria-Montastrea-Porites* zone, a *Madracis mirabilis* zone, and an algal sponge zone.

The complex and biologically productive reef communities that cap the Banks offer a combination of esthetic appeal and recreational and research opportunity matched in few other ocean areas. These reef communities are in delicate ecological balance because of the fragile nature of coral and the fact that the Banks lie on the extreme northern edge of the zone in which extensive reef development can occur. In addition to their coral reefs, the Banks contain the only known oceanic brine seep in continental shelf waters of the Atlantic Ocean. Because of these features, the Flower Gardens are particularly valuable for scientific research.

Article 4. Scope of Regulation

Section 1. Activities Subject to Regulation. The following activities may be regulated within the Sanctuary and adjacent waters to the extent necessary and reasonable to ensure the protection of Sanctuary characteristics that give it conservation, recreational, ecological, historical, research, educational or esthetic value:

a. Anchoring by vessels;

b. Depositing or discharging of materials or substances;

c. Altering the seabed except by hydrocarbon exploration and development in Sanctuary areas lying outside of the no-activity zones established by the Department of the Interior and defined by the topographic features stipulation for OCS lease sale 112;

d. Removing or injuring coral or other resources;

e. Using fishing gear other than conventional hook and line gear; and

f. Detonating explosives or releasing electrical charges.

Section 2. Consistency with International Law—The regulations governing activities listed in Section 1 of this Article shall apply to foreign flag vessels and persons not citizens of the United States only to the extent consistent with generally recognized principles of international law, and in accordance with treaties, conventions, and other agreements to which the United States is a party.

Section 3. Emergency Regulations—Where essential to prevent immediate, serious, and irreversible damage to the ecosystem of the area, activities not listed in Section 1 of this Article may be regulated within the limits of the Act on an emergency basis for a period not to exceed 120 days.

Article 5. Relation to Other Regulatory Programs

Section 1. Fishing—The regulation of the use of conventional hook and line fishing gear is not authorized under Article 4. All regulatory programs pertaining to fishing, including Fishery Management Plans promulgated under the Magnuson Fishery Conservation and

Management Act, 16 U.S.C. 1801 *et seq.*, shall remain in effect. Where regulations promulgated under these programs are in conflict with Sanctuary regulations, the more restrictive regulations will prevail.

Section 2. Defense Activities—The regulation of activities listed in Article 4 will not prohibit any Department of Defense activity that is necessary for national defense. All activities carried out by the Department of Defense within the area of the proposed Sanctuary on the effective date of designation that are necessary for the national defense shall not be subject to Sanctuary prohibitions. Additional activities having the potential for significant environmental impact may be exempted from regulation after consultation between the Department of Commerce and the Department of Defense.

Section 3. Other Programs—All applicable regulatory programs shall remain in effect. Where regulations promulgated under these programs are in conflict with Sanctuary regulations, the more restrictive regulations shall prevail.

Article 6. Alterations to This Designation

This designation may be altered only in accordance with the same procedures by which it has been made, including public hearings, consultation with interested Federal and State agencies and the Gulf of Mexico Fishery Management Council, review by the appropriate Congressional committees, and approval by the Secretary of Commerce or his or her designee.

IV. Summary of Proposed Regulations

The proposed regulations would prohibit a relatively narrow range of activities in the proposed Sanctuary, would establish procedures for issuing permits to conduct otherwise prohibited activities for a narrow range of purposes and would set forth the maximum per day penalty for conducting a prohibited activity without a permit.

Specifically, the proposed regulations would add a new part 943 to title 15, Code of Federal Regulations.

Proposed § 943.1 would set forth the statutory authority for the designation of the Sanctuary and for the issuance of the regulations.

Proposed § 943.2 would set forth as the purposes for designating the Sanctuary: (1) Protecting and conserving the East and West Flower Garden Banks and the waters over them; and (2) ensuring the continued availability of the Banks and the waters as ecological, recreational, research, and educational resources.

Proposed § 943.3 and the appendix following propose § 943.10 would set forth the boundaries of the Sanctuary.

Proposed § 943.4 would define various terms used in the regulations. "Conventional hook and line" would be defined as any apparatus composed of a single line terminated by a combination of sinkers and hooks or lures and spooled upon a reel that may be hand or electrically operated, hand held or mounted. "Injure" would be defined as to change adversely, either in the long- or short-term, a chemical or physical quality or the viability of a Sanctuary resource. "Person" would be defined to mean any private individual, partnership, corporation, or other entity; or any officer, employee, agent, agency, department or instrumentality of the Federal government, of any State or local government, or of any foreign government. "Sanctuary resource" would be defined to mean any living or non-living resource of the Sanctuary that contributes to its conservation, recreational, ecological, historical, research, educational or esthetic value, including, but not limited to the carbonate-rock substratum of the Banks, corals and coralline algae, benthic invertebrates, brine-seep biota, pelagic fish, turtles and marine mammals.

Proposed § 943.6 would prohibit a variety of activities and make it unlawful for any person to conduct them. However, any of the prohibited activities could be conducted lawfully if necessary for national defense; if necessary to respond to an emergency threatening life, property, or the environment; or pursuant to a permit issued by the Assistant Administator for Ocean Services and Coastal Zone Management under proposed § 943.8.

The first activity prohibited would be anchoring within the Sanctuary by vessels greater than 100 feet in registered length. Vessels of 100 feet or less in registered length would be allowed to anchor in the Sanctuary, however, such vessels would be prohibited from using more than 15 feet of chain or wire rope attached to their anchors and from using anchor lines (exclusive of such chain or wire rope) that are not constructed of soft fiber or nylon, polypropylene, or similar material.

These proposed prohibitions on anchoring are necessary to protect the fragile coral bottom from damage. Although the proposed regulations would permit vessels of 100 feet or less in registered length to anchor subject to the limitations on anchoring gear, should such anchoring by these vessels damage coral resources, it could be prohibited or further regulated by regulatory amendment.

The second activity prohibited would be depositing or discharging from any location within the boundaries of the Sanctuary, materials or substances of any kind, including anesthetics and toxins used for taking or collecting fish, but excepting fish or parts and chumming materials (bait) and water (including cooling water) and other biodegradable effluents as specified. Depositing or discharging, from any location beyond the boundaries of the Sanctuary, materials or substances of any kind except for the exclusions discussed above, would also be prohibited if they enter the Sanctuary and injure a Sanctuary resource.

The third activity prohibited would be dredging, constructing structures or otherwise altering the seabed, or attempting to do so, for any purpose other than the authorized installation of navigational aids or incidental to hydrocarbon exploration and development in areas of the Sanctuary lying outside of the no-activity zones established by the Department of the Interior and defined by the topographical lease sale 112.

The fourth activity prohibited would be injuring, damaging, taking or removing, or attempting to injure, damage, take or remove, any fish (except by conventional hook and line gear or by spearfishing gear), marine invertebrate, coral or other bottom formation, or plant. Any such resource found in the possession of a person within the Sanctuary would be presumed, subject to refutation, to have been taken from the Sanctuary.

The fifth activity prohibited would be the collecting, harvesting, or taking of any fish by use of bottom longlines, traps, nets, bottom trawls or any other gear, device, equipment or means except by use of conventional hook and line gear or spearfishing gear. While spearfishing could be regulated or prohibited by regulatory amendment if deemed necessary for resource protection, the use of conventional hook and line gear could not be regulated or prohibited except on an emergency basis, without amending the designation document.

The sixth and last prohibited activity would be detonating explosives or releasing electrical charges within the Sanctuary.

Proposed § 943.5 would allow all activities to be conducted in the Sanctuary (subject to all other prohibitions, restrictions, or conditions imposed under any other program) except for those activities specifically

prohibited in proposed § 943.6. Thus, vessels of 100 feet or less in registered length could anchor in the Sanctuary subject to certain restrictions on their use of anchoring gear, and fish could be taken by use of conventional hook and line fishing gear and spearfishing gear.

Proposed § 943.7 would set forth the maximum statutory civil penalty per day for conducting a prohibited activity—$50,000. Each day of a continuing violation would constitute a separate violation. Further, *in rem* actions against any vessel used in conducting a prohibited activity would be statutorily authorized. Regulations setting forth the administrative procedures governing the assessment of civil penalties, enforcement hearings, and appeals, permit sanctions and denials for enforcement reasons, and the issuance of written warnings appear at Part 904, title 15, Code of Federal Regulations.

Proposed § 943.8 would set forth the procedures for applying for a permit to conduct a prohibited activity in the Sanctuary and the criteria governing the issuance or denial of such permits. Permits would be granted by the Assistant Administrator for Ocean Services and Castal Zone Management if he or she finds that the activity will further research related to Sanctuary resources; further the educational, historical or cultural value of the Sanctuary; further salvage or recovery operations in or near the Sanctuary in connection with a recent air or marine casualty, or assist in the management of the Sanctuary. In deciding whether to issue a permit, the Assistant Administrator may consider such factors as the professional qualifications and financial ability of the applicant as related to the proposed activity, the appropriateness of the methods and procedures proposed by the applicant for the conduct of the activity, the extent to which the conduct of the activity may diminish or enhance the values for which the Sanctuary was designated, and the end value of the applicant's overall activity.

Proposed § 943.9 would set forth the procedures governing appeals of the grant, conditioning, amendment, suspension or revocation of permits by the Assistant Administrator.

Proposed § 943.10 would state that all permits, licenses, and other authorizations issued pursuant to any other authority are valid within the Sanctuary subject only to the prohibitions set forth in proposed § 943.6. All applicable regulatory programs would remain in effect. If regulations promulgated by another authority are in conflict with Sanctuary regulations, the more restrictive regulations apply.

V. Miscellaneous Rulemaking Requirements

Executive Order 12291

Under Executive Order 12291, the Department must judge whether the regulations proposed in this notice are "major" within the meaning of section 1 of the Order, and therefore subject to the requirement that a Regulatory Impact Analysis be prepared. The Assistant Administrator has determined that the regulations proposed in this notice are not major because, if adopted, they are not 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.

Regulatory Flexibility Act

The regulations proposed in this notice would allow all activities to be conducted in the proposed sanctuary other than a narrow range of prohibited or restricted activities. These prohibitions and restrictions are not expected to have a significant economic impact on a substantial number of small entities and the General Counsel of the Department of Commerce has so certified to the Chief Counsel for Advocacy of the Small Business Administration that these proposed rules, if adopted, will not have a significant economic impact on a substantial number of small entities because the proposed regulations would have no effect on small business or small government jurisdictions. As a result, an initial Regulatory Flexibility Analysis was not prepared.

Paperwork Reduction Act

This proposed rule contains a collection of information requirement subject to the requirements of the Paperwork Reduction Act (Pub. L. No. 96–511). The collection of information requirement applies to persons seeking permits to conduct otherwise prohibited activities and is necessary to determine whether the proposed activities are consistent with the management goals for the sanctuary. The collection of information requirement contained in the proposed rule has been submitted to the Office of Management and Budget for review under section 3504(h) of the Paperwork Reduction Act. The public reporting burden per respondent for the collection of information contained in this rule is estimated to average 1.75 hours annually. This estimate includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and and completing and reviewing the collection of information. Comments from the public on the collection of information requirement are specifically invited and should be addressed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC, 20530; and to Richard Roberts, Room 305, 601 Executive Boulevard, Rockville, DC, 20852.

Executive Order 12612

This proposed rule does not contain policies with sufficient Federalism implications to warrant preparation of a Federalism assessment under Executive Order 12612.

National Environmental Policy Act

In accordance with section 304(a)(2) of the Act (16 U.S.C. 1434(a)(2)) and the provisions of the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370(a)), a draft environmental impact statement has been prepared for the proposed designation and the proposed regulations. As required by section 304(a)(2), the draft environmental impact statement includes the resource assessment report required by section 303(b)(3) of the Act (16 U.S.C. 1433(b)(3)), maps depicting the boundaries of the proposed designated area, and the existing and potential uses and resources of the area. Copies of the draft environmental impact statement are available upon request to the Office of Ocean and Coastal Resource Management at the address listed above.

Executive Order 12630

This proposed rule, if issued in final form as proposed, would not have any takings implications within the meaning of Executive Order 12630 because it would not appear to have an effect on private property sufficiently severe as to effectively deny economically viable use of any of any distinct legally potential property interest to its owner or to have the effect of, or result in, a permanent or temporary physical occupation, invasion, or deprivation.

List of Subjects in 15 CFR Part 943

Administrative practice and procedure, Environmental protection, Marine resources, Natural resources.

Thomas J. Maginnis,

Assistant Administrator for Ocean Services and Coastal Zone Management.

(Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program)

Accordingly, for the reasons set forth above, 15 CFR is proposed to be amended as follows:

1. Part 943 is added to read as follows:

PART 943—FLOWER GARDEN BANKS NATIONAL MARINE SANCTUARY

Sec.

943.1 Authority.
943.2 Purpose.
943.3 Boundaries.
943.4 Definitions.
943.5 Allowed activities.
943.6 Prohibited activities.
943.7 Penalties for commission of prohibited activities.
943.8 Permit applications—procedures and criteria.
943.9 Appeals of administrative action.
943.10 Other authorities.
Appendix—Flower Garden Banks National Marine Sanctuary Boundary Coordinates.

Authority: Secs. 303, 304, 305, and 307, Title III, Marine Protection, Research, and Sanctuaries Act of 1972, as amended, 16 U.S.C. 1431 *et seq.*

§ 943.1 Authority.

The Sanctuary has been designated by the Secretary of Commerce pursuant to the authority of Title III of the Marine Protection, Research, and Sanctuaries Act of 1972, as amended, 16 U.S.C. 1431 *et seq.* (Act). The regulations in this part are issued pursuant to the authority of sections 303(a), 304, 305, and 307 of the Act.

§ 943.2 Purpose.

The purpose of designating the Sanctuary is to protect and conserve the discrete, highly productive marine areas called the East and West Flower Garden Banks and the waters over them and to ensure the continued availability of the areas and the waters as ecological, recreational, research and educational resources.

§ 943.3 Boundaries.

The Sanctuary consists of two areas of marine waters 110 nautical miles southeast of Galveston, Texas. The boundaries, encompassing 41.7 square nautical miles (143.21 square kilometers), include the "no activity" zones established by the Department of the Interior over the East and West Flower Garden Banks. The boundary coordinates are listed in the appendix following § 943.10.

§ 943.4 Definitions.

(a) "Act" means Title III of the Marine Protection, Research, and Sanctuaries Act of 1972, as amended, 16 U.S.C. 1431 *et seq.*

(b) "Administrator" means the Administrator of the National Oceanic and Atmospheric Administration (NOAA), U.S. Department of Commerce, or designee.

(c) "Assistant Administrator" means the Assistant Administrator for Ocean Services and Coastal Zone Management, National Ocean Service, NOAA, or designee.

(d) "Conventional hook and line" means any apparatus composed of a single line terminated by a combination of sinkers and hooks or lures and spooled upon a reel that may be hand or electrically operated, hand held or mounted.

(e) "Injure" means to change adversely, either in the long- or short-term, a chemical or physical quality or the viability of a Sanctuary resource.

(f) "Person" means any private individual, partnership, corporation, or other entity; or any officer, employee, agent, agency, department or instrumentality of the Federal government, of any state or local government, or of any foreign government.

(g) "Sanctuary" means the Flower Garden Banks National Marine Sanctuary.

(h) "Sanctuary resource" means a living or non-living resource of the Sanctuary that contributes to its conservation, recreational, ecological, historical, research, educational or esthetic value, including, but not limited to, the carbonate-rock substratum of the Banks, corals and coralline algae, benthic invertebrates, brine-seep biota, pelagic fish, turtles and marine mammals.

§ 943.5 Allowed activities.

All activities except those specifically prohibited by § 943.6 may be conducted within the Sanctuary subject to all other prohibitions, restrictions, and conditions imposed by any other authority.

§ 943.6 Prohibited activities.

(a) Unless permitted by the Assistant Administrator in accordance with § 943.8, or as may be necessary for national defense, or as may be necessary to respond to an emergency threatening life, property or the environment, it is unlawful for any person to conduct the following prohibited activities.

(1) *Anchoring by Vessels.* (i) Anchor within the Sanctuary a vessel greater than 100 feet in registered length;

(ii) Use more than fifteen (15) feet of chain or wire rope attached to any anchor to anchor within the Sanctuary a vessel of less than or equal to 100 feet in registered length;

(iii) Use anchor lines (exclusive of the anchor chain or wire rope permitted by, paragraph (a)(1)(ii) of this section) other than those of a soft fiber or nylon, polypropylene, or similar material to anchor within the Sanctuary a vessel of less than or equal to 100 feet in registered length.

(2) *Depositing or Discharging Materials or Substances.* (i) Deposit or discharge, from any location within the boundaries of the Sanctuary, materials or substances of any kind, including anesthetics and toxins, except:

(A) Fish or fish parts and chumming materials (bait); and

(B) Water (including cooling water) and other biodegradable effluents incidental to use of a vessel in the Sanctuary and generated by:

(1) Marine sanitation devices approved by the U.S. Coast Guard;

(2) Routine vessel maintenance (e.g., deck wash down or on-board meals); or

(3) Engine exhaust.

(ii) Deposit or discharge, from any location beyond the boundaries of the Sanctuary, materials or substances of any kind, including anesthetics and toxins, with the exceptions listed in paragraphs (a)(2)(i) (A) and (B) of this section, which enter the Sanctuary and injure a Sanctuary resource.

(3) *Altering the Seabed.* Dredge, construct structures or otherwise alter the seabed, or attempt such activity, within the Sanctuary, for any purpose other than the authorized installation of navigation aids, except for dredging, constructing structures, or otherwise altering the seabed incidental to hydrocarbon exploration and development in areas of the Sanctuary lying outside of the no-activity zones established by the Department of the Interior and defined by the topographic lease stipulation for OCS lease sale 112.

(4) *Injuring or Removing Resources.* Injure, damage, take or remove, or attempt to injure, damage, take or remove, any fish (except as provided in paragraph (a)(5) of this section), marine invertebrate, coral or other bottom formation, or plant within the Sanctuary. There shall be a rebuttable presumption that any such resource found in the possession of a person within the Sanctuary was removed from or taken in the Sanctuary.

(5) *Fishing or Collecting.* Collect, harvest or take any fish within the Sanctuary by use of bottom longlines, traps, nets, bottom trawls or any other gear, device, equipment or means except by use of conventional hook and line gear or spearfishing gear.

(6) *Explosives, Electrical Charges, and Toxins.* Detonate explosives or release electrical charges within the Sanctuary.

(b) Any activity necessary for the national defense that is being carried out by the Department of Defense within the Sanctuary on the effective date of designation is exempt from the prohibitions of this section. Additional activities of the Department of Defense may be exempted by the Assistant Administrator after consultation between the Department of Commerce and the Department of Defense.

(c) The prohibitions in this section shall be applied to foreign persons and foreign vessels in accordance with generally recognized principles of international law, and in accordance with treaties, conventions, and other international agreements to which the United States is a party.

§ 943.7 Penalties for commission of prohibited activities.

(a) Section 307(b) of the Act authorizes the assessment of a civil penalty of not more than $50,000 for each violation of any regulation issued pursuant to the Act. Each day of a continuing violation shall constitute a separate violation. Section 307(b)(3) further authorizes a proceeding *in rem* against any vessel used in violation of any regulation and for which a civil penalty has been assessed.

(b) Regulations setting forth the administrative procedures governing the assessment of civil penalties for violating the regulations in this part, enforcement hearings and appeals, permit sanctions and denials for enforcement reasons, and the issuance of written warnings appear at 15 CFR Part 904.

§ 943.8 Permit applications—procedures and criteria.

(a) If a person wishes to conduct an activity prohibited under § 943.6, that person must apply for, receive, and have in possession on board any vessel used, a valid permit issued pursuant to this part authorizing that person to conduct that activity.

(b) Permit applications shall be addressed to the Assistant Administrator, Ocean Services and Coastal Zone Management; ATTN: Marine and Estuarine Management Division, Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration, 1825 Connecticut Avenue, NW., Washington, DC 20235. An application shall include a description of all activities proposed, the equipment, methods, and personnel (particularly describing relevant experience) involved, and a timetable for completion of the proposed activity. Copies of all other required licenses or permits shall be attached.

(c) Upon receipt of a complete application, the Assistant Administrator may seek the views of any person or entity, within or outside the Federal Government, and may hold a public hearing, in his or her discretion.

(d) The Assistant Administrator, in his or her discretion, may issue a permit, subject to such conditions as deemed appropriate, to conduct an activity otherwise prohibited by § 943.6, if the Assistant Administrator finds that the activity will: Further research related to Sanctuary resources; further the educational, historical or cultural value of the Sanctuary; further salvage or recovery operations in or near the Sanctuary in connection with a recent air or marine casualty; or assist in managing the Sanctuary. In deciding whether to issue a permit, the Assistant Administrator may consider such factors as: the professional qualifications and financial ability of the applicant as related to the proposed activity; the appropriateness of the methods and procedures proposed by the applicant for the conduct of the activity; the extent to which the conduct of the activity may diminish or enhance the values for which the Sanctuary was designated; and the end value of the applicant's overall activity.

(e) A permit issued pursuant to this section is nontransferable.

(f) The Assistant Administrator may amend, suspend or revoke a permit issued pursuant to this section or deny a permit application pursuant to this section, in whole or in part, if the Assistant Administrator determines that the permittee or applicant has acted in violation of the terms of the permit or of these regulations or for other good cause shown. Any such action shall be communicated in writing to the permittee or applicant and shall set forth the reason(s) for the action taken. Procedures governing permit sanctions and denials for enforcement reasons are found at Subpart D of 15 CFR Part 904.

§ 943.9 Appeals of administrative action.

(a) Except for permit actions taken for enforcement reasons and therefore covered by the procedures at Subpart D of 15 CFR Part 904, an applicant for a permit, a permittee, or any other interested person (hereinafter appellant) may appeal the grant, conditioning, amendment, suspension or revocation of any permit issued under § 943.8 or the denial of any permit application under § 943.8 to the Administrator of NOAA. In order to be considered by the Administrator, such appeal must be in writing, state the action(s) appealed and the reason(s) therefor, and be received within 30 days of the action(s) by the Assistant Administrator. The Administrator, in his or her discretion, may hold an informal hearing on the appeal.

(b) Upon receipt of an appeal authorized by this section, the Administrator may request the appellant, the permit applicant or permittee, if other than the appellant, or any person or entity, within or outside the Federal Government, to submit such information as the Administrator may deem appropriate in order to decide the appeal. The Administrator shall decide the appeal based on the record before the Assistant Administrator and the record of the appeal. The Administrator shall notify the appellant of the final decision and the reason(s) therefor in writing, normally within 30 days of the date of the receipt of adequate information to make the decision.

(c) If the Administrator determines that an informal hearing should be held, he or she may designate an officer before whom the hearing shall be held. Notice of the time, place, and subject matter of the hearing shall be published in the **Federal Register**. Such hearing shall be held no later than 30 days following publication of the notice in the **Federal Register**, unless the hearing officer extends the time for reasons deemed equitable. The appellant, the applicant or permittee and other interested persons may appear personally or by counsel at the hearing and submit such material and present such arguments as deemed appropriate by the hearing officer. Within 30 days after the record for the hearing closes, the hearing officer shall recommend a decision in writing to the Administrator.

(d) The Adminsitrator may adopt the hearing officer's recommended decision, in whole or in part, or reject of modify it In any event, the Administrator shall notify the appellant and other interested persons of his/her decision and the reason(s) therefor in writing within 30 days of receipt of the recommended decision of the hearing officer. The Administrator's decision shall constitute final agency action for the purposes of the Administrative Procedure Act.

(e) Any time limit prescribed in this section may be extended by the Administrator for good cause for a period not to exceed 30 days, either upon his/her own motion or upon written request from the appellant, permit applicant or permittee, stating the reason(s) therefor.

§ 943.10 Other authorities.

(a) All permits, licenses, and other authorizations issued pursuant to any other authority are valid within the Sanctuary subject only to the activity restrictions set forth in § 943.6. All applicable regulatory programs remain in effect. Where regulations promulgated by another authority are in conflict with Sanctuary regulations, the more restrictive regulations shall prevail.

Appendix: Flower Garden Banks National Marine Sanctuary Boundary Coordinates

Point no.	Latitude	Longitude
East Flower Garden Bank:		
E-1	27°52'52.13"	93°37'40.52"
E-2	27°53'33.81"	93°38'22.33"
E-3	27°55'13.31"	93°38'39.07"
E-4	27°57'30.14"	93°38'32.26"
E-5	27°58'27.79"	93°37'42.93"
E-6	27°59'00.29"	93°35'29.56"
E-7	27°58'59.23"	93°35'09.91"
E-8	27°55'20.23"	93°34'13.75"
E-9	27°54'03.35"	93°34'18.42"
E-10	27°53'25.95"	93°35'03.79"
E-11	27°52'51.14"	93°36'57.59"
West FLower Garden Bank:		
W-1	27°49'09.24"	93°50'43.35"
W-2	27°50'10.23"	93°52'07.96"
W-3	27°51'13.14"	93°52'50.68"
W-4	27°51'31.24"	93°52'49.79"
W-5	27°52'49.55"	93°52'21.89"
W-6	27°54'59.08"	93°49'41.87"
W-7	27°54'57.08"	93°48'38.52"
W-8	27°54'33.46"	93°47'10.36"
W-9	27°54'13.51"	93°46'48.96"
W-10	27°53'37.67"	93°46'50.67"
W-11	27°52'56.44"	93°47'14.10"
W-12	27°50'38.31"	93°47'22.86"
W-13	27°49'11.23"	93°48'42.59"

[FR Doc. 89-4030 Filed 2-23-89; 8:45 am]
BILLING CODE 3510-08-M

FEDERAL TRADE COMMISSION

16 CFR Parts 801, 802 and 803

Premerger Notification; Reporting and Waiting Period Requirements

AGENCY: Federal Trade Commission.

ACTION: Advance notice of proposed rulemaking; request for comments.

SUMMARY: The purpose of this advance notice of proposed rulemaking and request for comments by the Federal Trade Commission is to incorporate public views on the operation of the Hart-Scott-Rodino premerger notification program prior to formulating specific proposals. The Federal Trade Commission, with the concurrence of the Assistant Attorney General for Antitrust, has several times amended the rules in order to improve the program's effectiveness. This notice is directed principally toward reducing the number of non-reportable transactions that may raise antitrust concerns and reducing the availability of devices for avoiding reporting and waiting requirements.

DATES: Comments must be received on or before April 25, 1989.

ADDRESSES: Written comments should be submitted to both (1) the Secretary, Federal Trade Commission, Room 172, Washington, DC 20580, and (2) the Assistant Attorney General, Antitrust Division, Department of Justice, Room 3214, Washington, DC 20530.

FOR FURTHER INFORMATION CONTACT: Roberta S. Baruch, Deputy Assistant Director for Evaluation, Bureau of Competition, Room 394, Federal Trade Commission, Washington, DC 20580. Telephone: (202) 326-3300.

SUPPLEMENTARY INFORMATION: In furtherance of its efforts to improve the effectiveness of the Hart-Scott-Rodino premerger notification program, the Federal Trade Commission has considered preliminary, and now seeks public comments on, five approaches to reducing the number of non-reportable transactions that may raise antitrust concerns and to reducing the availability of devices for avoiding reporting and waiting requirements.

This notice is divided into two parts. Part One describes the development of the premerger notification rules and provides some background specific to the approaches discussed here. Part Two briefly describes each of the five options, discusses some of the merits and disadvantages of each, and raises questions about each to which concerned members of the public may wish to direct their comments. The public is also specifically invited to address any other issues raised by any of these options, and to suggest alternative approaches to addressing the problems of concern.

Part One: Background

Section 7A of the Clayton Act ("the act"), 15 U.S.C. 18a, as added by sections 201 and 202 of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain acquisitions of assets or voting securities to give advance notice to the Federal Trade Commission (hereafter referred to as "the Commission") and the Assistant Attorney General in charge of the Antitrust Division of the Department of Justice (hereafter referred to as "the Assistant Attorney General"), and to wait certain designated periods before the consummation of such acquisitions. The transactions to which the advance notice requirement is applicable and the length of the waiting period required are set out respectively in subsections (a) and (b) of section 7A. This amendment to the Clayton Act does not change the standards used in determining the legality of mergers and acquisitions under the antitrust laws.

The legislative history suggests several purposes underlying the act. Congress wanted to assure that large acquisitions were subjected to meaningful scrutiny under the antitrust laws prior to consummation. To this end, Congress clearly intended to eliminate the large "midnight merger," which is negotiated in secret and announced just before, or sometimes only after, the closing takes place. Congress also provided an opportunity for the Commission or the Assistant Attorney General (sometimes hereafter referred to collectively as the "antitrust agencies" or the "enforcement agencies") to seek a court order enjoining the completion of those transactions that the agencies deem to present significant antitrust problems. Finally, Congress sought to facilitate an effective remedy when a challenge by one of the enforcement agencies proved successful. Thus, the act requires that the antitrust agencies receive prior notification of significant acquisitions, provides certain tools to facilitate a prompt, thorough investigation of the competitive implications of these acquisitions, and assures the enforcement agencies an opportunity to seek a preliminary injunction before the parties to an acquisition are legally free to consummate it, reducing the problem of unscrambling the assets after the transaction has taken place.

Subsection 7A(d)(1) of the act, 15 U.S.C. 18a(d)(1), directs the Commission, with the concurrence of the Assistant Attorney General, in accordance with 5 U.S.C. 553, to require that the notification be in such form and contain such information and documentary material as may be necessary and appropriate to determine whether the proposed transaction may, if consummated, violate the antitrust laws. Subsection 7A(d)(2) of the act, 15 U.S.C.

18a(d)(2), grants the Commission, with the concurrence of the Assistant Attorney General, in accordance with 5 U.S.C. 553, the authority (A) to define the terms used in the act, (B) to exempt additional persons or transactions from the act's notification and waiting period requirements, and (C) to prescribe such other rules as may be necessary and appropriate to carry out the purposes of section 7A.

On December 15, 1976, the Commission issued proposed rules and a proposed Notification and Report Form ("the Form") to implement the act. This proposed rulemaking was published in the **Federal Register** of December 20, 1976, 41 FR 55488. Because of the volume of public comment, it became clear to the Commission that some substantial revisions would have to be made in the original rules. On July 25, 1977, the Commission determined that additional public comment on the rules would be desirable and approved revised proposed rules and a revised proposed Notification and Report Form. The revised rules and Form were published in the **Federal Register** of August 1, 1977, 42 FR 39040. Additional changes in the revised rules and Form were made after the close of the comment period. The Commission formally promulgated the final rules and Form, and issued an accompanying Statement of Basis and Purpose on July 10, 1978. The Assistant Attorney General gave his formal concurrence on July 18, 1978. The final rules and Form and the Statement of Basis and Purpose were published in the **Federal Register** of July 31, 1978, 43 FR 33451, and became effective on September 5, 1978.

The rules are divided into three parts, which appear at 16 CFR Parts 801, 802, and 803. Part 801 defines a number of the terms used in the act and rules, and explains which acquisitions are subject to the reporting and waiting period requirements. Part 802 contains a number of exemptions from these requirements. Part 803 explains the procedures for complying with the act. The Notification and Report Form, which is completed by persons required to file notification, is an appendix to Part 803 of the rules.

Final changes of a substantive nature have been made in the premerger notification rules or Form on six occasions since they were first promulgated. In addition, on September 22, 1988, the Federal Trade Commission published in the **Federal Register** a proposal for a seventh change. That notice of proposed rulemaking sought comments on one principal proposal and two alternative approaches to revising the rules, each of which is designed to eliminate unnecessary notification burdens and to reduce incentives to violate the rules. The principal proposal would exempt from the premerger notification obligations all acquisitions of 10% or less of an issuer's voting securities on the grounds that such acquisitions are unlikely to violate the antitrust laws. The alternative proposals would alter existing notification procedures for acquisitions of 10% or less of an issuer's voting securities. One would permit the purchase, but require that the securities be placed in escrow pending antitrust review; the other would eliminate the reporting requirement imposed on the target firm, thus freeing the acquiror of its obligation to give the target prior notice. The period for submitting public comments on this proposal expired on December 23, 1988.

The first final rule change increased (to $15 million) the minimum dollar value exemption contained in § 802.20 of the rules. This amendment was proposed in the **Federal Register** of August 10, 1979, 44 FR 47099, and was published in final form in the **Federal Register** of November 21, 1979, 44 FR 60781. The second amendment replaced the requirement that certain revenue data for the year 1972 be provided in the Notification and Report Form with a requirement that comparable data be provided for the year 1977. This change was made because total revenues for the year 1977 broken down by Standard Industrial Classification (SIC) codes became available from the Bureau of the Census. The amendment appeared in the **Federal Register** of March 5, 1980, 45 FR 14205, and was effective May 3, 1980.

The third set of changes was published by the Commission as proposed rules changes in the **Federal Register** of July 29, 1981, 46 FR 38710. These revisions were designed to clarify and improve the effectiveness of the rules and of the Notification and Report Form as well as to reduce the burden of filing notification. Several comments on the proposed changes were received during the comment period. Final rules, which adopted some of the suggestions received during the comment period, but which were substantially the same as the proposed rules, were published in the **Federal Register** of July 29, 1983, 48 FR 34427, and became effective on August 29, 1983. The fourth change, replacing the requirement to provide 1977 revenue data with a requirement to provide 1982 data on the Form, was published in the **Federal Register** of March 26, 1986, 51 FR 10368.

The fifth set of changes to the rules and the Notification and Report Form was published by the Federal Trade Commission as proposed rule changes in the **Federal Register** of September 24, 1985, 50 FR 38742. Those thirteen proposed revisions were designed to reduce the cost to the public of complying with rules and to improve the program's effectiveness. The Commission decided to adopt nine of the proposals, to reject one, and to defer action on the other three. Final rules, which adopted some of the suggestions received from public comments, were published in the **Federal Register** of March 6, 1987, 52 FR 7066 and became effective on April 10, 1987. These changes included revisions to the Notification and Report Form, found in 16 CFR 803 (Appendix). The Form had previously undergone minor revisions on two other occasions.

The sixth set of changes was published by the Federal Trade Commission as proposed rules changes in the **Federal Register** of March 6, 1987, 52 FR 7095, and as final rules in the **Federal Register** of May 29, 1987, 52 FR 20058. Those amendments to the premerger notification rules grew out of the comments on Proposal 1 of the September 24, 1985, **Federal Register** notice, the proposed "acquisition vehicle" rules. The underreporting problem that the "acquisition vehicle" approach was designed to solve is extensively discussed in that notice of proposed rulemaking. It explains both how in some circumstances an acquisition made by a partnership is not subject to the reporting and waiting obligations of the act, and how in similar circumstances an acquisition made by a newly-formed corporation that has no controlling owner is not subject to the obligations of the act. The proposed rules would have required both types of transactions to be reported.

Upon reviewing the comments on the "acquisition vehicle" proposal, the Commission concluded that that approach appeared likely to require filings in connection with numerous competitively insignificant transactions and that a less inclusive approach could accomplish the primary objective of the proposal: covering acquisitions by partnerships that really are controlled by another entity. In addition, it appeared that there had been no problems associated with acquisitions by newly-formed corporations. The Commission therefore reconsidered its proposal and developed a new approach that applied only to partnerships and

other entities that did not have outstanding voting securities.

Under previous staff interpretations, acquisitions made by certain partnerships were not reportable under the act although acquisitions by similarly structured corporations were reportable. No report was required even if an acquisition was by a partnership that was owned and operated principally by one person, and even if that person was a competitor of the acquired person. Because that result was inconsistent with the treatment of corporations that are dominated by one person and with the objectives of the act and the rules, the Commission amended the definition of control in § 801.1(b) to provide that persons owning 50 percent or more of partnerships or other entities that do not have outstanding voting securities control such entities. Those persons are now required to report acquisitions by the entities they own, just as persons must report acquisitions by corporations if they own 50 percent or more of the outstanding voting securities of those corporations.

The Commission also amended the alternative definition of control, which is based on the contractual power to designate members of an entity's board of directors or analogous body. The change—from the power to designate a majority to the power to designate 50 percent—resulted in a uniform 50 percent criterion for all three definitions of control in the rules.

In the statement of basis and purpose accompanying the promulgation of the amendments to the definition of control at 52 FR 20061 the Commission noted that more inclusive definitions of control were possible and, indeed, that each of the comments on the proposed rule had suggested some more expansive approach. The Commission rejected greater coverage at that time, preferring first to amend the definitions of control to equalize the treatment of partnerships and corporations. It noted, however, that it might reexamine the need for more inclusive definitions if it appeared that significant underreporting remained after implementation of the changes being promulgated at that time.

Based on the Commission's experience with the new partnership control rules in effect for 18 months, we believe that there may continue to be acquisitions that may not be covered by the HSR premerger reporting requirements that it would be useful for the enforcement agencies to have an opportunity to review. At the same time, the Commission continues to be concerned about any unnecessary increase in the number of filings that might result from any of these rules.

Thus, to facilitate the analysis of the more inclusive options available, and to highlight the merits and disadvantages of each, the Commission seeks public comments in response to this advance notice of proposed rulemaking. The Commission seeks comments on several general questions posed here, as well as on five more specific options discussed in the next section.

General Questions

How many transactions take place each year that it would be useful for the enforcement agencies to have an opportunity to review but that the parties believe are not covered by the HSR premerger reporting requirements' definition of "control"?

Based on the Commission's experience, it appears that intermediary entities created to carry out acquisitions are most often in the form of partnerships. What are the reasons for the apparent preference for this business form for this kind of business activity?

More specifically, under the current rules, why have partnerships rather than corporations been used to avoid reporting?

What would be the effect of having a more inclusive definition of "control" for partnerships than for corporations?

Part Two: Options

Option One: Change the "Flow-through rule" of § 801.11(e). Section 801.11(e) was amended in the March 6, 1987, **Federal Register**, 52 FR 7066, to codify a long-standing informal position of the Commission staff that a person without a regularly prepared balance sheet generally should not include funds used to make an acquisition in determining its size. The issue arises primarily in connection with newly-formed entities, not controlled by any other entity, that have not yet drawn up a balance sheet. Under this rule, if such an entity's only assets are cash that will be used to make an acquisition and securities of the entity it is acquiring, it generally will not have to file for that acquisition because it will be deemed too small to meet the act's size-of-person test. The rule is intended to limit the coverage of the premerger rules to those situations when an antitrust violation is most likely to be present, that is, when one business entity of a substantial size acquires another business entity of a substantial size. The operation and purpose of the rule is discussed in some detail in the statement of basis and purpose accompanying the final rule.

Most new entities that do not have to report significant acquisitions are exempt from filing obligations because they fail independently to meet the act's size-of-person test through the operation of this rule. If such an intity is not controlled by another entity with sufficient sales or assets to fall within the coverage of the act, then the acquisition may not be subject to the reporting and waiting requirements.

The focus of both the proposed "acquisition vehicle" rule and the more limited partnership control rule ultimately adopted by the Commission was on providing a mechanism for the enforcement agencies to receive filings from the entities with controlling or other ownership interests in the newly-formed entities that would not, themselves, have to report. It may be, however, that it would be helpful to change the flow-through rule in some way that would require certain newly-formed entities to report.

There are at least two potentially significant problems with this approach. First, there are many transactions without antitrust significance that are exempt under the current rule but that would be reportable with a change in the flow-through rule. The additional reporting that would likely result from such a change might be limited by adopting a different, higher threshold for such newly-formed entities. However, the Commission does not currently have sufficient information to identify the appropriate threshold.

Second, if newly-formed entities were themselves required to report, their filings would not provide much information useful for an initial assessment of the antitrust significance of the transaction. It is likely that any competitive effects would be associated with the ongoing business interests of those with ownership interests in the new acquiring entity, even if they did not meet the rules' narrow definition of control. To reflect their operations in a filing by the acquiring entity could require significant changes in the information required by the Notification and Report Form.

Questions for Option One

How many transactions currently exempt from reporting and waiting requirements would be required to report if the flow-through rule were eliminated?

Are these transactions concentrated in any particular industry?

What might be an appropriate alternative threshold level for newly-formed entities?

What changes would need to be made in the Notification and Report Form to provide useful information from entities with less-than-controlling interests in

newly-formed entities? Could these be made without requiring extensive additional information from all reporting parties?

Are there other changes that could be made in the flow-through rule that would achieve these objectives without requiring as many additional filings?

Option Two: Define each general partner or a managing partner as controlling a partnership. Under the current partnership control rule, any partner with a 50 percent or greater ownership interest in a partnership is deemed to control the partnership. However, partnerships are often set up with many limited partners and a small number of general partners, none of which has a 50 percent interest but any of which could exercise significant control over the business of the partnership. An acquisition made by such a partnership entity might well be exempt from current reporting requirements. This is especially likely if the partnership were newly-formed and did not have a regularly prepared balance sheet so that it failed to meet the size-of-person test as a result of the operation of the flow-through rule.

Deeming each general partner to control the partnership would be consistent with the power of general partners under common law. It would also assure that any party with potential control over a partnership would have to report any acquisition (that otherwise meets the statutory requirements) made by that partnership. The primary problem with this option is that it would likely require filings for many transactions that are unlikely to present significant antitrust concerns and that have, until now, been exempt from reporting requirements.

There are at least two ways the Commission might be able to limit this effect. One is to exempt certain types of partnerships, or industries that often use partnerships, where it is possible to identify significant numbers of otherwise reportable acquisitions that would not raise antitrust concerns. The other is to exempt general partners that relinquish certain crucial elements of partnership control through the partnership agreement. Thus, rather than defining every general partner as controlling every partnership, the definition of control might include only partners with certain critical powers, for example, the powers to acquire and dispose of assets, to enter into certain kinds of agreements, or to perform certain management functions of an ongoing business. This definition of control, designed for partnerships, might also be applied to entities with similar powers to direct the business operations of corporations or other entities. Thus, the "managing" entity would include the value of the controlled entities when determining whether it met the size-of-person test, and it would include information about the business activities of the controlled entities on its notification and report forms. One effect of applying the rule in this way would be to resolve a question that has been of concern on several occasions: how to obtain information in a premerger filing from an entity with little or no ownership interest in a compny but with management contracts giving it actual control over the company's ongoing business. Such a change, whether or not limited to control of a partnership, might take the form of an expansion or clarification of § 801.1(b)(2), which defines control to include:

(2) Having the contractual power presently to designate 50 percent or more of the directors of a corporation, or in the case of unincorporated entities, of individuals exercising similar functions.

Questions for Option Two

How many additional filings would the enforcement agencies likely receive as the result of such a change, if the change included all general partners? If the change were limited to partners with specific elements of management authority? If the change applied to any entity with similar elements of management authority over corporations or other entities, as well as partnerships?

What proportion of those transactions are likely to have antitrust significance?

What industries are likely to be significantly affected by such a change?

What elements of authority might be used to define when a partner or other entity is deemed to control a partnership or other entity?

Option Three: lower ownership level for control from 50 percent. Several comments to the Commission, including comments by the American Bar Association ("ABA") offered in response to the proposed "Acquisition Vehicle" rule, have suggested that the Commission base its definition of control of a partnership on an ownership level lower than the 50 percent used to define control of a corporation. The ABA comments and others have suggested 25 percent as an alternative. Although the 50-percent ownership level appears to have been adequate for attributing control of a corporation, it may be that a different standard is warranted for partnerships in light of their more frequent use as acquisition vehicles and their greater flexibility in allocating power among partners.

Any such change would almost certainly subject to premerger antitrust review some transactions that it would be useful for the antitrust agencies to assess and that currently are not reported. However, the change would also increase the number of filings of transactions raising no antitrust concerns. To limit the number of additional filings that the agencies would receive as a result of a lower ownership threshold for control of a partnership, the ABA proposal would attribute control *only* to the partner with the largest ownership share equal to or greater than 25 percent. Thus, if there were a 50-percent partner and two 25-percent partners, only the 50-percent partner would file. If there were two 25-percent partners and 50 one-percent partners, the 25-percent partners each would be deemed to control the partnership. A possible disadvantage of requiring reports by minority owners is that minority owners might thereby obtain effective veto power over acquisitions.

Questions for Option Three:

How many additional filings might the enforcement agencies expect from any of these changes?

Would different definitions of control for corporations than for partnerships create an incentive for parties to structure transactions in inefficient ways to avoid reporting and waiting requirements?

Option Four: restore the concept of a "group" to the definition of "entity" and include in it the kind of group recognized by the Securities and Exchange Commission. The definition of "entity" is a critical link in determining who must report and wait before completing a proposed transaction. Section 801.1(a)(2) defines "entity" by setting forth a list of the types of organizational units that are included within that term. In the original HSR rule published in the July 31, 1978 **Federal Register**, 43 FR 33450, the list included the phrase, "or other group organized for any purpose." Informal contacts between the Commission staff and persons wishing to determine the reportability of particular transactions indicated that the concept of "group" was a source of considerable uncertainty. The concern was caused in part by the fact that the Securities and Exchange Commission ("SEC") also requires reporting by entities called groups. However, the Commission concluded that the SEC's definition of "group," geared as it is to securities regulation, was too broad for purposes of the HSR premerger rules. The Commission concluded that the other

organizational units included in the definition of "entity" had proven to be adequate, and that in light of the confusion it engendered, the concept of "group" was unnecessary. Accordingly, the Commission eliminated the concept of "group" from the definition of "entity" on July 29, 1983, 48 FR 34427.

It may be time to reevaluate both of the Commission's earlier conclusions about the appropriateness of using the SEC's definition of group and value of including "group" within the definition of "entity." The Commission believes that unnecessary inconsistencies between the HSR rules and the SEC rules may create both confusion and distortions in the market that can result in inefficiently structured transactions as well as incentives to violate one set of regulations. Accordingly, the Commission seeks comments on the effects of including the SEC definition of "group" within the HSR rules' definition of "entity."

One problem with this approach is how to define control by, or of, a "group." If the group neither controls nor is controlled by any of its members, a filing by the group would likely contain little information useful to a preliminary antitrust analysis. Indeed, in many cases a group formed to make an acquisition would probably be exempt from filing requirements by operation of the flow-through rule (discussed in Option One, above). If a group were deemed to control all of its members, the rules would probably have to provide some special mechanism for a joint filing. And if a group were deemed controlled by some or all of its members, the rules would have to provide some way of determining who controls the group. For that purpose, one of the two options discussed above for defining control of a partnership might be useful.

Questions for Option Four:

How many additional filings would the enforcement agencies likely receive if this rule were adopted?

Is the existing SEC definition of "group" clear enough to be incorporated into the Commission's premerger rules?

Would the SEC definition of "group" necessarily include every partnership?

If a "group" were deemed to control all of its members, how might information from all of the members be provided?

Option Five: return to the "acquisition vehicle" rule. the "acquisition vehicle" rule, proposed by the Commission on September 24, 1985, at 50 FR 38742, would have required the owners of an entity used primarily to make an acquisition (an "acquisition vehicle") to file notification for an acquisition made by the acquisition vehicle as if the owners had made the acquisition directly without the acquisition vehicle. Although the premerger notification rules subject many indirect acquisitions to antitrust review, acquisitions made by entities that are not "controlled" by other persons frequently are not reportable.

Thus, under current rules, if four corporations each acquired 25 percent of the voting securities of another corporation, each of those acquisitions would be separately reported and reviewed by the antitrust agencies (assuming the act's other requirements were met). However, if, for purposes of acquiring the voting securities, the four corporations were to create a new entity to make the acquisition, the acquisition would probably not be reported, even though the antitrust interest in the transaction would be identical. Indeed, such an acquisition typically would be followed by a statutory merger that would not be covered by the rules' reporting requirements. Such a merger would, thus, transfer direct ownership of the acquired voting securities to the original four purchasers with no opportunity for review by the antitrust enforcement agencies. The "acquisition vehicle" rule would require the four purchasers in the above example to report the acquisition in the same way whether they acquired the voting securities directly or through the device of an "acquisition vehicle."

The "acquisition vehicle" rule has a particular advantage in that, with respect both to underreporting and avoidance, "acquisition vehicles" have been the entities of greatest concern to the Commission. This approach also would treat transactions with similar characteristics in the same manner and would assure that many transactions not now reported to the enforcement agencies would be subject to meaningful premerger antitrust review. At the same time, commenters on the proposed rule suggested that the "acquisition vehicle" rule would require the unnecessary reporting of a significant number of transactions, and could be particularly susceptible to manipulation for avoidance purposes because of difficulties in defining "acquisition vehicle."

The Commission is interested in further suggestions on how reporting created by the acquisition vehicle rule could be limited while obtaining the benefits of this approach.

Questions for Option 5:

How many additional transactions would likely be received by the enforcement agencies if the rule as previously proposed were adopted?

How could the rule be revised to reduce any overreporting that might result?

How could "acquisition vehicle" be defined to avoid both confusion and manipulation by those seeking to avoid reporting?

By direction of the Commission,

Donald S. Clark,

Secretary.

[FR Doc. 89-4310 Filed 2-23-89; 8:45 am]

BILLING CODE 6750-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3527-5; GA-013]

Approval and Promulgation of Implementation Plans; Georgia Stack Height Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a declaration by Georgia that recent revisions to EPA's stack height regulations do not necessitate source-specific revisions to the State Implementation Plan (SIP) in this State. The State was required to review its SIP for consistency within nine months of final promulgation of the stack height regulations. The intended effect of this action is to formally document that Georgia has satisfied its obligations under Section 406 of Pub. L. 95-95 to review its SIP with respect to EPA's revised stack height regulations. No emission limitations were affected by stack height credit above GEP or any other dispersion technique with the possible exception of five sources. These sources will be dealt with in a subsequent notice.

DATE: Comments must be received on or before March 27, 1989.

ADDRESSES: Comments may be mailed to Beverly T. Hudson of EPA Region IV's Air Programs Branch. (See EPA Region IV address below.) Copies of the submission and EPA's evaluation are available for public inspection during normal business hours at the following locations:

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

Georgia Department of Natural Resources, Floyd Towers East, Room 1162, 205 Butler Street, Atlanta, Georgia 30334.

FOR FURTHER INFORMATION CONTACT: Beverly T. Hudson, EPA Region IV Air Programs Branch, at the above listed address, telephone (404) 347–2864 or FTS 257–2864.

SUPPLEMENTARY INFORMATION: On February 8, 1982 (47 FR 5864), EPA promulgated final regulations limiting stack height credit and other dispersion techniques as required by section 123 of the Clean Air Act (the Act). These regulations were challenged in the U.S. Court of Appeals for the D.C. Circuit by the Sierra Club Legal Defense Fund, Inc., the Natural Resources Defense Council, Inc., and the Commonwealth of Pennsylvania in *Sierra Club v. EPA*, 719 F.2d 436. On October 11, 1983, the court issued its decision ordering EPA to reconsider portions of the stack height regulations, reversing certain portions and upholding other portions.

On February 28, 1984, the electric power industry filed a petition for a writ of certiorari with the U.S. Supreme Court. On July 2, 1984, the Supreme Court denied the petition (104 S.Ct. 3571), and on July 18, 1984, the Court of Appeals formally issued a mandate implementing its decision and requiring EPA to promulgate revisions to the stack height regulations within six months. The promulgation deadline was ultimately extended to June 27, 1985.

Revisions to the stack height regulations were proposed on November 9, 1984 (49 FR 44878) and finalized on July 8, 1985 (50 FR 27892). The revisions redefine a number of specific terms, including "excessive concentrations," "dispersion techniques," "nearby," and other important concepts, and modify some of the bases for determining good engineering practice (GEP) stack height.

Pursuant to section 406(d)(2) of Pub. L. 95–95, all states were required to (1) review and revise, as necessary, their state implementation plans (SIPs) to include provisions that limit stack height credit and dispersion techniques in accordance with the revised regulations and (2) review all existing emission limitations to determine whether any of these limitations have been affected by stack height credits above GEP or any other dispersion techniques. For any limitations so affected, states were to prepare revised limitations consistent with their revised SIPs. All SIP revisions and revised emission limits were to be submitted to EPA within 9 months of promulgation, as required by statute.

Subsequently, EPA issued detailed guidance on carrying out the necessary revisions. For the review of emission limitations, the regulations required the states to prepare inventories of stacks greater than 65 meters (m) in height and sources with emissions of sulfur dioxide (SO_2) in excess of 5,000 tons per year. These limits correspond to the *de minimis* GEP stack height and the *de minimis* SO_2 emission exemption from prohibited dispersion techniques. The sources were to be screened for further review on the basis of the grandfathering clause (in existence before December 31, 1970) and the actual stack height being less than the calculated (GEP) stack height. The remaining sources were then to be subjected to detailed review for conformance with the revised regulations. State submissions were to contain an evaluation of each stack and source in the inventory. Georgia has indicated that the documentation is available for review at the State office (listed above). A summary of the States findings is provided below.

Georgia identified facilities that would be potentially affected by the stack height rule using data in the National Emissions Data System (NEDS) file. Letters were sent to facilities identified requesting certain information that was needed to analyze the applicability of the final rule. Upon receipt of the information, Georgia analyzed each stack and its liability under the final stack height rule. The findings are summarized below.

Stack Height—Georgia identified thirty-seven (37) sources examined in the stack height review analysis. Nine (9) sources were grandfathered. Ten stacks exceeded their formula for Good Engineering Practice (GEP) stack height. These sources were evaluated to determine if the ambient standards are protected only when the GEP stack height is used. The modeling for all but two of these sources shows that the ambient air quality standards for sulfur dioxide are not exceeded when only GEP stack height is considered. The modeling techniques used in the demonstration supporting this revision are, for the most part based on modeling guidance in place at the time that the analysis was performed, i.e., the EPA "Guideline on Air Quality Models" (1978). Since that time, revisions to modeling guidance have been promulgated by EPA (53 FR 392, January 6, 1988). Because the modeling analysis was underway prior to publication of the revised guidance, EPA accepts the analysis. For the remaining two sources, Georgia Power Plant Bowen and Plant Yates, the analysis is not yet completed and will be dealt with in a subsequent notice. Also auxiliary boilers for three plants (Scherer, Wansley and McIntosh) have not yet been modeled. This will be dealt with in a forthcoming notice.

EPA is not acting on fifteen sources (identified in table form or by asterisk) because they currenty receive credit under one of the provisions remanded to EPA in *NRDC* v. *Thomas*, 838 F.2d 1224 (D.C. Cir 1988). Georgia and EPA will review these sources for compliance with any revised requirements when EPA completes rulemaking to respond to the *NRDC* remand.

Dispersion Techniques—Thirty seven (37) stacks were reviewed for other prohibited dispersion techniques. No source was found that used a prohibited dispersion technique.

EPA Review

EPA has reviewed Georgia's submittal and concurs with the conclusion that no revisions to Georgia's existing source emission limitations are necessary as a result of EPA's revised stack height regulations based on the portion of the analysis already submitted. Georgia has therefore met its obligations under section 406 of Pub. L. 95–95 for existing source emission limitations with the possible exception of five sources. The analysis for these sources will be dealt with in a subsequent notice.

Today's action does not certify that Georgia has complied with the regulations contained in 40 CFR 51.164 and 51.118. Those federal provisions contain the stack height requirements for all sources that were or are constructed, reconstructed or modified subsequent to December 31, 1970. EPA is acting on Georgia's submittal to comply with these requirements in a separate **Federal Register** notice.

The technical support submitted by the State is available for public inspection at the EPA Regional Office listed in the ADDRESSES section of this notice. By publishing this proposed approval of the submittal and soliciting public comment, EPA is ensuring the opportunity for public participation in this process.

Proposed Action

EPA proposes to approve Georgia's determination that no emission limitations for sources in the States have to be revised at this time, with the possible exception of Plants Yates and Bowen, and Plants Scherer, Wansley, and McIntosh with respect to the auxiliary boilers of those three plants. Concerning these sources, which are not currently included in the negative declaration and for which a review pursuant to section 406(d)(2) is still required, EPA is providing Georgia with the following alternative methods to insure compliance with EPA's stack height regulations:

(1) Submittal, within the public comment period associated with this notice, of a modeling analysis and other technical support demonstrating compliance within the stack height regulations for the remaining sources; or

(2) Submittal, within the public comment period associated with this notice, of revised emission limitations as necessary to comply with the stack height regulations along with a modelling analysis and other technical support; or

(3) Submittal, within the public comment period associated with this notice, of a schedule for final submittal of either (1) or (2) above.

Under 5 U.S.C. 605(b), the Administrator has certified that SIP approvals do not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709).

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

List of Subjects in 40 CFR Part 52

Air Pollution Control, Intergovernmental relations.

Authority: 42 U.S.C. 7401–7642.

Dated: June 24, 1987.

Lee A. DeHihns III,

Acting Regional Administrator.

Editorial Note: This document was received at the Office of the Federal Register on February 21, 1989.

[FR Doc. 89–4296 Filed 2–23–89; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 180

[PP 7E3473/P476A; FRL 3529–6]

Pesticide Tolerance for Sulfur Dioxide

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed Rule; Extension of Comment Period.

SUMMARY: This document extends to March 6, 1989, the time period in which interested parties may comment on the January 5, 1989 (54 FR 385) proposed rule to establish a pesticide tolerance for sulfur dioxide (40 CFR 180.444). This extension is being granted to give all parties an opportunity to respond more fully to the proposed rule.

DATE: The comment period is extended to and includes March 6, 1989.

ADDRESS: Comments should be identified by the document control number [PP 7E3473/P476A] and sent, in triplicated if possible, by mail to: Public Docket and Freedom of Information Section, Field Operations Division (TS–757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

In person, deliver comments to: Rm. 246, Crystal Mall Building No. 2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted in any comment concerning this proposed rule may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. All written comments will be available for public inspection in Rm. 246 at the address given above from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Walter C. Francis, Product Manager Team 32, Registration Division (TS–767C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 711, Crystal Mall Building No. 2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)–557–3964.

SUPPLEMENTARY INFORMATION: On October 30, 1986, EPA received a pesticide petition (7E3473) from Uvas Quality Packaging, Inc., P.O. Box 369, Antioch, CA 94509, Snowden Enterprises, Inc., P.O. Box 751, Fresno, CA 93712, Frupac International Corp., 400 Market St., Suite 500, Philadelphia, PA 19106, and Quimica Osku, Ltda., 853 Agustinas St., Office No. 831, Santiago, Chile proposing to amend 40 CFR Part 180 by establishing a tolerance to permit residues of the fungicide sulfur dioxide in or on grapes at 20 parts per million (ppm).

The petitioners subsequently amended this petition proposing to establish a tolerance to permit residues of sulfur dioxide in or on grapes at 10 ppm, the current level of detection determined by the modified Monier-Williams method used by the Food and Drug Administration (FDA) for its enforcement procedures.

Submission of this petition was prompted by an announcement by FDA in the **Federal Register** of July 9, 1986 (51 FR 25021) that the use of sulfiting agents as preservatives on raw fruits and vegetables served or sold to consumers was no longer deemed to be generally recognized as safe (GRAS) because some individuals experience severe allergic reactions to sulfite residues on food. FDA's action did not affect the use of sulfiting agents as a fungicide on grapes because this pesticidal use is under EPA's jurisdiction.

In its July 9, 1986 Notice, FDA concluded that the use of sulfites as preservatives on fruits and vegetables intended to be served raw or sold raw to consumers poses a risk to that discrete and relatively small segment of the population which is sulfite sensitive. EPA has reviewed the data evaluated by FDA pertaining to sulfite sensitivity that were cited in the **Federal Register** of August 14, 1985 (50 FR 32834), and additional information set forth in the **Federal Register** of July 9, 1986 (51 FR 25012 and 25021), and agrees with the conclusions reached by FDA with respect to this potential adverse effect to individuals who are sulfite sensitive.

Since the health effect of concern is sulfite sensitivity, no additional animal toxicity data are required under 40 CFR 158.135 to support a sulfur dioxide tolerance. If EPA receives information indicating health concerns other than sulfite sensitivity, a reevaluation of the toxicological data base for sulfites will be undertaken.

EPA is aware that there may be some risks to sulfite-sensitive individuals from the presence of low levels of sulfites in grapes; however, EPA believes that establishing a tolerance at the current level of detection, 10 ppm, will minimize this risk.

Recently, the Chilean Exporters's Association and the Chilean Embassy requested that EPA extend the comment period on the proposed rule by 30 days to enable these and other groups to more fully discuss the issues.

In order to give all parties an opportunity to respond more fully to the proposed rule, EPA is extending the comment period 30 days. The new deadline is March 6, 1989. Comments should be submitted to the address given earlier in this document.

Dated: February 15, 1989.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 89–4397 Filed 2–23–89; 8:45 am]

BILLING CODE 6560–50–M

Notices

Federal Register
Vol. 54, No. 36
Friday, February 24, 1989

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.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Special Committee on Ethics in Government; Public Meeting

SUMMARY: Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of a meeting of the Special Committee on Ethics in Government of the Administrative Conference of the United States. The committee has scheduled the meeting to continue its discussion of the Ethics in Government Act's financial reporting requirements and conflict-of-interest rules for federal advisory committee members.

DATE: Friday, March 3, 1989 at 9:30 a.m.

Location: Library of the Administrative Conference, 2120 L Street, NW., Suite 500, Washington, DC.

Public Participation: The committee meeting is open to the interested public, but limited to the space available. Persons wishing to attend should notify the contact person at least two days prior to the meeting. The committee chairman may permit members of the public to present oral statements at the meeting. Any member of the public may file a written statement with the committee before, during, or after the meeting. Minutes of the meeting will be available on request.

FOR FURTHER INFORMATION CONTACT: Michael W. Bowers, Office of the Chairman, Administrative Conference of the United States, 2120 L Street, NW., Suite 500, Washington, D.C. 20037. Telephone: (202) 254–7065.

Dated: February 23, 1989.

Jeffrey S. Lubbers,

Research Director.

[FR Doc. 89–4556 Filed 2–23–89; 11:25 am]

BILLING CODE 6110-01-M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Docket No. FV–89–025]

Emergency Request for OMB Approval Relating to Proposed Marketing Agreement and Order For Vidalia Onions Grown in Georgia

AGENCY: Agricultural Marketing Service USDA.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Agricultural Marketing Service (AMS) has requested emergency review and approval of new reporting and information collection requirements from the Office of Information and Regulatory Affairs of the Office of Management and Budget (OMB). The requirements are needed in order to conduct a referendum on a proposed marketing order and agreement for Vidalia Onions grown in Georgia.

FOR FURTHER INFORMATION CONTACT: Kenneth G. Johnson, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2529–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 447–5057.

SUPPLEMENTARY INFORMATION: A referendum is scheduled to be conducted March 1–3 to determine producer support for the proposed marketing order and agreement on Vidalia onions grown in Georgia. In addition, handlers would be provided the opportunity to sign a companion marketing agreement. The proposed marketing agreement and order program would authorize production research, and market research and development, including paid advertising for Vidalia onions grown in Georgia. Vidalia onion industry members are seeking implementation of the proposed order and agreement prior to the 1989 season, which begins in April, in an effort to accelerate research and promotion efforts which they believe are critical if they are to remain successful in the highly competitive onion market. It is not possible to implement the proposed program by April 1 unless a referendum is conducted by March 1–3.

In order to conduct the referendum and handler sign-up, OMB approval of information collection on the official producer ballot and the marketing agreement must be obtained. If the referendum vote is favorable and the Secretary issues an order to implement the program, a background statement would be necessary to select Vidalia onion committee members who would administer the program locally. It is proposed that the committee be composed of eight grower members, four of whom would also be handlers, and one public member and their alternates. Approval is also being required for the use of a committee form on which onion handlers would report their weekly shipments of Vidalia onions. This information will be necessary to collect assessment fees. Finally, OMB approval is being requested of an information collection provision which requires that handlers maintain records verifying reports filed with the committee.

Following is a copy of APHIS Form 71 reflecting the burdens which will be imposed during this process:

BILLING CODE 4352-02-M

INSTRUCTIONS: Use this form when a single information collection document involves multiple reporting and recordkeeping requirements. The totals of the figures in cols. (D), (F), (H), (I) and (K) should be entered in items 17 & 18 of SF 83. For cols. (E), (G), and (J), the averages of the totals shall be computed, as follows, and then entered on the SF 83:

(F) Total / (D) Total = (E) Average; (H) Total / (F) Total = (G) Average; (K) Total / (I) Total = (J) Average

TITLE OF INFORMATION COLLECTION DOCUMENT: Decision and Order on Proposed Marketing Order for Vidalia Onions Grown in Georgia

OMB NO.: 0581-

DATE PREPARED: February 1989

PAGE: 1 OF 1

IDENTIFICATION OF REPORTING OR RECORDKEEPING REQUIREMENT			ANNUAL BURDEN							
			REPORTS					RECORDS		
SECTION OF REGS. (A)	DESCRIPTION (B)	FORM NO(S). (If "none", so state) (C)	NO. OF RESPONDENTS (D)	NO. OF RESPONSES PER RESPONDENT (E)	TOTAL ANNUAL RESPONSES (Col. D x E) (F)	HOURS PER RESPONSE (G)	TOTAL HOURS (Col. F x G) (H)	NO. OF RECORDKEEPERS (I)	ANNUAL HOURS PER RECORDKEEPER (J)	TOTAL RECORDKEEPING HOURS (Col. I x J) (K)
7 U.S.C. et. seq. 8(c)(19)	OFFICIAL PRODUCER BALLOT	None	Approx 250	1	250	.17	42.5			
	The 1937 Agricultural Marketing Agreement Act provides that a producer referendum be held to determine industry support for the proposed order. Approval can be determined by two-thirds affirmative vote of all of those voting in the referendum or by producers representing two-thirds of the production.									
7 U.S.C. et. seq. 8(b) and 8(c)(8)	MARKETING AGREEMENT	None	Approx 150	1	150	.08	12			
	Should the industry support the proposed order, handlers will be requested to sign an agreement indicating their willingness to abide by those provisions regulating the handling of Vidalia Onions grown in Georgia.									
.7 CFR 955.22	Nominations (Background Statement)	None	16	1 each two yr period/ not to	8 option nominate	.17	1.4			
	Producers and handlers meet once each year to nominate persons to be members or alternates to the committee. Members serve two year terms; one-half of the committee is selected each year. Anyone present at the meeting may vote for persons to be nominees; the resulting nominees are submitted to the Secretary for his approval. If nominations are not made, the Secretary may select members and alternates on the basis of representation.									
955.60	Reports (Weekly Report of Shipments)	None	40	1 each week per season	400 (10 wks)	.08	32			
955.60(c)	Recordkeeping							40	.3	12

APHIS FORM 71 (AUG 83) SUMMARY OF INFORMATION COLLECTIONS USDA-APHIS

BILLING CODE 4352-02-C

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

Dated: February 21, 1989.

Robert C. Keeney

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 89–4352 Filed 2–23–89; 8:45 am]

BILLING CODE 3410–10–M

Forest Service

Intent To Prepare an Environmental Impact Statement Pertaining to Vegetation Treatments in the Hatchet Park Area; Arapaho and Roosevelt National Forests, Sulphur Ranger District, Grand County, CO

SUMMARY: The Department of Agriculture, Forest Service will prepare an environmental impact statement for a proposal to harvest and regenerate timber in the Hatchet Park area of the Sulphur Ranger District of the Arapaho National Forest. The proposed sale is located 5 miles west of Grand Lake, CO. The proposed actions are activities associated with the implementation of the Arapaho and Roosevelt National Forests Plan, approved on May 4, 1984. The agency invites written comments and suggestions on the proposed management activities.

DATE: Comments concerning the proposed action must be received by March 15, 1989 to receive timely consideration in the development of the draft EIS.

ADDRESS: Submit written comments, suggestions and questions on the proposed action to George Edwards, District Ranger, Sulphur Ranger District, P.O. Box 10, Granby, CO 80446.

SUPPLEMENTARY INFORMATION: The area under consideration for vegetation treatment encompasses approximately 800 acres of National Forest lands. About one half of the proposed treatment acres are in a former RARE II roadless area. This area was released for multiple use management in the Colorado Wilderness Act of 1980. Since the release of this roadless area in 1980, two timber sales have occurred in the area—Supply Creek timber sale in 1981 and Bowen Bulch timber sale in 1988.

The timber volume generated from the Hatchet Park sale will be around 6 million board feet. A range of alternatives for vegetation treatment will be considered. One of them will be the no action alternative. Other options will consider both commercial and noncommercial treatments to address Forest Plan objectives dealing with water production, wood fiber production, visual quality, and wildlife habitat improvement. The EIS will analyze the cumulative effects of past, current and projected activities for each of the alternatives.

Comments from other Federal, State and local agencies, organizations and individuals who may be interested in, or affected by the decisions have been and will continue to be solicited. Scoping has been initiated through individual contacts and meetings beginning in the summer of 1988. Several issues have been identified: Concern about visual impacts from Rocky Mountain National Park, the impacts of winter logging on existing snowmobile use in the area, the need to improve elk habitat adjacent to the Park, road management, the need to manage vegetation to lessen the potential impact of the Mountain Pine Beetle on adjacent private lands, fuel hazard reduction by providing a local supply of firewood for personal use. Contacts have been initiated with Rocky Mountain National Park, the Colorado Forest Service, the Colorado Division of Wildlife, Grand County Commissioners, the Colorado Environmental Coalition, the Colorado Mountain Club, Louisiana Pacific Corporation, the Grand Lake Trail Groomers, and several individuals.

Public comment and participation is welcomed throughout the process. Additional scoping will occur after the publication of this notice in the **Federal Register**. The draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and available for public review in April of 1989. At that time EPA will publish a notice of availability of the draft EIS in the **Federal Register**.

The comment period on the draft EIS will be 45 days from the date of EPA's notice of availability in the **Federal Register**. It is very important that those interested in the management of the former Never Summer Inventoried Roadless Area participate at this time. To be most helpful, comments on the draft EIS should be as specific as possible and may address the adequacy of the statement or the merits of the alternatives discussed. In addition, Federal court decisions have established that reviewers of a draft EIS must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewers' position and contentions, *Vermont Yankee Nuclear Power Corp.* v. *NRDC, 435 U.S. 519, 553 (1978).* Such decisions have also established that environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the final EIS, *Wisconsin Heritages, Inc.* v. *Harris, 490 F Supp. 1334, 1338 (E.D. Wis. 1980).* The reason for this requirement is to ensure that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to the final.

After the end of the comment period on the draft EIS, the comments will be analyzed and considered by the Forest Service in preparing the final EIS. The final EIS is expected to be completed by June of 1989. In the final EIS, the Forest Service is required to respond to comments received (40 CFR 1503.4). The responsible official will consider the comments, responses, environmental consequences discussed in the EIS and applicable laws, regulations, and policies in making a decision regarding this proposal. The responsible official, who is the Arapaho and Roosevelt National Forests Supervisor, will document the decision and reasons for the decisions in the Record of Decision. That decision will be subject to appeal under standard agency procedures (36 CFR Part 217).

Date: February 16, 1989.

Raymond O. Benton,

Forest Supervisor.

[FR Doc. 89–4241 Filed 2–23–89; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Agency Form 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: International Trade Administration.

Title: Short Supply Steel Petitions/ Appendix E.

Form Numbers: Agency—Appendix E OMB—0625–0175.

Type of Request: Extension of the expiration date of a currently approved collection.

Burden: 100 respondents; 300 reporting hours.

Average Hours Per Response: 3 hours.

Needs and Uses: Between 1982 and 1984 the United States concluded 21 bilateral agreements with 29 different countries. The bilateral agreements, referred to as "Arrangements", serve to limit U.S. steel imports from those countries. Included in 14 of these Arrangements is a provision to address a situation of "economic emergency" or short supply. The short-supply provision allows the issuance of additional

licenses for steel exports (above the ceiling established in the Arrangement) if the Commerce Department "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." Appendix E to the bilateral steel arrangements provides the short supply request information needed by Commerce to make a determination as to whether or not the U.S. steel industry is able to meet demand in the USA for a particular product in accordance with the short-supply provision.

Affected Public: Businesses or other for profit; small businesses or organizations.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Francine Picoult, 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 Francine Picoult, OMB Desk Officer, Room 3208 New Executive Office Building, Washington, DC 20503.

Dated: February 16, 1989.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 89-4286 Filed 2-23-89; 8:45 am]

BILLING CODE 3510-CW-M

[Docket No. 90246-9046]

Request for Information on the Implementation of the Liability Risk Retention Act of 1986 for Use in the Preparation of a Mandated Report to Congress

AGENCY: Office of the Under Secretary for Economic Affairs, U.S. Department of Commerce.

ACTION: Notice and request for submission of information on the implementation of the Liability Risk Retention Act of 1986.

Background

The office of the Under Secretary for Economic Affairs of the Department of Commerce is preparing a report for the Secretary of Commerce to submit to the Congress on the implementation of the Liability Risk Retention Act of 1986 and is seeking information for use in the preparation of the report.

The Liability Risk Retention Act of 1986 requires the Secretary of Commerce to submit its second report to Congress on the implementation of the Act no later than September 1, 1989.

The report is to be based on consultation with State insurance commissioners, risk retention groups, purchasing groups, and other interested parties, and shall describe the Secretary's views concerning:

1. The contribution of the Act toward resolution of problems relating to the unavailability and unaffordability of liability insurance;

2. The extent to which the structure of regulation and preemption established by the Act is satisfactory;

3. The extent to which, in the implementation of the Act, the public is protected from unsound financial practices and other commercial abuses involving risk retention groups and purchasing groups;

4. The causes of any financial difficulties of risk retention groups and purchasing groups;

5. The extent to which risk retention groups and purchasing groups have been discriminated against under State laws, practices and procedures contrary to the provisions and underlying policy of the Act and the Product Liability Risk Retention Act (as amended by the Liability Risk Retention Act of 1986); and

6. Such other comments and conclusions as the Secretary deems relevant to assessment of the implementation of the Act.

Any persons or groups who have information which would be useful in addressing the above issues or who wish to comment on the implementation of the Act are requested to contact the staff members listed below.

Closing Date: June 1, 1989.

FOR FURTHER INFORMATION CONTACT: Edward T. Barrett, II (202-377-2101) or Jane W. Molloy (202-377-5926). Address: Room 4858, U.S. Department of Commerce, Washington, DC 20230.

Dated: February 14, 1989.

Robert Ortner,

Under Secretary for Economic Affairs.

[FR Doc. 89-4342 Filed 2-23-89; 8:45 am]

BILLING CODE 3510-EA-M

Foreign-Trade Zones Board

[A-4-89]

Foreign-Trade Zone 121, Albany, NY; Request for Manufacturing; Fortitech Inc. Vitamin Blending

The Capital District Regional Planning Commission, grantee of FTZ 121, Albany, New York, has requested manufacturing approval from the Foreign-Trade Zones Board to allow the use of zone procedures with in FTZ 121 by Fortitech Inc., for the blending of ingredients for vitamin products.

Fortitech is planning to blend various ingredients to make Vitamin B12 trituration (dicalcium phosphate trituration and mannitol trituration, HTS 3003.90.00002, duty rate 6%) in bulk form. The bulk products would then be sold to food/pharmacheutical companies for further processing into retail products. The only foreign ingredient Fortitech would issue in its blending operation is B12 cyanocobalamin (HTS 2936.26.00005, duty rate 16.2%) which accounts for 1 percent of the finished product content, but 88 percent of its material value. All other ingredients, such as dicalcium phosphate and mannitol, will be sourced domestically.

Zone procedures would exempt Fortitech from Customs duties on the cyanocobalamin used in the finished products that are exported. On products destined for domestic consumption the company would be able to elect the duty rate applicable to the finished product (6%). The request indicates that zone procedures will help improve Fortitech's international competitiveness.

Comments on the proposed manufacturing operation are invited in writing from interested persons and organizations. They should be addressed to the Board's Executive Secretary at the address below and postmarked before April 7, 1989.

A copy of the application is available for public inspection at the: Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 2835, 14th & Pennsylvania Ave., NW., Washington, DC 20230.

Dated: February 21, 1989.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 89-4339 Filed 2-23-89; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

Short-Supply Review on Certain Low Carbon Rimmed Steel Wire Rod; 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.-Brazil, the U.S.-EC, and the U.S.-Spain steel trade arrangments, with respect to certain low carbon rimmed steel wire rod.

DATE: Comments must be submitted no later than March 6, 1989.

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, Officer 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.-Brazil Arrangement Concerning Trade in Certain Steel Products, the U.S.-EC Arrangement Concerning Trade in Certain Steel Products, and the U.S.-Spain 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 low carbon rimmed steel wire rod, grades C1006 and C1008, in a diameter of 7/32 inch (5.5mm).

Any party interested in commenting on this request should send written comments as soon as possible, and no later than March 6, 1989. 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.

Jan W. Mares,

Assistant Secretary for Import Administration.

February 17, 1989.

[FR Doc. 89–4340 Filed 2–23–89; 8:45 am]

BILLING CODE 3510–DS–M

Applications for Duty-Free Entry of Scientific Instruments; National Institutes of Health et al.

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), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with § 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 a.m. and 5:00 p.m. in Room 2841, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 88–044R. *Applicant:* National Institutes of Health, Building 1, Room 118, Bethesda, MD 20892. *Instrument:* NMR Spectrometer, Model AM 600. *Manufacturer:* Bruker Instruments, Inc., West Germany. Original notice of this resubmitted application was published in the **Federal Register** of December 28, 1987.

Docket Number: 89–058. *Applicant:* U.S. Environmental Protection Agency, Office of Research & Development, Environmental Research Laboratory, College Station Road, Athens, GA 30613–7799.

Instrument: Mass Spectrometer, Model VG 70VSEQ. *Manufacturer:* VG Analytical Ltd., United Kingdom. *Intended Use:* The instrument will be used for studies of organic chemicals of varying degrees of structural complexity selected on the basis of the probable reactive moieties to comprise several homologous series that are representative of natural and man-made compounds postulated to be common aquatic pollutants. These studies will be conducted to develop mathematical expressions that can be used to predict transformation of chemical pollutants in ambient environments and further transformation of the original compounds' transformation products. Another objective of these studies is to develop mathematical expressions that relate transformation rates to chemical structure so that rates can be computed instead of measuring the rates. *Application Received by Commissioner of Customs:* January 11, 1989.

Docket Number 89–059. *applicant:* University of Maryalnd at Baltimore, Dental School, 666 W. Baltimore Street, Baltimore, MD 21201. *Instrument:* Electron Microscope, a Model JEM–1200EX/SEG. *Manufacturer:* JEOL Ltd., Japan. The instrument will be used for the following biological research projects:

1. Morphology studies of the neurons in the intermediate layers of the optic tectum in the rattlesnake *Crotalus viridis.*

2. Morphological characterization and comparison of human periodontal ligament fibroblasts with gingival fibroblasts.

3. Ultrastructual studies of human and feline gingival connective tissue components from overgrowth gingiva elicited by phenytoin and cyclosporine-A therapy.

4. Morphological studies of monolayer cultures of human and porcine prostate cells.

5. Examination of the presence of *Proteus mirablis* as a nidus in urease-induced struvite crystal formation.

6. Identification of surface antigens of *Treponema denticola* by immunogold labelling techniques.

7. The role tobacco components may have on the epithelial cell membrane fluidity and cytoskeleton organization of cells derived from guinea pigs and A431 human epidermoid carcinoma cells.

8. Morphometric analysis of horse-radish peroxidase stained drosophila cells as an aspect of cellular aging.

Application Received by Commissioner of Customs: January 12, 1989.

Docket Number: 89–060. *Applicant:* Women and Infants' Hospital, 101 Dudley Street, Providence, RI 02905. *Instrument:* Automated Image Analysis Microscope, Model Cytoscan RK1. *Manufacturer:* Image Recognition Systems, United Kingdom. *Intended Use:* The instrument will be used for training medical personnel in the principles and practice of karyotyping, including arrangement, chromosome model number and karyotypes; and clinical applications of variant karyotypes. *Application Received by Commissioner of Customs:* January 12, 1989.

Docket Number: 89–061. *Applicant:* The Regents of the University of California, Riverside, Material Management Department, Riverside, CA 92521. *Instrument:* XY Laser Raman Spectrometer. *Manufacturer:* Dilor, France. *Intended Use:* The instrument will be used for the following research purposes:

(1) On-line raman spectroscopy of compounds separated by capillary supercritical fluid chromatography.

(2) Raman studies of linear conjugated molecules.

(3) Conjugate acids of vinylogous amides.

(4) Binding of vitamin D steroids to receptors.

(5) Gas chromatography-matrix isolation-raman spectroscopy.

Application Received by Commissioner of Customs: January 17, 1989.

Docket Number: 89–063. *Applicant:* Michigan State University, Department of Chemistry, East Lansing, MI 48824–1322. *Instrument:* Rotating Anode X–Ray Generator. *Manufacturer:* Rigaku Corporation, Japan. *Intended Use:* The instrument will be used for studies of small, poorly diffracting single crystals of blood proteins and enzymes to determine the arrangement of atoms of these molecules and infer their mode of functionality at the molecular level. In addition, the instrument will be used to teach Ph.D. graduate students the methods of X-ray diffraction and structure analysis. *Application Received by Commissioner of Customs:* January 18, 1989.

Docket Number: 89–065. *Applicant:* NYS Institute for Basic Research in Developmental Disabilities, 1050 Forest Hill Road, Staten Island, NY 10314. *Instrument:* Electron Microscope, Model H–7000. *Manufacturer:* Hitachi, Japan. *Intended Use:* The instrument will be used for studies of experimental and human disease related specimens either isolated or *in situ*. Conditions relating to mental retardation and developmental disabilities such as Down Syndrome, nutritional deficiencies, genetic disorders and conditions known to be caused by infectious agents are some of the areas of investigations. *Application Received by Commissioner of Customs:* January 19, 1989.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 89–4341 Filed 2–23–89; 8:45 am]

BILLING CODE 3510–05–M

National Technical Information Service

Intent to Grant Exclusive Patent License; Johns Hopkins University

The National Technical Information Service (NTIS), U.S. Department of Commerce, intends to grant to Johns Hopkins University, having a place of business in Laurel, Maryland, an exclusive license the United States to practice the invention embodied in U.S. Patent 4,050,533, "Powered Wheelchair". Prior to any license grant by NTIS, the patent rights in this invention have been assigned to the United States of America, as represented by the Secretary of Commerce.

The intended exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The intended license may be granted unless, within sixty days from the date of this published Notice, NTIS receives written evidence and argument which establishes that the grant of the intended license would not serve the public interest.

Inquiries, comments, and other materials relating to the proposed license must be submitted to Douglas J. Campion, Associate Director, Office of Federal Patent Licensing, NTIS, Box 1423, Springfield VA 22151.

A copy of the instant patent may be purchased from the U.S. Patent and Trademark Office.

Douglas J. Campion,

Associate Director, Office of Federal Patent Licensing, National Technical Information Service, U.S. Department of Commerce.

[FR Doc. 89–4311 Filed 2–23–89; 8:45 am]

BILLING CODE 3510–04–M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1989; Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Additions to Procurement List.

SUMMARY: This action adds to Procurement List 1989 a commodity and a service to be produced or provided by workshops for the blind or other severely handicapped.

EFFECTIVE DATE: March 27, 1989.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202–3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman, (703) 557–1145.

SUPPLEMENTARY INFORMATION: On November 18 and December 23, 1988, the Committee for Purchase from the Blind and Other Severely Handicapped published notices (53 FR 46645 and 51872) of proposed additions to Procurement List 1989, which was published on November 15, 1988 (53 FR 46018).

No comments were received concerning the proposed additions to the Procurement List. After consideration of the material presented to it concerning capability of qualified workshops to produce the commodity and provide the service at fair market prices and impact of the additions on the current or most recent contractors, the Committee has determined that the commodity and service listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.6.

I certify that the following actions will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

a. The actions will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The actions will not have a serious economic impact on any contractors for the commodities listed.

c. The actions will result in authorizing small entities to produce the commodities procured by the Government.

Accordingly, the following commodity and service are hereby added to Procurement List 1989:

Commodity

Bag, Drinking Water Storage, 4610–01–117–8271.

Service

Janitorial/Custodial, Food & Drug Administration Laboratory, Canyon Park Business Center, Bothell, Washington.

Beverly L. Milkman,

Executive Director.

[FR Doc. 89–4331 Filed 2–23–89; 8:45 am]

BILLING CODE 6820–33–M

Procurement List 1989; Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Additions to procurement list.

SUMMARY: This action adds to Procurement List 1989 commodities to be

produced by workshops for the blind or other severely handicapped.

EFFECTIVE DATE: March 27, 1989.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: B.L. Milkman, (703) 557-1145.

SUPPLEMENTARY INFORMATION: On November 28, 1988, the Committee published a notice (53 FR 47850) of the proposed addition of three inking pads to Procurement List 1989, November 15, 1988, (53 FR 46018). That notice was modified in the Committee's notice dated January 12, 1989, (54 FR 1200) to announce that the number of pads under consideration had been reduced from three to two.

Comments were received from a law firm representing the current contractor for the inking pads included in both notices. The major issues raised in the comments involved the workshop's capability to produce the inking pads in compliance with the government's commercial item description, the impact on the current contractor, the types of pads selected for consideration, and the risk of serious injury to workshop employees.

The commenter challenged the workshop's ability to produce the container for the pad in compliance with the Commercial Item Description (CID). He stated that the CID required that the pad containers "shall be the manufacturer's commercial standard." By process of elimination, he concluded that the workshop would have to procure the container from one particular source, whose container would not comply with the CID.

In fact, the workshop does not intend to purchase its containers from the source used in the commenter's analysis. Moreover, the CID does not require that the pad containers comply with a given commercial standard, but that they shall be the *manufacturer's commercial standard*. The capability of the workshop to produce the inking pads has been confirmed by the General Services Administration based on a favorable on-site inspection of the workshop conducted by that agency. Additionally, the National Industries for the Severely Handicapped reported that it has verified that the workshop is capable of producing the inking pads. Based on those reports, the Committee has determined that the workshop can produce the inking pads in compliance with the government's requirements.

The commenter indicated that the addition of the pads to the Procurement List would constitute severe adverse impact on the current contractor and another firm which usually bids in response to government solicitations for inking pads. He stated that the current contractor recently experienced a downturn in sales, has incurred relocation costs as a result of a recent move, and expects its sales to be reduced further by disruption of the firm's business due to that relocation. The Committee recognizes that any move of a business involves the expenditure of funds and possible disruption during the move; however, these are short-term occurrences that would not necessarily affect the long-term viability of a firm. Additionally, the short-term disruption connected with relocation resulted from an independent business decision by the firm which is not related to the proposed addition to the Procurement List. The Committee need not consider the effects of such decisions in assessing the impact of a proposed addition upon a contractor. Also, the commenter provided no concrete evidence that the shutdown would result in a decrease in overall sales.

Using data provided by the commenter, the Committee has determined that the value of the firm's current contract for the two inking pads represents approximately 9.5 percent of its total annual sales. The firm's contracts for the two items over the past five years averaged 10.2 percent of its total sales. The Committee has considered the relevant points raised by the commenter concerning its possible loss of sales due to the addition of the two pads to the Procurement List. Based on that review, the Committee has determined that the addition of the two inking pads to the Procurement List will not have a serious adverse impact on the current contractor.

Regarding the potential loss of business by the other firm that usually competes with the current contractor in response to government solicitations, there are several similar pads which will continue to be purchased by the government after the addition of these pads to the Procurement List. Additionally, there is a significant nongovernment market for items of this type. Consequently, the only loss to the competing firm would be the opportunity to bid on the two items added to the Procurement List. That loss is not considered to be serious adverse impact.

The commenter stated that the differing designs of the two inking pads selected would prevent the workshop and government contractors for similar pads from achieving economies of scale in purchasing raw materials. He related that the pads covered by this action are of a different size and suggested that if two pads of the same size were added to the Procurement List it would permit both the workshop and commerical firms to purchase materials at a lower cost and would result in lower prices paid by the government and possible higher profits for the firms involved. The commenter provided no data to substantiate that the change would result in lower prices. Although the purchase of higher quantities of raw materials sometimes results in slightly reduced prices, the Committee has no evidence that there would be any significant reduction in the cost of materials due to possible larger volume purchases.

The commenter expressed concern that the workshop's employees would be exposed to a risk of serious injury because of the nature of the operations required to produce the pads. He said that normal manufacturing operations require the use of a hydraulic press and high speed garment cutters which would be dangerous for blind or severely handicapped employees. The type of manufacturing functions required to produce the inking pads have been performed satisfactorily and safely in workshops for many years and do not constitute severe hazards for blind or severely handicapped workers.

After consideration of the material presented to it concerning the capability of a qualified workshop to produce the inking pads at a fair market price and the impact of the addition on the current or most recent contractor, the Committee has determined that the pads are suitable for procurement by the Federal Government under 41 U.S.C. 46-48c and 41 CFR 51-2.6.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

a. The action will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The action will not have a serious economic impact on any contractors for the commodities listed.

c. The action will result in authorizing small entities to produce the commodities procured by the Government.

Accordingly, the following commodities are hereby added to Procurement List 1989:

Inking Pad

7510–00–224–7676, 7510–00–526–1741

Beverly L. Milkman,

Executive Director.

[FR Doc. 89–4332 Filed 2–23–89; 8:45 am]

BILLING CODE 6820–33–M

DEPARTMENT OF DEFENSE

Intent to Prepare an Environmental Impact Statement; Deepwoods Army National Guard Training Area, ME

AGENCY: National Guard Bureau, DOD/ Maine Department of Defense and Veterans Services.

ACTION: Notice of intent to prepare an environmental impact statement for proposed establishment of Deepwoods Army National Guard Training Area, Maine.

Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, the National Guard Bureau and the Maine Department of Military Affairs will, acting as co-lead agencies, prepare an Environmental Impact Statement for the proposed establishment of Deepwoods Army National Guard Training Area, Maine. The proposed training area will be state operated with eligibility for federal operating funds. The proposed development of the Deepwoods Training Area includes construction of permanent year-round buildings, facilities, and small arms ranges on approximately 8,595 acres of state owned property near Bradley, Maine. The Deepwoods maneuver training areas will encompass all of Champion International Corporation's land in the state of Maine, which total approximately 711,000 acres of heavily forested and varying terrain. The Champion lands are proposed to be used for dismounted infantry training, engineer training, and aviation (helicopter) training. The Environmental Impact Statement will address environmental considerations of the initially proposed actions and various alternatives. The document will display direct and indirect environmental impacts, both beneficial and detrimental. Environmental attributes to be addressed will include air quality, noise, physical setting, natural resources, land use, waste disposal, water resources, cultural resources, and social and economic resources.

The National Guard Bureau will utilize the scoping process, as outlined by the Council on Environmental Quality Regulations (40 CFR Parts 1500–1508) implementing the National Environmental Policy Act. This process will determine potentially significant issues related to the proposed establishment of the Deepwoods Army National Guard Training Area. To initiate the formal scoping process, interested individuals, governmental agencies, and private organizations are invited to submit information and comments on this proposed action for consideration by the National Guard Bureau and possible incorporation into the Environmental Impact Statement.

Particularly solicited is information that would assist the National Guard Bureau and Maine Department of Military Affairs in analyzing the potential environmental consequences of the proposed action. This includes information on other environmental studies planned or completed in the area surrounding the proposed Deepwoods Training Area; environmental issues which the Environmental Impact Statement should consider; and major impacts associated with the proposed actions and recommended mitigation measures. Concerned individuals and agencies can express their views either by writing or participating in a public scoping meeting to be held at a convenient location in or near Old Town, Maine. Adequate notice will be published in local area newspapers and other local media at a later date to inform interested parties of the exact place and time of the scoping meeting. The notice will also be mailed to select groups, individuals, agencies, and those responding to this Notice of Intent desiring to be informed of the details of the upcoming public scoping meeting. The purpose of the public scoping meeting is (1) to provide a description of the proposed action, (2) to identify potential impacts and issues that should be included in the Environmental Impact Statement, (3) to identify other review coordination or permit requirements associated with the proposed action, and (4) to discuss the role of the Environmental Impact Statement in the development of the proposed Deepwoods Training Area. Questions and comments regarding the scope of the environmental analysis should be directed to: MAJ Donovan LaJoie, Directorate of Facilities Engineering, Maine Army National Guard, Camp Keyes, Augusta, Maine 04333–0033, (207) 626–4220.

To ensure that comments regarding this proposal are considered in a timely manner, all correspondence should be received at the address above no later than 30 days following the public scoping meeting in order to be considered in the draft Environmental Impact Statement.

Lewis D. Walker,

Deputy for Environment, Safety, and Occupational Health OASA (I&L).

[FR Doc. 89–4235 Filed 2–23–89; 8:45 am]

BILLING CODE 3710–08–M

Department of the Army

Chief of Staff's Special Commission on the Honor Code and Honor System at the United States Military Academy

AGENCY: U.S. Army Chief of Staff, DOD.

ACTION: Notice of open meeting.

SUMMARY: The Department of the Army Chief of Staff's Special Commission on the Honor Code and Honor System at the United States Military Academy subcommittee on legal, procedural, and political aspects of the honor system will hold an open meeting.

DATE OF MEETING: March 13, 1989.

PLACE: Command Conference Room, Building 122 (Root Hall), Carlisle Barracks, Pennsylvania.

TIME: 1100–1700 hours.

PROPOSED AGENDA: 1. Review of Plenary commission meetings. (2) Review and discussion of legal and procedural aspects of USMA Honor System and Honor Code.

POINT OF CONTACT: Executive Secretary to the Commission, LTC James O. Younts III, Office of the Deputy Chief of Staff for Personnel, Washington, DC 20310–0300, at (202) 695–1983.

John O. Roach II,

Army Liaison Officer with the Federal Register.

[FR Doc. 89–4308 Filed 2–23–89; 8:45 am]

BILLING CODE 3710–08–M

Military Traffic Management; Standardization of the International and Domestic Carrier Evaluation Reporting System

AGENCY: Department of the Army, Department of Defense (DOD).

ACTION: Proposed revision of regulation and request for public comment.

SUMMARY: The Department of Defense is proposing to standardize the policies and procedures in the International Carrier Evaluation Reporting System (ICERS) and the domestic Carrier Evaluation Reporting System (CERS). Change to the DOD 4500.34R and ICERS pamphlet is pending. The intent of the revision is to streamline and standardize procedures for all domestic and

international personal property shipping offices reducing the administrative workload for both the Transportation Offices and the carriers who are currently operating under two different evaluation programs. Since these programs form an integral part of the relationship between MTMC and its carriers, MTMC requests public comment on the proposed standards prior to its publication in final form.

DATE: Comments must be submitted on or before March 27, 1989.

ADDRESS: Comments should be addressed to Headquarters, Military Traffic Management Command, ATTN: MT–PPQ, 5611 Columbia Pike, Falls Church, VA 22041–5050.

FOR FURTHER INFORMATION CONTACT: MSG Ross or Ms. Betty Wells, HQMTMC, ATTN: MT–PPQ, 5611 Columbia Pike, Falls Church, VA 22041–5050.

SUPPLEMENTARY INFORMATION: As the single manager of traffic management for the Department of Defense (DOD), MTMC is responsible for ensuring that DOD passenger, freight, and personal property transportation services are procured only from qualified carriers. The proposed revision would supersede procedures published in DOD 4500.34R; Carrier Evaluation and Reporting System (ICERS) pamphlet, dated March 1984; and the International Carrier Evaluation and Reporting System (ICERS) pamphlet dated 1 June 1987. The significant changes contained in the proposed revision are as follows:

A. Performance Factors

1. On Time Pickup—A carrier will be awarded 20 points for meeting the established pick up date. A carrier which fails to effect pick up as ordered will receive no points.

2. On Time Delivery—A carrier will be awarded 40 points for meeting the established Required Delivery Date (RDD). Four points will be deducted for each day the shipment is late, up to a maximum of 40 points. If a shipment is not offered for delivery on or prior to the RDD, the shipment will be considered as having not met the RDD. Storage-in-Transit (SIT) will not affect the score.

3. Loss and/or Damage—The carrier will be awarded 40 points for a shipment that sustained no loss and/or damage. Four points will be deducted from a carrier's shipment score for each $100 increment of loss/damage up to 40 points.

B. Scoring "Turned Back" or "Pulled Back" Shipments

A shipment that has been turned back by the carrier will be given a score of 40 points. A shipment that has been pulled back by the government will not be scored. The carrier will be charged administrative tonnage on the TDR for a turned back shipment.

C. Individual Shipment Scores

All shipments will be scored 1 year after pick up or 90 days after delivery. Shipments over 18 months past the pick up date will not be scored. A carrier may request a shipment score 90 days after delivery when proof of delivery is provided. A completed DD Form 1840/1840R will be the only acceptable proof of delivery. The destination transportation office (TO) has 45 days to return scoring paperwork to origin after delivery. The origin TO then has 45 days to score the shipment after receiving the destination paperwork. Individual shipment scores must first be appealed to the TO and, if not resolved, to the area command/field office, which will be the final authority on appeals.

D. Semi-Annual Scores

Each carrier will receive only one domestic HHG score (codes 1 and 2), one international HHG score (codes 4, 5, 6 and T), and one UB score (codes 7, 8 and J), as applicable, out of an installation or activity regardless of areas of operation or traffic channels. Carriers will be advised of their semi-annual shipment score not later than 30 calendar days prior to the effective date of the following 6 month rate cycle. Scores under 85 must be mailed to the carrier by certified mail. All individual shipment scores will be included in the semi-annual score with the semi-annual score adjusted to reflect any changes due to appeals. The area command/field office will be the final appellate authority on semi-annual score appeals. If a carrier does not receive a shipment evaluation during the evaluation period the carrier's last semi-annual score will be carried forward.

E. Traffic Denial

Semi-annual scores below 85 will result in periods of traffic denial. Scores of 75 to 84.99 will result in 60 days of traffic denial, scores of 50 to 74.99 will result in 120 days; and scores below 50 will result in 180 days of traffic denial. Carriers placed in a traffic denial status will be returned to the TDR at the end of the traffic denial period with an administrative score of 85 only after review of their performance file. Shipments scored and mailed to the carrier after the evaluation cycle which resulted in traffic denial will be used by the TO to determine whether reinstatement of the TDR is appropriate. If the average score on these residual shipments is less than 85, the carrier will not be reinstated to the TDR during the current rate cycle.

F. Letters of Warning

Letters of warning will not be issued for each Tender of Service violation. The purpose of the letter of warning will be to note an unacceptable trend or performance problem. The letter of warning will serve as a formal warning and will normally precede a Letter of Suspension. At the TO's request, the Letter of Warning may require a written response from the carrier. However, a TO may issue a Letter of Suspension without a prior letter of warning when, in the judgment of the TO, immediate suspension is necessary to protect the interests of the DOD.

G. Suspensions

1. The TO shall issue a Letter of Suspension to the carrier before taking suspension action. The TO should consider the overall performance of the carrier and the effectiveness of any corrective action before issuing a suspension. Suspensions will be initiated by TGBL HHG (codes 1 and 2), ITBGL HHG (codes 4, 5, 6 and T) or UB (codes 7, 8 and J). The TO will allow the carrier a 20 calendar day response period from the date of the Letter of Suspension before effecting the suspension. TOs may book shipments with the carrier until the effective date of the suspension if the pick up date does not fall within the projected suspension period. No shipments will be booked with the carrier during the suspension period.

2. All suspensions will be for a minimum of 30 days. Lifting of the suspension and return to the TDR will require evidence adequate to convince the TO that the problem has been corrected. If the TO determines that the carrier's response is not adequate, the ITO must notify the carrier in writing within 15 days that the corrective action was not acceptable and the carrier will remain in suspension status.

3. Should a carrier fail to provide adequate evidence of effective corrected action within 90 days of the effective date of the suspension the TO will provide the carrier a "Notice of Intent to Return the LOI." The carrier will be advised that failure to respond within 30 days from the date of the notice will result in automatic return of the LOI and notification made to HQ, MTMC.

4. A missed pick up will requre a mandatory immediate suspension. A missed pick up from nontemporary storage (NTS) does not require a suspension. Missing the Required

Delivery Date (RDD) may be considered grounds for imposing a regular suspension.

Pursuant to requirements codified at 41 U.S.C. 418b, MTMC is providing notice of this proposed revision and offering a 30-day period for receiving and considering the views of all interested parties. Timely written comments will be reviewed and considerd prior to publication of the final procedures.

John O. Roach, II,

Army Liaison Officer with the Federal Register.

[FR Doc. 89-4282 Filed 2-23-89; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF EDUCATION

National Council on Vocational Education; Meeting; Correction

AGENCY: National Council on Vocational Education, Education.

ACTION: Notice of public meeting of the Executive Committee; Correction.

SUMMARY: This notice corrects the opening time of a forthcoming meeting of the Executive Committee of the National Council on Vocational Education published on February 9, 1989 (54 FR 6317). The starting time for the meeting in the DATES caption read "9:00 p.m." It should have read "9:00 a.m."

DATE: February 27, 1989—9:00 a.m. to 3:00 p.m.

Joyce Winterton,

Executive Director.

[FR Doc. 89-4480 Filed 2-23-89; 8:45 am]

BILLING CODE 4000-01-M

Office of the Secretary

Delegation of Waiver Authority; Deputy Under Secretary for Management

AGENCY: Department of Education.

ACTION: Notice of delegation of waiver authority.

In accordance with the delegation of authority from the Secretary of Commerce dated November 14, 1988, the Secretary delegated to the Deputy Under Secretary for Management the authority to approve waivers to Federal Information Processing Standards in accordance with section 111(d) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 759(d)) as amended by the Computer Security Act of 1987.

EFFECTIVE DATE OF DELEGATION: This delegation was effective on January 11, 1989.

FOR FURTHER INFORMATION CONTACT: Ms. Tish Liggett, Special Assistant to the Deputy Under Secretary for Management, Office of Management, U.S. Department of Education, 400 Maryland Avenue, SW., Room 3181 Federal Office Building 6, Washington, DC 20202-4500. Telephone Number: (202) 732-5470.

Dated: February 21, 1988.

Lauro F. Cavazos,

Secretary of Education.

[FR Doc. 89-4364 Filed 2-23-89; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER89-223-000, et al.]

Northeast Utilities Service Co., et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

Take notice that the following filings have been made with the Commission:

1. Northeast Utilities Service Company

[Docket No. ER89-223-000]

February 17, 1989.

Take notice that on February 8, 1989, Northeast Utilities Service Company (NUSCO) tendered for filing as an initial rate schedule (1) a purchase agreement dated August 1, 1987 with respect to the sale to the United Illuminating Company (UI) of various gas turbine units from the Connecticut Light and Power Company (CL&L) (Agreement A); (2) a capacity exchange letter agreement and system gas turbine sale letter agreement between CL&P and Western Massachusetts Electric Company (WMECO, together with CL&P , the NU Companies) and UI (Agreement B) dated November 2, 1987; (3) an outage service and system gas turbine sales letter agreement, dated November 2, 1987 (collectively, the Agreements), between the NU Companies and UI (Agreement C).

NUSCO requests that the Commission waive its standard notice period and allow the rate schedules to become effective on August 1, 1987, for Agreement A and November 1, 1987, for Agreements B and C.

NUSCO further requests that the rate schedules filed herewith be terminated effective October 31, 1987 (Agreement A), October 31, 1988 (Agreement B) and April 30, 1988 (Agreement C), the dates on which the Agreements terminated in accordance with their own terms.

NUSCO states that a copy of this rate schedule has been mailed or delivered to UI (New Haven, Connecticut), CL&P, and WMECO.

Comment date: March 3, 1989, in accordance with Standard Paragraph E at the end of this notice.

2. Northeast Utilities Service Company

[Docket No. ER89-229-000]

February 21, 1989.

Take notice that on February 13, 1989, Northeast Utilities Service Company (NUSCO) tendered for filing (i) a Purchase Agreement with respect to Various Gas Turbine Units (Gas Turbine Agreement) between The Connecticut Light and Power Company (CL&P), Western Massachusetts Electric Company (WMECO), and Bangor Hydro-Electric Company (Bangor), dated January 1, 1986, (ii) a Letter Agreement dated September 23, 1988, amending the Gas Turbine Agreement (Gas Turbine Amendment Agreement), and (iii) a Letter Agreement dated December 23, 1985 (Middletown Amendment), amending the Purchase Agreement with respect to Middletown No. 4 (previously submitted and filed as FERC Rate Schedule No. CL&P 329 and Supplement Nos. 1 and 2 thereto (Middletown Agreement)) between Bangor and CL&P.

NUSCO states that the rate schedule changes were made at Bangor's request and by mutual agreement of the parties. The rate schedule changes provide for (i) changes in capacity purchase amounts and changes in units under the Gas Turbine Agreement, (ii) the termination of the Gas Turbine Agreement, as amended by the Gas Turbine Amendment, and (iii) changes in capacity purchase amounts and the extension of the term of the Middletown Agreement, as amended by the Middletown Amendment.

NUSCO states that copies of this rate schedule have been mailed or delivered to CL&P, WMECO, and Bangor.

Comment date: March 7, 1989, in accordance with Standard Paragraph E at the end of this notice.

3. Utah Power & Light Company A Division of PacifiCorp.

[Docket No. ER89-226-000]

February 21, 1989.

Take notice that on February 9, 1989, Utah Power & Light Company (Utah) tendered for filing interim transmission agreements with Utah Associated Municipal Systems (UAMPS) and Washington City. The agreements

provide for interim transmission service commencing April 1, 1989, and continuing until such time as firm, long-term agreements can be executed pursuant to Order No. 318, the rehearing of which is currently pending before the Commission.

Utah requests that the notice requirements be waived and that the agreements be permitted to become effective on April 1, 1989, the date service is to commence.

Copies of the filing have been served upon UAMPS, Washington City, Idaho Power Company and the Utah Public Service Commission.

Comment date: March 7, 1989, in accordance with Standard Paragraph E at the end of this notice.

4. Southern California Edison Company

[Docket No. ER89-225-000]

February 21, 1989.

Take notice that on February 9, 1989, Southern California Edison Company (Edison) tendered for filing, as an initial rate schedule, the following Power Sale Agreement, executed on August 10, 1988, by the respective parties:

Edison-SMUD
Power Sale Agreement
between
Southern California Edison Company (Edison)
and
Sacramento Municipal Utility District (SMUD)

Edison and SMUD executed an Agreement under which Edison will sell 300 megawatts of capacity and associated energy to SMUD from January 1, 1990, through December 31, 1999. At SMUD's option, 250 megawatts of this capacity may be taken from May 15 through September 15 (summer capacity). SMUD also has an option to purchase, on a year-round basis, up to 400 megawatts of additional capacity and associated energy.

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comment date: March 7, 1989, in accordance with Standard Paragraph E at the end of this notice.

5. Public Service Company of New Mexico

[Docket No. ER89-227-000]

February 21, 1989.

Take notice that on February 10, 1989, Public Service Company of New Mexico (PNM) tendered for filing Notices of Cancellation of Service Schedules C, D, and I to the Interconnection Agreement between PNM and Texas-New Mexico Power Company (TNP), formerly Community Public Service Company (Supplement Nos. 3, 4 and 10 to PNM Rate Schedule FERC No. 46) and a Notice of Cancellation of the PNM/TNP Contract for Electric Service (PNM Rate Schedule FPC No. 32, as supplemented).

PNM requests that the applicable notice requirements be waived to permit Service Schedules C, D and I to be terminated effective as of July 31, 1977, July 9, 1978, and February 1, 1986, respectively. PNM also requests that the notice requirements be waived to permit the PNM/TNP Contract for Electric Service to be terminated as of May 1, 1988.

Comment date: March 7, 1989, in accordance with Standard Paragraph E at the end of this notice.

6. Vermont Electric Power Company

[Docket No. ER89-230-000]

February 21, 1989.

Take notice that on February 13, 1989, Vermont Electric Power Company (VELCO) tendered for filing a change in rate under FERC Rate Schedule No. 10 and FERC Rate Schedule No. 236.

VELCO states that these rate changes are provided for in Paragraph 5 of FERC Rate Schedule No. 10 and Article IV of FERC Rate Schedule No. 236.

VELCO further states that the percentage rate used in computing monthly charges changed from 20.43% to 19.60%.

VELCO request that the effective date for the proposed change in rate be January 1, 1989.

Comment date: March 7, 1989, in accordance with Standard Paragraph E at the end of this notice.

7. Canal Electric Company

[Docket No. ER89-228-000]

February 21, 1989.

Take notice that on February 10, 1989 Canal Electric Company (Canal) tendered for filing a Power Contract (the Power Contract) between itself, Cambridge Electric Light Company and Commonwealth Electric Company and a Winter Power Capacity Acquisition Commitment (the Commitment). The Power Contract implements the terms of the Capacity Acquisition Agreement (FERC Rate Schedule No. 21) and the Commitment. Such Power Contract recognizes the purchase of demand and related energy by Canal from United Illuminating Company, Central Vermont Public Service Corporation and Connecticut Light and Power Company over the time period January 1, 1989 to April 30, 1989 and the sale of such power to Cambridge Electric Light Company and Commonwealth Electric Company. Canal has requested that the Commission's notice requirements with respect to the Power Contract and the Commitment be waived in order to allow the tendered rate schedule to become effective as of January 1, 1989.

Comment date: March 7, 1989, in accordance with Standard Paragraph E at the end of this document.

8. Arizona Public Service Company

[Docket No. ER89-231-000]

February 21, 1989.

Take notice that on Feburary 13, 1989, Arizona Public Service Company tendered for filing a Wholesale Power Agreement and a Wheeling and Administrative Service Agreement between Arizona Public Service Company (APS) and Maricopa Municipal Water Conservation District Number One (MCM).

It is intended that these new Agreements supersede the terms and conditions for service presently being rendered under an Interim Letter Agreement, APS FERC Rate Schedule No. 157. The rates for Wholesale Power Service and for Wheeling and Administrative Services to be rendered remain unchanged from those presently in effect.

Copies of this filing have been served upon MCM and the Arizona Corporation Commission.

Comment date: March 7, 1989, 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 avaliable for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-4355 Filed 2-23-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP89-812-000 et al.]

Tennessee Gas Pipeline Co. et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission.

1. Tennessee Gas Pipeline Company

[Docket No. CP89-812-000]

February 16, 1989.

Take notice that on February 13, 1989, Tennessee Gas Pipeline Company, (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP89-812-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Meridian Oil Inc. (Meridian), a producer, under the blanket certificate issued in Docket No. CP87-115-000 on June 18, 1987, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Tennessee states that pursuant to a transportation agreement dated December 21, 1988, as amended, under its Rate Schedule IT, it proposes to transport up to 25,000 dekatherms (dt) per day equivalent to natural gas for Meridian. Tennessee states that it would transport the gas from receipt points located offshore Louisiana and in the state of Alabama, and deliver such gas to interconnections with Alabama-Tennessee Natural Gas, Columbia Gas Transmission, Mountaineer Gas Company, Nashville Gas Company, and New Orleans Public Service, Inc., in various states, with ultimate deliveries being made in the states of Alabama, Louisiana, Mississippi, Tennessee, Virginia and West Virginia.

Tennessee advises that service under § 284.223(a) commenced on January 1, 1989, as reported in Docket No. ST89-2024 (filed January 30, 1989). Tennessee further advises that it would transport 25,000 dt on an average day and 9,125,000 dt annually.

Comment date: April 3, 1989, in accordance with Standard Paragraph G at the end of this notice.

2. Transcontinental Gas Pipe Line Corporation

[Docket No. CP89-801-000]

February 16, 1989.

Take notice that on February 10, 1989, Transcontinental Gas Pipe Line Corporation (Transco), P.O. Box 1396, Houston Texas 77251, filed in Docket No. CP89-801-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Amoco Production Company (Amoco), under the blanket certificate issued in Docket No. CP88-328-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Transco states that pursuant to a transportation agreement dated September 15, 1988, under its Rate Schedule IT, it proposes to transport up to 2,683,705 dt per day equivalent of natural gas for Amoco. Transco states that it would transport the gas from multiple existing receipt points as described in Exhibit A to the transportation agreement, and deliver the gas to multiple existing delivery points also described in Exhibit A.

Transco advises that service under § 284.223(a) commenced December 19, 1988, as reported in Docket No. ST89-1750. Transco further advises that it would transport 100,000 dt on an average day and 3,650,000 dt annually.

Comment date: April 3, 1989, in accordance with Standard Paragraph G at the end of this notice.

3. The Inland Gas Company, Inc.

[Docket No. CP89-779-000]

February 16, 1989.

Take notice that on February 7, 1989, The Inland Gas Company, Inc. (Inland) 336-338 14th Street, Ashland, Kentucky 41101, filed in Docket No. CP89-779-000 an application pursuant to section 7(c) of the Natural Gas Act and § 284.221 of the Commission's Regulations for a blanket certificate of public convenience and necessity that would authorize Inland to transport natural gas on behalf of others, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Inland indicates that it intends to transport natural gas on behalf of all shippers and that it accepts and would comply with paragraph (c) of § 284.221 of the Commission's Regulations which paragraph refers to Subpart A of Part 284 of the Regulations. Inland concurrently filed, pursuant to § 154.62 of the Commission's Regulations, a rate filing that included Rate Schedules FTS and ITS, for the blanket transportation of gas. Inland noted that it is willing to provide open-access blanket transportation service but its ability to do so is contingent upon the requirements and conditions contained in any Commission order issued in its Section 4 rate case. Inland, therefore, has requested a waiver of § 157.20(a) of the Commission's Regulations to permit it adequate time in which to notify the Commission of its acceptance or rejection of the blanket certificate in the event of a request for rehearing of the Commission order.

Comment date: March 9, 1989, in accordance with Standard Paragraph F at the end of this notice.

4. PennEast Gas Services Company CNG Transmission Corporation Texas Eastern Transmission Corp.

[Docket No. CP88-195-002]

February 16, 1989.

Take notice that on January 27, 1989, PennEast Gas Services Company (PennEast), P.O. Box 2521, Houston, TX 77252, a general partnership, CNG Transmission Corporation (CNG Transmission), 445 West Main Street, Clarksburg, WV 26301, and Texas Eastern Transmission Corporation (Texas Eastern) collectively referred to as Applicants, submitted an amendment to their joint application which was filed on January 15, 1988, as amended on November 10, 1988, for a certificate of public convenience and necessity and related authorizations pursuant to section 7(c) of the Natural Gas Act (15 U.S.C. 717f), and the Rules and Regulations of the Commission issued thereunder (hereinafter referred to as the Niagara Cogeneration Project), so as to reflect changes in service and required facilities, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Applicants state that this amendment was filed in compliance with the Commission's January 12, 1989, *Order Finding Niagara Import Project Discrete*, 46 FERC ¶61,013 in Docket No. CP 87-451-017, *et al.* (Niagara Settlement Order), pursuant to which transportation services associated with the Niagara Cogeneration Project are restructured from those originally proposed by PennEast; and to implement the terms of a certain Memorandum of Understanding (MOU) dated October 6, 1988 between Applicants and National Fuel Gas Supply Corporation (National Fuel).

Applicants amended the Niagara Cogeneration Project to provide restructured transportation services of up to 101,000 dekatherms (Dt) of gas per day for Northeast Energy Associates (Northeast), North Jersey Energy Associates (North Jersey), and Texas Eastern, from Niagara Falls, New York to Leidy, Pennsylvania and up to 62,500 Dt of gas per day for National Fuel

between Ellisburg and Leidy, Pennsylvania, as hereinafter described. Applicants also amended the Niagara Cogeneration Project to: (1) Delete all facilities proposed in the original Application, and proposed in the Amendment thereto filed on November 19, 1988 in Docket No. CP88–195–001, (2) seek approval of rates for restructured services and of cost deferral authorizations associated with the phased construction and service for the proposed joint Ellisburg to Leidy pipeline and (3) seek approval to construct and operate the various facilities needed to render these services.

The Applicants state that, pursuant to the terms of the Niagara Settlement, Applicants now seek to provide the following long-term, firm transportation services pursuant to PennEast's Rate Schedule T–1 for the following customers:

A. From Niagara Falls, New York to Leidy, Pennsylvania:

(1) 50,000 Dt of gas per day for Northeast Energy Associates' (Northeast) Bellingham, Massachusetts Cogeneration Plant to Transcontinental Gas Pipeline Corporation (Transco); and

(2) 22,000 DT of gas per day for North Jersey Energy Associates' (North Jersey) Sayreville, New Jersey Cogeneration Plant to Transco; and

(3) 29,000 Dt of gas per day for Texas Eastern for system supply; and

B. Between Ellisburg and Leidy, Pennsylvania: (1) Up to 62,500 Dt of gas per day for National Fuel.

Under contractural arrangement between ProGas and Texas Eastern, gas not needed by Texas Eastern for system supply may be released from time to time for sale to others at market competitive prices. A Sales Agreement and Special Marketing Agreement provides for the sale of the Canadian gas imported and released by Texas Eastern for direct purchase from ProGas by third parties, including Texas Eastern's customers. Payments for special marketing gas will be made by the marketers directly to ProGas.

It is stated that Applicants now seek authorization for PennEast to construct, own, and operate the following PennEast facilities which are required to render the service proposed herein consistent with the terms of the Niagara Settlement:

—Install measurement and regulation (M & R) facilities and approximately 2,000 feet of 20-inch pipeline (to connect the M & R facilities to CNG's Line No. 546) at CNG's Marilla Station (to be jointly owned by CNG and PennEast);

—Install 2,200 horsepower of additional compression at CNG's State Line Compressor Station;

—Install M & R facilities at or near CNG's Ellisburg Station; and

—Install additional M & R facilities for deliveries to Texas Eastern at Leidy.

The above facilities will be constructed and operated by CNG Transmission on behalf of PennEast Partnership at a cost of approximately $4,808, 900.

By this amended application, Applicants also seek authority for PennEast to own a fifty (50) percent undivided interest with National Fuel in the joint pipeline facilities between Ellisburg and Leidy, Pennsylvania which consist of 2.5 miles of 24-inch pipeline between CNG's Ellisburg Station and National Fuel's Ellisburg Station; 40 miles of 24-inch pipeline between Ellisburg and Leidy, Pennsylvania; and 2,600 h.p. of compression facilities at National Fuel's Ellisburg Station, as those facilities are more fully described in National Fuel's amended application in Docket No. CP88–194–001. These facilities will be operated by National Fuel. In addition, PennEast seeks authority to own a fifty (50) percent interest in the proposed joint M&R Station at Leidy, and for CNG Transmission to operate that station on behalf of PennEast. The aforesaid facilities and the terms and conditions of the construction, ownership, operation, and maintenance thereof are set forth in the MOU and will be governed by the terms of a Construction, Joint Ownership, Operations and Maintenance Agreement between National Fuel and PennEast to be supplied at a later date for inclusion in Exhibit M. PennEast also seeks authority to own and utilize that portion of the capacity in the Niagara Spur Loop Line for which Tennessee Gas Pipeline Company has made an amended application in Docket No. CP88–171–001. The estimated capital cost of PennEast's portion of the total proposed facilities, not including filing fees is $30,263,809 which includes the $4.8 million proposed in this docket. The $4.8 million facilities are proposed to be constructed in 1990 and to be placed in service on or about November 1, 1990.

PennEast proposes firm long term transportation on behalf of Northeast, New Jersey and Texas Eastern pursuant to a proposed Rate Schedule T–1 set forth in Exhibit P., Volume II of this application. This service will utilize PennEast capacity on the Niagara Spur from the Niagara Falls receipt point to Marilla, New York. From Marilla, New York, southward the proposed transportation will be effectuated by the $4.8 million of facilities described by PennEast in the instant application to the constructed between Marilla, New York and the PennEast M & R Station to be constructed at CNG Transmssion's Ellisburg, PA., Compression Station. From that point southward, the transportation will occur by the use of PennEast capacity in the 2.5 mile 24-inch pipeline and the 40 mile 24-inch pipeline to be jointly owned with National Fuel and constructed and operated by National Fuel for which application is being made by National Fuel and Penn York in Docket No. CP88–194–001, and through the M & R Stations at Leidy for delivery to Transco and Texas Eastern for which application is sought herein.

PennEast also seeks authorization, pursuant to the terms of the MOU, to charge National Fuel a development rate for the period commencing with the date of initial service of the joint pipeline facilities through October 31, 1991. Proposed rates by PennEast for service associated with joint pipeline facilities are predicated upon the Commission's approval of National Fuel's rate levelizing methodology as requested by National Fuel in Docket No. CP88–194–001, and PennEast's development rate enabling PennEast's sharing of the revenues resulting from the application of National Fuel's methodology. In addition, PennEast requests approval of its own cost deferral methodology so that by using both cost deferral methods, PennEast is compensated for its physical inability to utilize all or any portion of its 50% capacity share in the joint facilities during all or a part of the phase-in period.

Comment date: March 8, 1989, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

Mitchell Energy Corporation

[Docket No. CI89–284–000]

February 16, 1989.

Take notice that on February 2, 1989, Mitchell Energy Corporation (Mitchell) of P.O. Box 4000, The Woodlands, Texas 77387–4000, filed an application pursuant to section 7 of the Natural Gas Act and the Federal Energy Regulatory Commission's (Commission) regulations thereunder for an unlimited-term blanket certificate with pregranted abandonment to authorize sales for resale in interstate commerce from certain interests located in the Seven Oaks, Leggett and Hortense Fields (Seven Oaks area) in Polk County, Texas, acquired by Mitchell from Natural Gas Pipeline Company of America (NGPL) by assignment

executed and effective August 31, 1988, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Comment date: March 8, 1989, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

6. Transcontinental Gas Pipe Line Corporation

[Docket No. CP89-744-000]

February 17, 1989.

Take notice that on February 1, 1989, Transcontinental Gas Pipe Line Corporation (Transco), Post Office Box 1396, Houston, Texas 77251, filed in Docket No. CP89-744-000 a request as supplemented on February 13, 1989, pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act, for authorization to provide a transportation service for Access Energy Corporation (Access), under Transco's blanket certificate issued in Docket No. CP88-328-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Transco states that pursuant to an agreement dated July 7, 1988, it proposes to transport up to 35,000 dt equivalent of natural gas per day on an interruptible basis. Transco indicates that it would receive that gas at specified points offshore Louisiana and redeliver the gas at an existing point of interconnection between Transco and Florida Gas Transmission Company at Vinton, Calcasieu Parish, Louisiana.

Transco also states that no construction of facilities would be required to provide this service. Transco further states that the maximum day, average day, and annual volumes would be 35,000 dt equivalent of natural gas per day, 50,000 dt equivalent of natural gas per day, and 1,825,000 dt equivalent of natural gas per day, respectively. Transco indicates that it would charge the rates and abide by the terms and conditions set forth in its Rate Schedule IT.

Transco indicates that it would provide the service until terminated by either party upon at least 30 days' written notice. It is indicated that Transco may discontinue service if Access in Transco's reasonable judgment fails to demonstrate credit worthiness and Access fails to provide adequate security in accordance with Section 9.4 of Transco's Rate Schedule IT.

Transco advises that service under § 284.223(a) of the Commission's Regulations commenced on December 14, 1988, as reported in Docket No. ST89-1626.

Comment date: April 3, 1989, in accordance with Standard Paragraph G at the end of this notice.

7. Northern Natural Gas Company

[Docket No. CP89-810-000]

February 17, 1989.

Take notice that on February 13, 1989, Northern Natural Gas Company (Northern), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251-1188, filed in Docket No. CP89-810-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on an interruptible basis on behalf of Union Texas Products Corporation (Union Texas), a producer of natural gas, under its blanket certificate issued in Docket No. CP86-435-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Northern states that the maximum daily, average and annual quantities that it would transport on behalf of Union Texas would be 80,000 MMBtu equivalent of natural gas, 60,000 MMBtu equivalent of natural gas and 29,200,000 MMBtu equivalent of natural gas, respectively.

Northern indicates that in Docket No. ST89-2043, filed with the Commission on January 30, 1989, it reported that transportation service on behalf of Union Texas had begun under the 120-day automatic authorization provisions of § 284.223(a).

Comment date: April 3, 1989, in accordance with Standard Paragraph G at the end of this notice.

8. Southern Natural Gas Company

[Docket No. CP89-808-000]

February 17, 1989.

Take notice that on February 10, 1989, Southern Natural Gas Company (Southern), P.O. Box 2563, Birmingham, Alabama 35202-2563, filed in Docket No. CP89-808-000 a request pursuant to §§ 157.205 and 284.223(b) of the Commission's Regulations under the Natural Gas Act for authorization to provide transportation service on an interruptible basis for Apache Transmission Corporation—Texas (Apache), an intrastate pipeline, under its blanket certificate issued in Docket No. CP88-316-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Southern proposes to transport 10,000 MMBtu equivalent of gas for Apache on a peak day. Southern indicates that Apache anticipates requesting the full transportation demand of 10,000 MMBtu equivalent of gas on an average day and, therefore, 3,650,000 MMBtu equivalent of gas on an annual basis.

Southern proposes to receive the gas at various receipt points in the Matagorda Island Blocks of offshore Texas and would transport it to delivery points in Refugio County, Texas. Southern indicates that the service agreement is for a primary term of one month with successive terms of one month thereafter unless cancelled by either party. Southern asserts that no new facilities are required to implement the proposed service.

Southern indicates that it reported to the Commission in Docket No. ST89-2141 that the Apache service began on December 14, 1988 under the 120-day automatic authorization provisions of § 284.223(a)(1).

Comment date: April 3, 1989, in accordance with Standard Paragraph G at the end of this notice.

9. Williams Natural Gas Company

[Docket No. CP89-805-000]

February 17, 1989.

Take notice that on February 10, 1989, Williams Natural Gas Company (WNG), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP89-805-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 284.223) for authorization to provide firm transportation for Williams Gas Marketing Company (WGM) under WNG's blanket certificate issued in Docket No. CP86-641-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the petition which is on file with the Commission and open to public inspection.

WNG states that pursuant to a service agreement dated January 1, 1989, it proposes to transport on a firm basis up to a maximum of 7,275 million Btu of natural gas per day for WGM from various receipt points in Colorado, Oklahoma and Wyoming to various delivery points on WNG's pipeline system located in Kansas and Missouri. WNG states that it anticipates transporting 7,275 million Btu of natural gas on both a peak and average day and 2,655,375 million Btu on an annual basis. It is stated that on January 1, 1989, WNG commenced a 120-day transportation service for WGM under § 284.223(a) as reported in Docket No. ST89-2055-000.

WNG further states that no facilities need be constructed to implement the service. WNG proposes to charge the rates and abide by the terms and conditions of its Rate Schedule FTS. It is indicated that WNG would provide the service for a primary term expiring on January 1, 1990, but would extend the service for additional periods of one month unless either party gives the other written notice at least thirty days prior to the expiration date of the original or any succeeding or extended term.

Comment date: April 3, 1989, in accordance with Standard Paragraph G at the end of this notice.

10. Northwest Pipeline Corporation

[Docket No. CP89–775–000]

February 17, 1989.

Take notice that on February 7, 1989, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP89–775–000, an application pursuant to section 7(b) of the Natural Gas Act, as amended, for an order granting permission and approval to abandon its currently authorized transportation and delivery of non-jurisdictional direct sales natural gas to Union Oil Company of California (Unocal), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Northwest states that by Commission Order issued April 19, 1983 in Docket No. CP82–320–000 the Commission granted a certificate of public convenience and necessity to Northwest authorizing the construction and operation of delivery facilities and transportation and delivery of non-jurisdictional direct sales gas to Unocal at its shale oil processing plant located in Garfield County, Colorado.

Northwest further states that on June 10, 1988, Northwest accepted a blanket certificate of public convenience and necessity authorizing transportation services pursuant to Subpart G of Part 284 of the Commission's Regulations. Northwest subsequently offered its firm sales customers the opportunity pursuant to 18 CFR 284.10(c)(3)(ii), to convert an unlimited portion of firm sales contract demand to firm transportation contract demand. As a result of this offer, by letter dated October 10, 1988, Unocal notified Northwest of its election, effective November 1, 1988, to convert 100% of its firm sales entitlements to a volumetrically equal amount of firm transportation pursuant to § 284.10(c) of the Commission's Regulations. Northwest and Unocal entered into a new firm Transportation Agreement dated October 11, 1988, whereby Northwest is currently providing service at a firm contract demand level of 12,500 MMBtu's per day under Rate Schedule TF–1 in Volume 1–A of Northwest's FERC Gas Tariff.

Specifically, in the subject application Northwest requests permission and approval to abandon the direct sales related transportation and delivery of up to 170,000 therms per day which Unocal elected to convert to a firm transportation agreement. Northwest requests that the abandonment approval recognize that Unocal's conversion election under 18 CFR 284.10(c) effectively terminated the Direct Sales contract effective November 1, 1988.

Pursuant to 18 CFR 284.10(d)(2), Unocal is deemed to be a consenting party to the proposed abandonment and pursuant to 18 CFR 284.10(d)(3) the proposed abandonment is deemed permitted by the present or future public convenience and necessity.

Comment date: March 10, 1989, in accordance with Standard Paragraph F at the end of this notice.

11. Natural Gas Pipeline Company of America

[Docket No. CP89–806–000]

February 17, 1989.

Take notice that on February 10, 1989, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP88–806–000 a request for authorization pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act, for authorization to transport natural gas on behalf of Coastal Gas Marketing Company (Coastal), a marketer of natural gas, under Natural's blanket certificate issued in Docket No. CP86–582–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Natural proposes to transport, on an interruptible basis, up to 150,000 MMBtu equivalent of natural gas per day for Coastal, plus any additional volumes accepted pursuant to the overrun provisions of Natural's Rate Schedule ITS, 100,000 MMBtu equivalent on an average day, and 36,500,000 MMBtu equivalent on an annual basis. It is stated that Natural would receive the gas for Coastal's account at existing points on Natural's system in Texas, offshore Texas, and offshore Louisiana, and would deliver equivalent volumes at an interconnection with United Gas Pipe LIne Company in Cameron Parish, Louisiana. It is explained that the transportation service would be effected using existing facilities and would require no construction of additional facilities. It is asserted that Natural commenced the transportation service January 1, 1989, under the self-implementing authorization provisions of § 284.223 of the Commission's Regulations, as reported in Docket No. ST89–2189.

Comment date: April 3, 1989, in accordance with Standard Paragraph G at the end of this notice.

12. Williams Natural Gas Company

[Docket No. CP89–804–000]

February 17, 1989.

Take notice that on February 10, 1989, Williams Natural Gas Company (WNG), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP89–804–000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to transport natural gas on behalf of Ward Gas Marketing, Inc. (Ward), a marketer of natural gas, under the blanket certificate issued in Docket NO. CP86–631–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

WNG proposes to transport on an interruptible basis up to 122,000 MMBtu equivalent of natural gas on a peak day, 122,000 MMBtu equivalent on an average day, and 44,530,000 MMBtu equivalent on an annual basis for Ward. It is stated that WNG would receive the gas for Ward's account at various receipt points on WNG's system in Kansas, Missouri, Oklahoma, Texas and Wyoming, and would deliver equivalent volumes of gas at various delivery points of WNG's system in Kansas, Missouri, Oklahoma, Texas and Wyoming. It is asserted that WNG commenced the transportation service January 1, 1989, under the self-implementing authorization provisions of § 284.223 of the Commission's Regulations, as reported in Docket No. ST89–2077.

Comment date: April 3, 1989 in accordance with Standard Paragraph G at the end of the notice.

13. ANR Pipeline Company

[Docket No. CP89–822–000]

February 17, 1989.

Take notice that on February 14, 1989, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP89–822–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on

behalf of Unicorp Energy, Inc. (Unicorp), a marketer, under its blanket authorization issued in Docket No. CP88–532–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

ANR would perform the proposed interruptible transportation service for Unicorp, pursuant to an interruptible transportation service agreement dated November 1, 1988. The transportation agreement is effective for a term until 120 days from the day of initial deliveries, and thereafter until November 30, 1989, and month to month thereafter until terminated by either party on thirty days written notice. ANR proposes to transport approximately 100,000 dth natural gas on a peak and average day; and on an annual basis 36,500,000 dth of natural gas for Unicorp. ANR proposes to receive the subject gas at various points located in ANR's Southeast and Southwest gathering areas and redeliver the gas for the account of Unicorp at existing interconnections located in the state of Illinois.

It is explained that the proposed service is currently being performed pursuant to the 120-day self implementing provision of § 284.233(a)(1) of the Commission's Regulations. ANR commenced such self-implementing service on January 1, 1989, as reported in Docket No. ST89–2098–000.

Comment date: April 3, 1989 in accordance with Standard Paragraph G at the end of the notice.

14. Williams Natural Gas Company

[Docket No. CP89–803–000]

February 17, 1989.

Take notice that on February 10, 1989, Williams Natural Gas Company (WNG), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP89–803–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) and the Natural Gas Policy Act (18 CFR 284.223) for authorization to transport natural gas for Union Pacific Resources Company (Union Pacific), a producer, under WNG's blanket certificate issued in Docket No. CP86–631–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with Commission and open to public inspection.

WNG proposes to transport, on a firm basis, up to 10,000 MMBtu of natural gas equivalent per day for Union Pacific pursuant to a transportation agreement dated January 1, 1989, between WNG and Union Pacific. WNG would receive the gas at various points on its system in Wyoming and deliver equivalent volumes, less fuel used and lost and unaccounted for quantities, to various delivery points on its system in Kansas.

WNG states that the estimated daily and annual quantities would be 10,000 MMBtu and 3,650,000 MMBtu, respectively. Service under § 284.223(a) commenced on January 1, 1989, as reported in Docket No. ST89–2075–000, it is stated.

Comment date: April 3, 1989, in accordance with Standard Paragraph G at the end of this notice.

15. Panhandle Eastern Pipe Line Company

[Docket No. CP89–816–000]

February 17, 1989.

Take notice that on February 14, 1989, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77251–1642, filed in Docket No. CP89–816–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Amgas, Inc. (Amgas), a marketer, under the blanket certificate issued in Docket No. CP86–585–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Panhandle states that pursuant to a transportation agreement dated December 1, 1988, under its Rate Schedule PT, it proposes to transport up to 100 dt per day equivalent of natural gas for Amgas. Panhandle states that it would transport the gas from receipt points in Texas, Oklahoma, Kansas, Colorado, Wyoming and Illinois, and deliver such gas, less fuel used and unaccounted for line loss, to Central Illinois Light Company in Tazewell County, Illinois.

Panhandle advises that service under § 284.223(a) commenced January 1, 1989, as reported in Docket No. ST89–1926. Panhandle further advises that it would transport 50 dt on an average day and 18,250 dt annually.

Comment date: April 3, 1989, in acordance with Standard Paragraph G at the end of this notice.

16. Panhandle Eastern Pipe Line Company

[Docket No. CP89–820–000]

February 17, 1989.

Take notice that on February 14, 1989, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77251–1642, filed in Docket No. CP89–820–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Amgas, Inc. (Amgas), a marketer, under the blanket certificate issued in Docket No. CP86–585–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Panhandle states that pursuant to a transportation agreement dated November 15, 1988, under its Rate Schedule PT, it proposes to transport up to 145 dt per day equivalent of natural gas for Amgas. Panhandle states that it would transport the gas from receipt points in Texas, Oklahoma, Kansas, Colorado, Wyoming and Illinois, and deliver such gas, less fuel used and unaccounted for line loss, to Central Illinois Light Company in Sangamon County, Illinois.

Panhandle advises that service under § 284.223(a) commenced January 1, 1989, as reported in Docket No. ST89–1928. Panhandle further advises that it would transport 33 dt on an average day and 12,045 dt annually.

Comment date: April 3, 1989, in accordance with Standard Paragraph G at the end of this notice.

17. Panhandle Eastern Pipe Line Company.

[Docket No. CP89–818–000]

February 17, 1989.

Take notice that on February 14, 1989, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77251–1642, filed in Docket No. CP89–818–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide a firm transportation service for Indiana Gas Company (Indiana Gas), a local distribution company, under the blanket certificate issued in Docket No. CP86–585–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Panhandle states that pursuant to a transportation agreement dated January 1, 1989, under its Rate Schedule PT, it proposes to transport up to 38,572 dt per day equivalent of natural gas for Indiana Gas. Panhandle states that it would transport the gas from receipt points in Texas, Oklahoma, Kansas, Colorado, Wyoming and Illinois, and deliver such gas, less fuel used and

unaccounted for line loss, to Indiana Gas in various counties in Indiana, as reflected in Exhibit A of the transportation agreement.

Panhandle advises that service under § 284.223 (a) commenced January 1, 1989, as reported in Docket No. ST89–1833. Panhandle further advises that it would transport 38,572 dt on an average day and 14,078,780 dt annually.

Comment date: April 3, 1989, 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 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,

Secretary.

[FR Doc. 89–4356 Filed 2–23–89; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–3528–9]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared February 6, 1989 through February 10, 1989 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382–5074.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 22, 1988 (53 FR 13318).

Draft EISs

ERP No. D–AFS–G60006–NM, Rating LO, Cemetery Tract Land Exchange for Westgate Tract or Trail Canyon Tract or Both Tracts, Implementation, Santa Fe National Forest, Los Alamos and Sandoval Counties, NM.

SUMMARY: EPA has no objections to the proposed action as described.

ERP No. D–NAS–E12003–00, Rating EC2, Advance Solid Rocket Motor Program, Design, Construction and Operation, Site Selection, John C. Stennis Space Center, Hancock Co., MS; Yellow Creek Site, Tishomingo Co., MS; John F. Kennedy Space Center, Brevard Co., FL; Michoud Assembly Facility, New Orleans Parrish, LA and Slidell Computer Center, St. Tammany Parish LA.

SUMMARY: EPA has some environmental concerns about the amount of wetlands impacted to accomplish this mission. On balance it appears that NASA's preferred alternative to produce the engines at the Yellow Creek Site (Mississippi) and test them at the Stennis Space Center (Mississippi) would minimize the environmental consequences of the action within the constraint's of the project's objectives. There are, however, a number of questions about the degree of wetland impacts associated with this option which need to be resolved in the final EIS. EPA requested that the final EIS include additional wetland analysis/mitigation with regard to NASA's preferred alternative.

ERP No. D–USN–E11021–NC, Rating EC2, Oak Grove Marine Corps Outlying Field, AV–8B Forward Training Facility Construction and Operation, Implementation, Jones County, NC.

SUMMARY: EPA does not anticipate any long-term adverse consequences of this action. Some data regarding aircraft noise should be added to the final EIS.

Final EISs

ERP No. F–AFS–K69006–AZ, Mount Graham Astrophysical Area Development, Approval and Management, Pinaleno Mountains, Coronado National Forest, Graham County, AZ.

SUMMARY: Review of the final EIS was not deemed necessary. No formal comments were sent to the agency.

ERP No. F–FHW–C40121–NY, Southwest Lockport Bypass Construction, Robinson Road to NY–31, Funding, Section 10, 404 and Coast Guard Bridge Permits, Niagara County, NY.

SUMMARY: EPA disagrees with the methodology used for the delineation of federally regulated wetlands in the project area and also question the adequacy of proposed wetland mitigation. Secondary impacts associated with the completion of the project were also not adequately addressed. EPA requested that these issues be addressed prior to the issuance of the Record of Decision.

ERP No. F–FHW–E40681–00, Bobby Jones Expressway Extension, Old Savannah Road in Augusta to US 1, Funding 404 Permit and Coast Guard Permit, Richmond County, GA and Aiken County, SC.

SUMMARY: EPA withdraws its earlier objections to the construction of the preferred alignment C. Based on the Georgia Department of Transportation's commitment to acquire 1317 acres of project wetlands and 130 acreas of point bar uplands for public preservation, and to implement hydrological and habitat mitigation measures as outlined in the final EIS. Design of the detailed mitigation measures should involve EPA

and U.S. FWS, and be appended to the Section 404 permit.

ERP No. F-FHW-E40684-KY, US 31E/150/Bardstown-Louisville Road Improvement, Brentlinger Road to US 31E/150, Funding and Corp of Engineer Permits, Jefferson, Bullitt, Spencer and Nelson Counties, NJ.

SUMMARY: EPA has concerns with proposed stream channelization and/or relocation and potential contamination of groundwater from highway runoff. A Lack of detailed mitigation plans for proposed impacts was also noted.

ERP No. F-SCS-H36100-MO, East Yellow Creek Watershed, Soil Erosion and Flood Damage Reduction Plan, Funding and Implementation, Sullivan, Linn and Chariton Counties, MO.

SUMMARY: EPA's concerns with the draft EIS was adequately responded to in this document.

Dated: February 21, 1989.

William Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 89-4385 Filed 2-23-89; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRI-3528-8]

Environmental Impact Statements; Availability

Responsible Agency: Office of Federal Activities, General Information (202) 382-5076 or (202) 382-5075.

Availability of Environmental Impact Statements. Filed February 13, 1989 Through February 17, 1989. Pursuant to 40 CFR 1506.9.

EIS No. 890037 Draft, FHW, WI, WI-26/Fort Atkinson Bypass Construction, Old WI-26/Existing WI-26 to the northern terminus of Existing WI-26 near Airport Road, Section 10 and 404 Permits and Funding, Koshkonong and Jefferson Townships, City of Fort Atkinson, Jefferson County, WI, Due: April 21, 1989, Contact: James L. Wenning (608) 264-5966.

EIS No. 890038 Draft, BOP, CO, Florence Federal Correctional Institution Complex, Construction and Operation, Fremont County, CO, Due: April 10, 1989, Contact: William Patrick (202) 274-3232.

EIS No. 890039 Draft, NOA, Flower Garden Banks National Marine Sanctuary Establishment, Designation, LA and TX, Due: April 24, 1989, Contact: Joseph A. Uravitch (202) 673-5122.

EIS No. 890040, Final, FPA, TX, South Austin Regional Wastewater Treatment Facility (formerly Onion Creek Wastewater Treatment Plant), Construction Grant and Revision of Special Condition No. 16, Travis County, TX, Due: March 27, 1989, Contact: Norman Thomas (214) 655-2260.

EIS No. 890041 Draft, AFS, OR, Shady Beach Fire Recovery Project, Implementation, Willamette National Forest, Lane County, OR, Due: April 11, 1989, Contact: Cathy Barbouletos (503) 782-5500.

Dated: February 21, 1989.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 89-4386 Filed 2-23-89; 8:45 am]

BILLING CODE 6560-50-M

[OPP-00274; FRL-3529-4]

State-FIFRA Issues Research and Evaluation Group (SFIREG) Working Committees; Open Meetings

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: There will be a half-day meeting of the State FIFRA Issues Research and Evaluation Group (SFIREG). The meeting will be open to the public.

DATE: Thursday, March 9, 1989, beginning at 8:30 a.m. and ending at 12:00 p.m.

ADDRESS: The meetings will be held at: Hyatt Regency—Crystal City, 2799 Jefferson Davis Highway, Arlington, VA 22202, (703-486-1234).

FOR FURTHER INFORMATION CONTACT:

By mail:
John T. Tice,
Office of Pesticide Programs (TSD-787C),
Environmental Protection Agency,
401 M Street, SW.,
Washington, DC 20460.

Office location and telephone number:
Room 712, Crystal Mall No. 2,
1921 Jefferson Davis Highway,
Arlington, VA. 22202,
(703-557-7410).

SUPPLEMENTARY INFORMATION: The tentative agenda thus far includes the following topics:

1. Action items from the December 1988 meeting of the full Group.
2. Regional reports.
3. Working Committee reports.
4. Other topics which may have arisen during the March 6-8, 1989, meeting of the Association of American Pesticide Control Officials.
5. Discussion of the loss of registered products for Minor Use Crops.
6. Progress on implementing FIFRA 1988 Amendments.
7. Discussion of Pesticide maintenance fees for 24(c) registrations.
8. Discussions for improving information exchange between Headquarters Regions and States.

Dated: February 17, 1988.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 89-4396 Filed 2-23-89; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Submitted to the Office of Management and Budget for Clearance

The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following information collection package for clearance in accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Type: Extension of 3067-0169

Title: Write Your Own (WYO) Program

Abstract: Under the Write Your Own (WYO) Program, private sector insurance companies may offer flood insurance to eligible property owners. The Federal Government is a guarantor of flood insurance coverage for WYO companies issued under the WYO arrangement. In order to maintain adequate financial control over Federal funds, the NFIP requires each WYO company to submit a monthly financial report.

Type of Respondents: Businesses or other for-profit

Estimate of Total Annual Reporting and Recordkeeping Burden: 540

Number of Respondents: 90

Estimated Average Burden Hours Per Response: 0.5

Frequency of Response: Monthly

Copies of the above information collection request and supporting documentation can be obtained by calling or writing the FEMA Clearance Officer, Linda Shiley, (202) 646-2624, 500 C Street, SW., Washington, DC 20472.

Direct comments regarding the burden estimate or any aspect of this information collection, including suggestions for reducing this burden, to the FEMA Clearance Officer at the above address; and to Francine Picoult, (202) 395-7231, Office of Management and Budget, 3235 NEOB, Washington, DC 20503 within two weeks of this notice.

Date: February 13, 1989.
Wesley C. Moore,
Director, Office of Administrative Support.
[FR Doc. 89-4288 Filed 2-23-89; 8:45 am]
BILLING CODE 6718-01-M

Agency Information Collection Submitted to the Office of Management and Budget for Clearance

The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following information collection package for clearance in accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Type: New Collection

Title: Federal Assistance for Offsite Radiological Planning and Preparedness Under Executive Order 12657

Abstract: In accordance with Executive Order 12657 and under Interim Rule 44 CFR Part 352, FEMA will need certain information from nuclear power plant licensees to determine whether State or local governments have declined or failed to prepare commercial nuclear power plant radiological emergency preparedness plans that meet NRC licensing requirements or to participate in the preparation, demonstration, testing, exercise or use of such plans. Also, when a licensee requests Federal facilities or resources, FEMA will need information from the NRC as to whether the licensee has made maximum use of its resources and the extent to which the licensee has complied with 10 CFR 50.47(c)(1).

Type of Respondents: State and local Governments Businesses or other for-profit Federal agencies or employees

Estimate of Total Annual Reporting and Recordkeeping Burden: 1

Number of Respondents: 1

Estimated Average Burden Hours Per Response: 1

Frequency of Response: On Occasion

Copies of the above information collection request and supporting documentation can be obtained by calling or writing the FEMA Clearance Officer, Linda Shiley, (202) 646-2624, 500 C Street, SW., Washington, DC 20472.

Direct comments regarding the burden estimate or any aspect of this information collection, including suggestions for reducing this burden, to the FEMA Clearance Officer at the above address; and to Francine Picoult, (202) 395-7231, Office of Management and Budget, 3235 NEOB, Washington, DC 20503 within two weeks of this notice.

Date: February 9, 1989.
Wesley C. Moore,
Director, Office of Administrative Support.
[FR Doc. 89-4289 Filed 2-23-89; 8:45 am]
BILLING CODE 6718-01-M

FEDERAL HOME LOAN BANK BOARD

American Savings Association, FA, Salt Lake City, UT; Appointment of Conservator

Notice is hereby given that pursuant to the authority contained in section 5(d)(6)(A)(i), of the Home Owner's Loan Act of 1933, as amended, 12 U.S.C. 1464(d)(6)(A)(i), and 12 U.S.C. 1701c (c)(2)(1982), as amended, the Federal Home Loan Bank Board was duly appointed the Federal Savings and Loan Insurance Corporation as sole conservator for American Savings & Loan Association, FA, Salt Lake City, Utah on February 16, 1989.

Dated: February 21, 1989.

By the Federal Home Loan Bank Board.
John F. Ghizzoni,
Assistant Secretary.
[FR Doc. 89-4368 Filed 2-23-89; 8:45 am]
BILLING CODE 6720-01-M

Anchor Savings Association, Kansas City, KS; Appointment of Conservator

Notice is hereby given that pursuant to the authority contained in section 406(c)(1)(B)(i)(I) of the National Housing Act, as amended, 12 U.S.C. 1729(c)(1)(B)(i)(I) (1982), the Federal Home Loan Bank Board duly appointed the Federal Savings and Loan Insurance Corporation as sole conservator for Anchor Savings Association, Kansas City, Kansas on February 16, 1989.

Dated: February 21, 1989.

By the Federal Home Loan Bank Board.
John F. Ghizzoni,
Assistant Secretary.
[FR Doc. 89-4369 Filed 2-23-89; 8:45 am]
BILLING CODE 6720-01-M

Blue Valley Federal Savings & Loan Association, Kansas City, MO; Appointment of Conservator

Notice is hereby given that pursuant to the authority contained in section 5(d)(6)(A)(i), of the Home Owner's Loan Act of 1933, as amended, 12 U.S.C. 1464(d)(6)(A)(i), and 12 U.S.C. 1701c (c)(2)(1982), as amended, the Federal Home Loan Bank Board was duly appointed the Federal Savings and Loan Insurance Corporation as sole conservator for Blue Valley Federal Savings & Loan Association, Kansas City, Missouri on February 16, 1989.

Dated: February 21, 1989.

By the Federal Home Loan Bank Board.
John F. Ghizzoni,
Assistant Secretary.
[FR Doc. 89-4370 Filed 2-23-89; 8:45 am]
BILLING CODE 6720-01-M

Community Savings & Loan Association, Fond du Lac, WI; Appointment of Conservator

Notice is hereby given that pursuant to the authority contained in section 406(c)(1)(B)(i)(I) of the National Housing Act, as amended, 12 U.S.C. 1729(c)(1)(B)(i)(I) (1982), the Federal Home Loan Bank Board duly appointed the Federal Savings and Loan Insurance Corporation as sole conservator for Community Savings & Loan Association, Fond du Lac, Wisconsin on February 16, 1989.

Dated: February 21, 1989.

By the Federal Home Loan Bank Board.
Nadine Y. Washington,
Assistant Secretary.
[FR Doc. 89-4389 Filed 2-23-89; 8:45 am]
BILLING CODE 6720-01-M

Concordia Federal Bank for Savings, Lansing, IL; Appointment of Conservator

Notice is hereby given that pursuant to the authority contained in section 5(d)(6)(A)(i), of the Home Owner's Loan Act of 1933, as amended, 12 U.S.C. 1464(d)(6)(A)(i), and 12 U.S.C. 1701c (c)(2)(1982), as amended, the Federal Home Loan Bank Board was duly appointed the Federal Savings and Loan Insurance Corporation as sole conservator for Concordia Federal Bank for Savings, Lansing, Illinois on February 16, 1989.

Dated: February 21, 1989.

By the Federal Home Loan Bank Board.
Nadine Y. Washington,
Assistant Secretary.
[FR Doc. 89-4371 Filed 2-23-89; 8:45 am]
BILLING CODE 6720-01-M

Equitable Federal Savings Bank, Fremont, NE; Appointment of Conservator

Notice is hereby given that pursuant to the authority contained in section 5(d)(6)(A)(i), of the Home Owner's Loan Act of 1933, as amended, 12 U.S.C. 1464(d)(6)(A)(i), and 12 U.S.C. 1701c (c)(2) (1982), as amended, the Federal

Home Loan Bank Board was duly appointed the Federal Savings and Loan Insurance Corporation as sole conservator for Equitable Federal Savings Bank, Fremont, Nebraska, on February 16, 1989.

Dated: February 21, 1989.

By the Federal Home Loan Bank Board.

Nadine Y. Washington,

Assistant Secretary.

[FR Doc. 89-4372 Filed 2-23-89; 8:45 am]

BILLING CODE 6720-01-M

First Federal Savings & Loan Association, Largo, FL; Appointment of Conservator

Notice is hereby given that pursuant to the authority contained in section 5(d)(6)(A)(i), of the Home Owner's Loan Act of 1933, as amended, 12 U.S.C. 1464(d)(6)(A)(i), and 12 U.S.C. 1701c(c)(2) (1982), as amended, the Federal Home Loan Bank Board was duly appointed the Federal Savings and Loan Insurance Corporation as sole conservator for First Federal Savings & Loan Association, Largo, Florida on February 16, 1989.

Dated: February 21, 1989.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 89-4373 Filed 2-23-89; 8:45 am]

BILLING CODE 6720-01-M

French Market Homestead, FSA, Metairie, LA; Appointment of Conservator

Notice is hereby given that, pursuant to the authority contained in section 5(d)(6)(A)(i) of the Homse Owner's Loan Act of 1933, as amended, 12 U.S.C. 1464(d)(6)(A)(i) (1982), and 12 U.S.C. 1701c(c)(2) (1982), as amended, the Federal Home Loan Bank Board duly appointed the Federal Savings and Loan Insurance Corporation as sole conservator for French Market Homestead, FSA, Metairie, Louisiana, on February 16, 1989.

Dated: February 21, 1989.

By the Federal Home Loan Bank Board.

Nadine Y. Washington,

Assistant Secretary.

[FR Doc. 89-4374 Filed 2-23-89; 8:45 am]

BILLING CODE 6720-01-M

Guaranty Federal Savings and Loan Association, Birmingham, AL; Appointment of Conservator

Notice is hereby given that pursuant to the authority contained in section 5(d)(6)(A)(i), of the Home Owner's Loan Act of 1933, as amended, 12 U.S.C. 1464(d)(6)(A)(i), and 12 U.S.C. 1701c(c)(2)(1982), as amended, the Federal Home Loan Bank Board was duly appointed the Federal Savings and Loan Insurance Corporation as sole conservator for Guaranty Federal Savings and Loan Association, Birmingham, Alabama, on February 16, 1989.

Dated: February 21, 1989.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 89-4375 Filed 2-23-89; 8:45 am]

BILLING CODE 6720-01-M

Independence Federal Bank, F.S.B.; Batesville, AR; Appointment of Conservator

Notice is hereby given that pursuant to the authority contained in section 5(d)(6)(A)(i), of the Home Owner's Loan Act of 1933, as amended, 12 U.S.C. 1464(d)(6)(A)(i), and 12 U.S.C. 1701c (c)(2)(1982), as amended, the Federal Home Loan Bank Board was duly appointed the Federal Savings and Loan Insurance Corporation as sole conservator for Independence Federal Bank, F.S.B., Batesville, Arkansas on February 16, 1989.

Dated: February 21, 1989.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 89-4376 Filed 2-23-89; 8:45 am]

BILLING CODE 6720-01-M

Mountainwest Savings and Loan Association, a Federal Savings and Loan Association, Ogden, UT; Appointment of Conservator

Notice is hereby given that pursuant to the authority contained in section 5(d)(6)(A)(i), of the Home Owner's Loan Act of 1933, as amended, 12 U.S.C. 1464(d)(6)(A)(i), and 12 U.S.C. 1701c (c)(2)(1982), as amended, the Federal Home Loan Bank Board was duly appointed the Federal Savings and Loan Insurance Corporation as sole conservator for Mountainwest Savings and Loan Association, a Federal Savings and Loan Association, Ogden, Utah, on February 16, 1989.

Dated: February 21, 1989.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 89-4377 Filed 2-23-89; 8:45 am]

BILLING CODE 6720-01-M

Nile Valley Federal Savings & Loan Association, Scottsbluff, NE; Appointment of Conservator

Notice is hereby given that pursuant to the authority contained in section 5(d)(6)(A)(i), of the Home Owner's Loan Act of 1933, as amended, 12 U.S.C. 1464(d)(6)(A)(i), and 12 U.S.C. 1701c (c)(2)(1982), as amended, the Federal Home Loan Bank Board was duly appointed the Federal Savings and Loan Insurance Corporation as sole conservator for Nile Valley Federal Savings & Loan Association, Scottsbluff, Nebraska on February 16, 1989.

Dated: February 21, 1989.

By the Federal Home Loan Bank Board.

Nadine Y. Washington,

Assistant Secretary.

[FR Doc. 89-4378 Filed 2-23-89; 8:45 am]

BILLING CODE 6720-01-M

North Jersey Savings & Loan Association, Passaic, NJ; Appointment of Conservator

Notice is hereby given that pursuant to the authority contained in section 406(c)(1)(B)(i)(I), of the National Housing Act, as amended, 12 U.S.C. 1729(c)(1)(B)(i)(I) (1982), the Federal Home Loan Bank Board duly appointed the Federal Savings and Loan Insurance Corporation as sole conservator for North Jersey Savings & Loan Association, Passaic, New Jersey on February 16, 1989.

Dated: February 21, 1989.

By the Federal Home Loan Bank Board.

Nadine Y. Washington,

Assistant Secretary.

[FR Doc. 89-4379 Filed 2-23-89; 8:45 am]

BILLING CODE 6720-01-M

Platte Valley Federal Savings & Loan Association, Gering, NE; Appointment of Conservator

Notice is hereby given that pursuant to the authority contained in section 5(d)(6)(A)(i), of the Home Owner's Loan Act of 1933, as amended, 12 U.S.C. 1464(d)(6)(A)(i), and 12 U.S.C. 1701c (c)(2)(1982), as amended, the Federal Home Loan Bank Board was duly appointed the Federal Savings and Loan Insurance Corporation as sole conservator for Platte Valley Federal Savings & Loan Association, Gering, Nebraska on February 16, 1989.

Dated: February 21, 1989.

By the Federal Home Loan Bank Board.
John F. Ghizzoni,
Assistant Secretary.
[FR Doc. 89-4380 Filed 2-23-89; 8:45 am]
BILLING CODE 6720-01-M

Security Savings & Loan Association, Scottsdale, AZ; Appointment of Conservator

Notice is hereby given that pursuant to the authority contained in section 406(c)(1)(B)(i)(I) of the National Housing Act, as amended, 12 U.S.C. 1729(c)(1)(B)(i)(I)(1982), the Federal Home Loan Bank Board was duly appointed the Federal Savings and Loan Insurance Corporation as sole conservator for Security Savings & Loan Association, Scottsdale, Arizona on February 16, 1989.

Dated: February 21, 1989.

By the Federal Home Loan Bank Board.
John F. Ghizzoni,
Assistant Secretary.
[FR Doc. 89-4381 Filed 2-23-89; 8:45 am]
BILLING CODE 6720-01-M

Southern Floridabanc Federal Savings & Loan Association, Boca Raton, FL; Appointment of Conservator

Notice is hereby given that pursuant to the authority contained in section 5(d)(6)(A)(i), of the Home Owner's Loan Act of 1933, as amended, 12 U.S.C. 1464(d)(6)(A)(i), and 12 U.S.C. 1701c (c)(2)(1982), as amended, the Federal Home Loan Bank Board was duly appointed the Federal Savings and Loan Insurance Corporation as sole conservator for Southern Floridabanc Federal Savings & Loan Association on February 16, 1989.

Dated: February 21, 1989.

By the Federal Home Loan Bank Board.
Nadine Y. Washington,
Assistant Secretary.
[FR Doc. 89-4382 Filed 2-23-89; 8:45 am]
BILLING CODE 6720-01-M

Sun Savings Association, F.A., Kansas City, KS; Appointment of Conservator

Notice is hereby given that pursuant to the authority contained in section 5(d)(6)(A)(i), of the Home Owner's Loan Act of 1933, as amended, 12 U.S.C. 1464(d)(6)(A)(i), and 12 U.S.C. 1701c (c)(2)(1982), as amended, the Federal Home Loan Bank Board was duly appointed the Federal Savings and Loan Insurance Corporation as sole conservator for Sun Savings Association, F.A., Kansas City, Kansas, on February 16, 1989.

Dated: February 21, 1989.

By the Federal Home Loan Bank Board.
John F. Ghizzoni,
Assistant Secretary.
[FR Doc. 89-4383 Filed 2-23-89; 8:45 am]
BILLING CODE 6720-01-M

Universal Savings and Loan Association, A Federal Savings and Loan Association, Scottsdale, AZ; Appointment of Conservator

Notice is hereby given that pursuant to the authority contained in section 5(d)(6)(A)(i), of the Home Owner's Loan Act of 1933, as amended, 12 U.S.C. 1464(d)(6)(A)(i), and 12 U.S.C. 1701c (c)(2)(1982), as amended, the Federal Home Loan Bank Board was duly appointed the Federal Savings and Loan Insurance Corporation as sole conservator for Universal Savings and Loan Association, A Federal Savings and Loan Association, Scottsdale, Arizona, on February 16, 1989.

Dated: February 21, 1989.

By the Federal Home Loan Bank Board.
Nadine Y. Washington,
Assistant Secretary.
[FR Doc. 89-4384 Filed 2-23-89; 8:45 am]
BILLING CODE 6720-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice that the following agreement(s) has been filed with the Commission pursuant to section 15 of the Shipping Act, 1916, and 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 protests or 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 and protests are found in § 560.7 and/or § 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.

Any person filing a comment or protest with the Commission shall, at the same time, deliver a copy of that document to the person filing the agreement at the address shown below.

Agreement No.: 224-002550-002.

Title: Port of New Orleans Terminal Agreement.

Parties:

Board of Commissioners of the Port of New Orleans
Sea-Land Service, Inc.

Synopsis: The Agreement provides for additional marshalling space and provides for additional rent based on the number of total tons loaded or discharged to or from vessels berthed at the terminal. The Agreement also provides for a minimum rent should the total tonnage in any one calendar year not exceed 600,000 short tons and includes an increase in the graduated scale based on tonnage following completion of improvements to the existing terminal facility. The Agreement also provides for changes in insurance coverages and permits lessee to discharge vessels other than those which are owned, chartered or operated by lessee at the France Road Berth No. 1.

Filing Party: J. Michael Orlesh, Jr, Director of Port Operations, The Port of New Orleans, P.O. Box 60046, New Orleans, LA 70160.

Agreement No.: 224-003829-003.

Title: Port of New Orleans Terminal Agreement.

Parties:

Board of Commissioners of the Port of New Orleans (Board).
Baton Rouge Marine Contractors, Inc.

Synopsis: The Agreement extends the term of the basic agreement for one additional five-year period beyond the present five-year term and changes rent for the second five-year renewal period. The agreement also clarifies the definition of "movement" to mean that it includes cargoes from a ocean-going vessel to the terminal or from the terminal to an ocean going vessel. It also clarifies that the Board may operate the existing container cranes or install or operate additional container cranes or may grant additional permits to third persons to install or operate such cranes, and provides for changes in the *Non-Exclusive Franchise* provisions of the basic agreement.

Filing Party: J. Michael Orlesh, Jr, Director of Port Operations, The Port of New Orleans, P.O. Box 60046, New Orleans, LA 70160.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

Dated: February 21, 1989.

[FR Doc. 89-4262 Filed 2-23-89; 8:45 am]

BILLING CODE 6730-01-M

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.: 224-003928-002.

Title: City of Long Beach Terminal Agreement.

Parties:

City of Long Beach

Atlantic Richfield Company.

Synopsis: The Agreement amends the basic agreement Agreement No. 224-003928, to provide a new guaranteed annual minimum compensation and minimum limits of coverage of liability and property insurance.

Agreement No.: 224-200060-007.

Title: Port of New Orleans Terminal Agreement.

Parties:

Port of New Orleans

Coastal Cargo Company (Coastal)

Synopsis: The Agreement amends the basic agreement (Agreement No. 224-200060) to reflect Coastal's exercise of an option to cancel ten(10) sections of the leased premises and a proportionate reduction in rent for the leased property.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

Dated: Feb. 21, 1989.

[FR Doc. 89-4263 Filed 2-23-89; 8:45 am]

BILLING CODE 6730-01-M

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice that the following agreement(s) has been filed with the Commission pursuant to section 15 of the Shipping Act, 1916, and 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 protests or 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 and protests are found in § 560.7 and/or § 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.

Any person filing a comment or protest with the Commission shall, at the same time, deliver a copy of that document to the person filing the agreement at the address shown below.

Agreement No.: 224-200220

Title: Port of Houston Authority Terminal Agreement

Parties: Port of Houston Authority of Harris County, Texas (Port) Shippers Stevedoring Company (SSC)

Synopsis: The Agreement provides that SSC will perform or have performed freight handling services at the Port's Barbours Cut Transit Sheds Number Two Section A. The services include the loading and unloading of cargo to or from land carriers at the terminal facility, and use of the railroad loading area. The Agreement's term expires December 31, 1990.

Filing Party: Algenita Scott Davis, Counsel, Port of Houston Authority, P.O. Box 2562, Houston, TX 77252-2562.

Agreement No.: 224-200219

Title: Port of Houston Authority Terminal Agreement

Parties: Port of Houston Authority of Harris County, Texas (Port) Fairway Terminal Corporation (FTC)

Synopsis: The Agreement provides for FTC to perform or have performed freight handling services at the Port's Barbours Cut Transit Sheds Number One Section B. Services provided include loading and unloading of cargo to or from land carriers at the terminal facility, and use railroad loading area. The term of the Agreement expires December 31, 1990.

Filing Party: Algenita Scott Davis, Counsel, Port of Houston Authority, P.O. Box 2562, Houston, TX 77252-2562.

By Order of the Federal Maritime Commission.

Dated: February 17, 1989.

Joseph C. Polking,

Secretary.

[FR Doc. 4240 Filed 2-23-89; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Agency Forms Under Review

February 17, 1989.

Background

On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act of 1980, as per 5 CFR 1320.9, "to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR 1320.9." Board-approved collection of information will be incorporated into the official OMB inventory of currently approved collections of information. A copy of the SF 83 and supporting statement and the approved collection of information instrument(s) will be placed into OMB's public docket files. The following report, which is being handled under this delegated authority, has received initial Board approval and is hereby published for comment. At the end of the comment period, the proposed information collection, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority.

DATE: Comments must be received on or before March 6, 1989.

ADDRESS: Comments, which should refer to the OMB Docket number should be addressed to Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets NW., Washington, DC 20551, or delivered to room B-2223 between 8:45 a.m. and 5:15 p.m. Comments received may be inspected in room B-1122 between 8:45 a.m. and 5:15 p.m. except as provided in section 261(a) of the Board's Rules Regarding Availability of Information, 12 CFR 261.6(a).

A copy of the comments may also be submitted to the OMB Desk Officer for the Board: Gary Waxman, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: A copy of the request for clearance (SF 83), supporting statement, and other documents that will be placed into OMB's public docket files once approved may be requested from the agency clearance officer, whose name appears below. Federal Reserve Board Clearance Officer—Frederick J. Schroeder—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202–452–3822).

Proposal To Approve Under OMB Delegated Authority the Implementation of the Following Report

Report Title: Report on Total Foreign Exchange Turnover.

Agency Form Number: FR 3036 A, B, and C.

OMB Docket Number: 7100–0240.

Frequency: One-time survey for month of April 1989.

Reporters: 154 banks, 15 brokers, and 15 nonbank financial institutions.

Annual Reporting Hours: 1,840.

Estimated Average Hours per Response: 10.

Number of Respondents: 184.

Small businesses are not affected.

General Description of Report

This information collection is voluntary (12 U.S.C. 248(a), 353–359, 3105(b)) and is given confidential treatment (15 U.S.C. 552(b) (4) and (8)).

This survey will gather information for April 1989 on turnover volume in the U.S. foreign exchange market from 154 banking institutions, 15 brokers and 15 nonbank financial institutions. The information will assist in assessing market structure and in implementing monetary policy.

Board of Governors of the Federal Reserve System, February 17, 1989.

William W. Wiles,

Secretary of the Board.

[FR Doc. 89–4278 Filed 2–23–89; 8:45 am]

BILLING CODE 6210–01–M

Federal Open Market Committee; Domestic Policy Directive of December 13–14, 1988

In accordance with § 271.5 of its Rules Regarding Availability of Information (12 CFR 271, *et seq.*), there is set forth below the domestic policy directive issued by the Federal Open Market Committee at its meeting held on December 13–14, 1988.[1] The directive was issued to the Federal Reserve Bank of New York as follows:

The information reviewed at this meeting suggests that, apart from the direct effects of the drought, economic activity has continued to expand at a vigorous pace. Total nonfarm payroll employment rose sharply in October and November, with sizable increases indicated in manufacturing after declines in late summer. The civilian unemployment rate, at 5.4 percent in November, remained in the lower part of the range that has prevailed since early spring. Industrial production advanced considerably in October and November. Housing starts turned up in October after changing little on balance over the previous several months. Growth in recent months, and indicators of business capital spending suggest a substantially slower rate of expansion than earlier in the year. The nominal U.S. merchandise trade deficit narrowed further in the third quarter. Preliminary data for October indicate a small decline from the revised prices and wages suggests little if any change from recent trends.

Interest rates have risen since the Committee meeting on November 1, with appreciable increases occurring in short-term markets. In foreign exchange markets, the trade-weighted value of the dollar in terms of the other G–10 currencies declined significantly further on balance over the intermeeting period.

Expansion of M2 and M3 strengthened in November from relatively slow rates of growth in previous months, especially in the case of M2. Thus far this year, M2 has grown at a rate a little below, and M3 at a rate a little above, the midpoint of the ranges established by the Committee for 1988. M1 has increased only slightly on balance over the past several months, bringing growth so far this year to 4 percent. Expansion of total domestic nonfinancial debt for the year thus far appears to be at a pace somewhat below that in 1987 and around the midpoint of the Committee's monitoring range for 1988.

The Federal Open Market Committee seeks monetary and financial conditions that will foster price stability over time, promote growth in output on a sustainable basis, and contribute to an improved pattern of international transactions. In furtherance of these objectives, the Committee at its meeting in late June reaffirmed the ranges it had established in February for growth of 4 to 8 percent for both M2 and M3, measured from the fourth quarter of 1987 to the fourth quarter of 1988. The monitoring range for growth of total domestic nonfinancial debt was also maintained at 7 to 11 percent for the year.

For 1989, the Committee agreed on tentative ranges for monetary growth, measured from the fourth quarter of 1988 to the fourth quarter of 1989, of 3 to 7 percent for M2 and 3½ to 7½ percent for M3. The Committee domestic nonfinancial debt at 6½ to 10½ percent. It was understood that all these ranges were provisional and that they would be reviewed in early 1989 in the light of intervening developments.

With respect to M1, the Committee reaffirmed its decision in February not to establish a specific target for 1988 and also decided not to set a tentative range for 1989. The behavior of this aggregate will continue to be evaluated in the light of movements in its velocity, developments in the economy and financial markets, and the nature of emerging price pressures.

In the implementation of policy for the immediate future, the Committee seeks to increase somewhat the existing degree of pressure on reserve positions. Taking account of indications of inflationary pressures, the strength of the business expansion, the behavior of the monetary aggregates, and developments in foreign exchange and domestic financial markets, somewhat greater reserve restraint would, or slightly lesser reserve restraint might, be acceptable in the inter-meeting period. The contemplated reserve conditions are expected to be consistent with growth of M2 and M3 over the period from November through March at annual rates of about 3 and 6½ percent, respectively. The Chairman may call for Committee consultation if it appears to the Manager for Domestic Operations that reserve conditions during the period before the next meeting are likely to be associated with a federal funds rate persistently outside a range of 7 to 11 percent.

By order of the Federal Open Market Committee, February 17, 1988.

Normand Bernard,

Assistant Secretary, Federal Open Market Committee.

[FR Doc. 89–4279 Filed 2–23–89; 8:45 am]

BILLING CODE 6210–01–M

[1] Copies of the record of policy actions of the Committee for the meeting of December 13–14, 1988, are available upon request to The Board of Governors of the Federal Reserve System, Washington, DC 20551.

Change in Bank Control; Acquisitions of Shares of Banks or Bank Holding Companies; Wayne Edsall et al.

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than March 13, 1989.

A. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Wayne Edsall,* Bozeman, Montana; to acquire an additional 11.04 percent of the voting shares of WestBanco, West Yellowstone, Montana, and thereby

indirectly acquire First Security Bank of West Yellowstone, West Yellowstone, Montana.

B. Federal Reserve Bank of San Francisco (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *M. Dale Rust,* Sandy, Utah; to acquire an additional 1.05 percent of the voting shares of Guardian Bancorp, Salt Lake City, Utah, and thereby indirectly acquire Guardian State Bank, Salt Lake City, Utah.

Board of Governors of the Federal Reserve System, February 21, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-4390 Filed 2-23-89; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Alcohol, Drug Abuse, and Mental Health Administration

Drug Abuse Treatment Waiting List Reduction Grant Program

AGENCY: Alcohol, Drug Abuse, and Mental Health Administration, HHS.

ACTION: Notice of request for applications.

I. Introduction

Community drug abuse treatment program directors and State drug abuse authorities have consistently reported in recent months and years that they are turning away many individuals who seek treatment for lack of capacity to enroll and serve them. This is particularly true in major metropolitan areas, low income communities and neighborhoods, and other areas with a high incidence of heroin or cocaine/crack use. Although no hard data exist on the true number of persons who would be in treatment if it were available, treatment experts believe they total many thousands. Given the rapidly growing AIDS epidemic in the nation, and the fact that approximately one-third of all new AIDS cases are contracted through use of contaminated intravenous drug needles, it is critical that the nation's ability to provide treatment to drug abusers be expanded.

II. Legal Authority

Section 509E of the Public Health Service Act, as added by Pub. L. 100-690, the Anti-Drug Abuse Act of 1988, authorizes the Alcohol, Drug Abuse, and Mental Health Administration to make grants to public and nonprofit private entities to reduce drug abuse treatment waiting lists by expanding the capacity of existing programs. The U.S. Congress has authorized $100 million for such grants, and appropriated $75 million to be used in Fiscal Year 1989 for this purpose. The President's budget for Fiscal Year 1990 includes a request to Congress that the additional $25 million be appropriated.

III. Purpose and Approach

This RFA requests applications for Waiting List Reduction Grants to help existing drug abuse treatment programs rapidly expand their capacity to serve drug abusers who want treatment but are not currently receiving it, i.e., they are on a waiting list. Grant awards may be used to cover all allowable startup and treatment delivery costs related to expanding a program's treatment capacity. The amount of a grant award, however, will be determined by multiplying the number of proposed new treatment slots by the current cost for each type slot in an applicant's program, i.e., outpatient, residential, other.

Drug abuse treatment programs interested in applying for Waiting List Reduction Grants should consider not only whether they meet the Minimum Statutory Eligibility Requirements described below, but also how they potentially will score under the Review Criteria described in Section VIII. All applications will initially be screened against the minimum requirements; those that meet these requirements will be further evaluated and ranked for funding consideration on the basis of additional evidence and information they provide as described in the Review Criteria. Highest overall funding priority will be given to those applicants that have the greatest need to expand their programs (i.e., they have the largest waiting lists and the longest average wait to enter treatment); propose to create the most new treatment slots; are part of an overall State plan to expand drug abuse treatment capacity; provide State verification of their existing waiting lists; and provide the strongest assurances that funding for their expanded treatment slots will continue to be available after the grant expires.

Grants will be awarded on a competitive basis for one year and are not renewable. Grants are not available under this announcement for programs treating alcoholism or alcohol abuse. However, drug abuse programs that address alcohol problems as part of drug abuse treatment are eligible. Inpatient hospital drug abuse programs are not eligible for funding.

IV. Minimum Statutory Eligibility Requirements

Any public or nonprofit private organization is eligible to apply for a Drug Abuse Treatment Waiting List Reduction Grant. Such an organization must meet the following four statutory requirements:

(1) Be experienced in delivering drug abuse treatment.

To be eligible for consideration for funding, applicants must show that their programs have been in operation for at least one year at the time of application.

(2) On the date the application is submitted, be successfully carrying out a program for the delivery of such services which is approved by the State or Territory.[1]

To be eligible for consideration for funding, applicants must show evidence that they are licensed by an appropriate State authority to provide drug abuse services, or that they possess a "Certificate of Need" to establish a drug abuse treatment program/facility where that is required. In States which do not require either a license or a Certificate of Need, the applicant must secure and submit a letter from the State indicating that applicant is "successfully carrying out a program for delivery of drug abuse services."

(3) Be unable, as a result of the number of requests for admission, to admit individuals any earlier than a month after the individual's request for admission.

In order to be considered eligible for funding, an applicant must show evidence that a waiting list has been maintained for a minimum of 60 days prior to the date of application, and that treatment cannot be provided to individuals on the list for at least 30 days after they applied for admission. The waiting list must be verified by an independent source (e.g., the State or a private auditor), who also must certify that the waiting list meets the following criteria:

- Only individuals who have been screened to determine eligibility for admission are on the waiting list;
- There is a roster, log, file, or equivalent record with names, addresses, and telephone numbers of qualified applicants for admission, date of application, and dates and nature of follow-up contacts;
- There is a policy defining what individuals on waiting lists must do to remain eligible for admission and/or how the provider will go about ensuring

[1] Hereafter, "State" is meant to include Territory.

that applicants for admission remain interested in entering treatment; and

• There are criteria defining when an individual's name is to be removed from the waiting list because of a loss of eligibility for admission or a failure to keep in contact with the provider.

Potential applicants who do not now have such a systematic procedure for documenting requests for admission and for administering a waiting list should develop these immediately.

(4) Provide assurances that the program will have access to financial resources sufficient to continue the program after the one-year grant terminates.

To be eligible for consideration for funding, an applicant must file (at a minimum) an assurance from the chief executive officer(s) of the program's primary funding source(s) that the applicant is eligible for, and will receive, *preferential consideration* for available financial resources needed to continue the expanded treatment capacity once the grant period ends. For public programs, a letter from the head of the State drug abuse authority will meet this requirement. For private non-profit programs, a copy of a letter from the chief executive officer(s) of the primary funding source(s), such as a corporation or foundation, to the treatment organization's Board of Directors will meet the requirement.

If a program relies on small contributions generated by fundraising campaigns as the major source of its funding, the program may submit a detailed plan of fundraising activities in lieu of assurances from funding sources to meet this minimum eligibility criterion. A brief history of previous fundraising efforts also should be included in the plan.

V. "Umbrella" Applications

A State or a federally-recognized Indian tribal governmental body may submit an "umbrella" application to coordinate distribution of funds to local provider organizations. Umbrella applications must contain all required information for each program for which funds are being sought. The State or Indian tribal government must submit assurances (in a cover letter) that:

• The data pertaining to all local treatment programs included in the umbrella application are accurate;

• The waiting lists of all the local programs are valid and that the waiting list system of each meets the criteria in Section IV-3;

• The current cost data provided by the local programs on residential, outpatient, or other treatment slots are valid and realistic; and

• The expansion plans of the local programs are sound and the programs have appropriate managerial capacity to handle the added capacity.

Each individual treatment program in an umbrella application will be ranked separately in the review process. Programs will be funded principally in rank order, irrespective of whether they are included in an umbrella application or have applied independently. Only one award will be made to each umbrella applicant, which may include funds for all or only some of the treatment programs covered by the application. Umbrella applicants may not use a grant award to support any projects other than those named on the Notice of Grant Award. Umbrella applicants will be legally and financially responsible for all aspects of the grant.

If a local treatment program is seeking support under an umbrella application, it may not also apply independently.

VI. Application Characteristics

Applicants should use form PHS 5161-1 (Rev. 11-88). The title of this RFA, "Drug Abuse Treatment Waiting List Reduction Grant," should be typed in item 10 on the face page.

Instructions are provided in the application kit for filling out parts I, II, and III of the application form. For Part IV, "Program Narrative," the information itemized in 1-8 below must be included.

An umbrella applicant must submit a cover letter designating it as an umbrella application and listing all programs covered by the application. Umbrella applicants should file only one form PHS 5161-1 (Rev. 11-88), with consolidated budget information for all programs in the umbrella application. However, umbrella applicants also must submit separate budget sheets and a separate Program Narrative for each program.

All information provided in applications must be accurate and truthful to the best of the applicant's knowledge, under penalty of all applicable Federal laws and regulations.

Program Description (Maximum of 5 Pages)

1. A description of the treatment program
   a. Name, address, and telephone number of program
   b. When it was established
   c. Ownership and governance
   d. Drug abuse incidence and prevalence data for area served
   e. Admission and discharge patterns
   f. Demographic characteristics of client population (e.g., sex, age, and ethnicity)
   g. Name and telephone number of program contact person

2. A description of how the program will establish and operate new treatment slots, including rental or leasing of additional space, staffing plans, development of new program components, etc.

Data

3. Current number of treatment slots

a. outpatient _____
b. residential _____
c. other (Specify) _____

4. Current annual cost per slot for each modality in program

a. outpatient $_____
b. residential $_____
c. other (Specify) $_____

Describe how costs were determined.

5. Proposed number of treatment slots to be created with grant funds

a. outpatient _____
b. residential _____
c. other (Specify) _____

6. Quarterly schedule for bringing new treatment slots into operation. (All new slots must be operational by the end of the one-year grant period.)

NEW SLOTS IN OPERATION

Quarter	Residential	Out-Patient	Other*
1			
2			
3			
4			
Totals			

*Please indicate type of slot.

7. Estimates of number of slots (residential, outpatient, other) to be used for treatment of users of heroin, cocaine/crack, marijuana, amphetamine, drug/alcohol combined, and other (specify).

NUMBER OF SLOTS

Drug of abuse	Residential	Out-Patient	Other (specify)
Heroin			
Cocaine/Crack			
Marijuana			
Amphetamine			
Drug/alcohol comb.			

NUMBER OF SLOTS—Continued

Drug of abuse	Residential	Out-Patient	Other (specify)
Other (specify)			

8. Waiting List Information:

a. Total number of persons on waiting list for one month or more at time of application _____
b. Average number of days these persons have been on waiting list _____

Documentation To Establish Minimum Eligibility

9. Attach documentation specified below to demonstrate minimum eligibility by complying with four statutory criteria (see Section IV for statutory eligibility requirements); and additional documents needed for rating purposes (see Section VIII). Mark documents "Eligibility," "Rating," or both, as appropriate.

Requirement 1—Verification of at least one year's experience in delivering drug abuse treatment: Copies of individual program's charter, past licenses, etc.

Requirement 2—Verification that the applicant is successfully carrying out a drug abuse treatment program that is approved by the State: Copies of appropriate current licensure, certification, or accreditation. If the program is operating in a State which does not require any of these, attach a letter from the State drug abuse authority saying that the applicant is "successfully providing a program of drug abuse treatment."

Requirement 3—Demonstration that the applicant is unable, as a result of the number of requests for admission, to admit individuals any earlier than one month after a request for admission: Copies of waiting lists, independent verification of waiting list accuracy, and certification that waiting list procedures described in Section IV–3 are in place. (In order to assure confidentiality to persons on waiting lists, obscure all last names, last four digits of telephone numbers, and street numbers. Also obscure any other notations that could identify a specific individual. First names, telephone exchanges, street names, demographic and eligibility information, follow-up information, dates, and other notations should be left intact.)

Requirement 4—Assurances that the program will have access to financial resources sufficient to continue the program after the grant terminates: Letters from primary funding source(s) providing assurance of access to continued support for expanded treatment capacity beyond the grant period, or, if appropriate, a fund-raising plan as described in Section IV–4.

An inventory of the above documents (see format in application kit) should be completed by every program, whether part of an umbrella application or applying independently, to help assure that all relevant documents have been provided.

VII. Application Process

Application kits containing all necessary forms and instructions to apply for a Drug Abuse Treatment Waiting List Reduction Grant may be obtained from: Waiting List Program, Technical Resources, Inc., P.O. Box 5347, Rockville, Maryland 20851, 301–770–3153.

The signed original and two permanent, legible copies of the completed application, and all supporting materials, should be sent to: Waiting List Program, Technical Resources, Inc., P.O. Box 5347, Rockville, Maryland 20851.

Important: The exterior of the envelope, package, or express delivery pouch should be clearly marked: "WAITING LIST"

Additional copies of applications will need to be made in order to have enough copies for review. Accordingly, one copy of the application must be provided unbound with no staples, paper clips, fasteners, or heavy or lightweight paper stock within the document itself. Refrain from attaching or including anything that cannot be photocopied using automatic processes. Use only 8½" x 11" white paper, with printing only on one side. Pages must be numbered consecutively from beginning to end, including any attachments.

Applications must be complete and contain all information needed for review, and be self-explanatory to reviewers who are unfamiliar with the current treatment program of the applicant. No addenda will be accepted later than the Receipt Date unless specifically requested by ADAMHA.

Applications submitted in response to this announcement are subject to the intergovernmental review requirements of Executive Order 12372, as implemented through Department of Health and Human Services regulations at 45 CFR Part 100. Through this process, States, in consultation with local governments, are provided the opportunity to review and comment on applications for Federal financial assistance. Applicants should contact the State's Single Point of Contact (SPOC) as early as possible to determine the applicable procedure. A current listing of SPOCs will be included in the application kit. SPOC comments are due one month after application Receipt Date. Send to: "Waiting List," Office of Communications and External Affairs, ADAMHA, Room 13C–06, 5600 Fishers Lane, Rockville, MD 20857.

Application Receipt and Review Schedule

Receipt Date: June 1, 1989.

Estimated Funding Date: September 1989.

Applications received after the above receipt date will not be reviewed or eligible for funding.

Applications approved but unfunded will be held for consideration for funding in FY 1990 should Congress appropriate additional monies for this program.

VIII. Review Process

Applications submitted in repsonse to this RFA will be reviewed by the Alcohol, Drug Abuse, and Mental Health Administration to determine if they meet the minimum statutory eligibility requirements (see Section IV).

Applications that are ineligible, incomplete for review, or non-responsive to this RFA will be screened out by ADAMHA upon receipt without further consideration and the applicants notified.

Eligible applications will be reviewed for rating on the basis of the Review Criteria specified below by a panel of persons from inside and outside the Federal government who are knowledgeable about drug abuse treatment programs.

Review Criteria

Applications will be rated as follows. A total of 100 points is available.

Requirement 1: Experience in delivering drug abuse treatment. Applications will be evaluated on this requirement only to determine if they meet minimum eligibility, not for rating.

Requirement 2: The applicant is, on the date the application is submitted, successfully carrying out a program for the delivery of such services approved by the State. (Total possible points=20)

If an independent treatment program files an application directly (not under an umbrella application), ten (10) points will be given if a letter is included from the State drug abuse authority *endorsing* the applicant's services.

Twenty (20) points will be given to applicants that provide evidence that their request for funds to reduce waiting

lists is part of an overall State effort to expand drug abuse treatment capacity. Submission of the applicant's request under a State umbrella application will qualify the applicant for these points. For programs applying independently, including a copy of appropriate State capacity expansion plans that name the applicant agency will qualify the applicant for these points.

Requirement 3: As a result of the number of requests for admission to the program, [the applicant] is unable to admit any individual into the program any earlier than one month after the date on which the individual makes a request for such admission. (Total possible points=60)

On this requirement, points will be assigned on three different measures:

Size of Waiting List

Up to 15 points will be given on the basis of the total number of individuals who have been on a program's waiting list for a month or more.

Length of Wait for Admission

Up to 15 points will be given based on the average number of days persons seeking treatment have been on the program's waiting list.

In order to earn points on either of the two above measures, applicants must be certain to submit documents that clearly demonstrate both the size of the list of drug abusers who have been waiting for treatment more than 30 days, and the average length of the wait, (i.e. the waiting list itself, with personal identifiers removed, and a calculation of the average length of wait in days).

Number of Treatment Slots To Be Established

Up to 30 points will be assigned based on the number of new treatment slots to be established with grant funds, i.e., the more new slots, the more points awarded.

Requirement 4: An applicant must provide satisfactory assurances that, after Federal funding is no longer available, the applicant will have access to financial resources sufficient to continue the program. (Total possible points=20)

Ten (10) points will be given to applicants that include, as part of the application, documents from the chief official(s) of funding source(s) (e.g., State drug abuse director, foundation board chairman, corporate chief financial officer) indicating that funding for continuation of expanded treatment capacity beyond the grant period is a *top priority* of the appropriate funding source, and that any funding requests made to State legislatures, corporate or foundation boards, will make continuation of new treatment capacity the first allocation.

Twenty (20) points will be given to applicants that include a letter(s) from funding source(s) assuring that funds *will be available* to continue the expanded treatment capacity after Federal funding terminates.

IX. Award Procedure

Upon completion of the review, each program, whether submitted independently or as part of an umbrella application, will be assigned a composite score based on the above review criteria. Composite scores will be used to place applications in rank order for consideration for grant awards. All or only some of the programs included in an umbrella application may receive support. State umbrella applicants will receive a Notice of Grant Award specifying which projects are being funded. The State will be responsible for notifying the individual programs. ADAMHA will send a Notice of Grant Award to independent applicants who have been approved for funding, and a letter to other independent applicants regarding the final action on their application.

Funding decisions will be based primarily on the ranking of independent applications and of programs within umbrella applications, according to the review process described above. However, overall program and geographic balance and public health needs may also be considered in selecting applications and programs for support.

Period of Support

Support may be requested for a period of up to 12 months. Current legislation does not permit additional years of support.

Terms and Conditions of Support

Allowability of Costs

Grant funds may be used to cover all allowable costs clearly related and necessary to creating the new treatment capacity to eliminate the full or a portion of the waiting list as constituted on the date of the application.

The amount of a grant will be based on the number of new treatment slots scheduled to be created by the program, multiplied by the annual cost of each specific type slot created (outpatient, residential, other) as determined from current cost information provided in the application.

A State or Indian tribal government awarded an umbrella grant may use up to 2 percent of the grant funds to cover the administrative costs of managing the grant.

All new slots must be operational by the end of the grant period. No grant funds may be expended after the 12-month grant period ends.

Grant funds must be used to supplement, not supplant, existing treatment service delivery activities.

Grant funds may not be used to defray the direct treatment costs for any indiviudual who has been in treatment within 30 days in another program operated by the same applicant, except where the individual had previously been enrolled in the expanded program and is being readmitted. The provision of limited services to a waiting individual as a means of keeping him/her engaged, however, does not constitute treatment and does not affect eligibility for reimbursement of that individual's treatment under the grant.

Umbrella awards may be used only to fund those programs approved in the Notice of Grant Awards to the applicant. Funds may not be shifted among approved programs.

Non-Allowable Costs

Applicants must provide a written assurance that grant funds will not be used to:

(1) Provide inpatient hospital services;

(2) Make cash payments to intended recipients of services under the program involved;

(3) Purchase or improve real property (other than minor) remodeling of existing improvements to real property) or to purchase major medical equipment;

(4) Satisfy any requirement for the expenditure of non-Federal funds;

(5) Provide financial assistance to any entity other than a public or nonprofit private entity.

Availability of Funds

In FY 1989, $75 million is available to award grants under this RFA. If appropriated by Congress, an additional $25 million will be available in FY 1990.

X. Grant Administration

Grants must be administered in accordance with the *PHS Grants Policy Statement* (Rev. January 1, 1987), which is available for $4.50 from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. When ordering copies, the GPO stock number, GPO 017-020-00092-7, should be referenced.

Federal regulations at Title 45 CFR Parts 74 and 92, "Administration of Grants," are applicable to these awards.

Confidentiality of Drug Abuse Patient Records

Grantees must agree to maintain the confidentiality of drug abuse client data in accordance with Federal regulations governing "Confidentality of Alcohol and Drug Abuse Patient Records" (42 CFR Part 2).

Final Reports

A Programmatic Performance Report of the progress made in meeting expansion goals must be submitted to ADAMHA within 90 days after completion or termination of the grant. The Report should include the following information:

1. Activities undertaken to expand treatment availability;
2. Number of new slots established, by type of slot;
3. Number of persons served, by type of drug problem and treatment modality;
4. Date that the first individual taken off the original waiting list during the grant period was placed in treatment;
5. Date that the last individual taken off the waiting list during the grant period entered treatment;
6. Total number of persons on waiting list on date of application and at conclusion of grant period;
7. Average number of days persons in 6. had been on waiting list at date of application, and at end of grant period;
8. Problems encountered in meeting goals;
9. Progress made in raising funds to continue the grant-initiated program.

Grantees are also required to submit a Financial Status Report which presents actual outlays and obligations of funds in a manner consistent with the official accounting practices of the State or independent treatment program.

An original and two copies of the final reports must be submitted to the ADAMHA Grants Management Officer within 90 days of the expiration or termination of the Grant.

Site Visits

Although no site visits to applicant programs or grantees are planned, the Federal government reserves the right to make such site visits or inspections.

XI. Further Information

Contacts for Programmatic Information

Address: Office of Communications and External Affairs, Alcohol, Drug Abuse, and Mental Health Administration, 5600 Fishers Lane, Rockville, MD 20857.

Telephone: Glenn Kamber or Jim Helsing (301) 443-3783, Tom Vischi (301) 443-3820.

Contact for Grants Management Information

Address: Grants Management Branch, National Institute of Mental Health, 5600 Fishers Lane, Room 7C-05, Rockville, MD 20857.

Telephone: Bruce Ringler or Diana Trunnell (301) 443-3065, Steve Hudak (301) 443-4456.

The Catalog of Federal Domestic Assistance number for this program is pending.

Joseph R. Leone,

Associate Administrator for Management Alcohol, Drug Abuse, and Mental Health Administrator.

[FR Doc. 89-4261 Filed 2-23-89; 8:45 am]

BILLING CODE 4160-20-M

Centers for Disease Control

[Announcement No. 910]

Program to Evaluate Persistence of Antibody After Vaccination With Edmonston-Zagreb and Schwarz Measles Vaccines

Introduction

The Centers for Disease Control (CDC) announces the availability of funds to assist in the study of antibody persistence in children who received Edmonston-Zagreb (EZ) and Schwarz measles vaccine at 6 months of age.

Authority

This program is authorized under the Public Health Service Act: Section 317(k)(1) (42 U.S.C. 247b(k)(3)), as amended.

Eligible Applicants

The Mexican Ministry of Health is conducting a large vaccine trial which includes children vaccinated at 6 and 9 months of age with EZ and Schwarz vaccines. The Mexican Ministry of Health has requested CDC to collaborate in conducting this study to obtain information concerning its potential use to eliminate measles in Mexico and other developing countries. Adequate numbers of infants who received these vaccines can be located in order to evaluate antibody persistence. Assistance will be provided only to the Mexican Ministry of Health which as a result of the current study has access to a cohort of children who received the EZ and Schwarz measles vaccine at 6 months of age and for whom serial serum specimens are available. Both the field workers and epidemiologists in Mexico have demonstrated the ability to execute these studies. No other applications are solicited or will be accepted.

Availability of Funds

Approximately $10,000 is available in Fiscal Year 1989 to fund this award. The award is expected to begin on or about April 1, 1989, for a 12 month budget period in a 1-2 year project period. Funding estimates may vary and are subject to change. A continuation award within the project period will be made on the basis of satisfactory performance and the availability of funds.

Purpose

The purpose of this cooperative agreement is to:

1. Evaluate the antibody status between 12-18 months after vaccination of infants who were vaccinated with EZ and Schwarz measles vaccine administered by subcutaneous injection at 6 months of age.
2. Evaluate antibody titers in mothers of infants who had been vaccinated in the study.

Program Requirements

1. Recipient Activities

A. Develop a protocol to assess the antibody status of recipients of EZ and Schwarz high and medium doses of vaccine more than 1 year after vaccination. The protocol should assess both infants immunized and their mothers and should include a sufficient sample size to meet the tests for statistical validity.

B. Implement the protocol.

C. Analyze the data and publish the results.

2. CDC Activities

A. Collaborate in study design and protocol development.

B. Assist in monitoring the collection of data.

C. Test or arrange for testing of sera for measles antibody by plaque-neutralization, and enzyme immunoassay.

D. Assist with data entry and data analysis, and collaborate in publishing the results.

Evaluation Criteria

The application will be reviewed and evaluated by a CDC convened ad hoc committee based on the following criteria:

1. The extent to which the proposed objectives are measurable, specific, time-phased, and related to required recipient activities and program purpose.

2. The quality of the applicant's plan for conducting program activities and the potential effectiveness of the proposed methods in meeting its objectives.

3. The qualifications of the project personnel and evidence of their experience in related activities.

In addition, consideration will also be given to the extent that the budget request and proposed use of project funds are appropriate and reasonable.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance Number is 13.283.

Application Submission and Deadline

The original and two copies of the application (PHS 5161–1) must be submitted to Nancy C. Bridger, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road NE., Room 300, Atlanta, GA 30305 on or before March 1, 1989.

Where to Obtain Additional Information

Additional information regarding the business aspects of this project may be obtained from Marsha D. Driggans, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road NE., Room 300, Atlanta, GA 30305, (404) 842–6640.

Please refer to Announcement Number 910 when requesting information regarding this program.

Technical assistance may be obtained from Lauri Markowitz, M.D., Division of Immunization, Center for Prevention Services, Centers for Disease Control, Atlanta, GA 30333, (404) 639–1870.

Dated: February 16, 1989.

Robert L. Foster,

Acting Director, Office of Program Support, Centers for Disease Control.

[FR Doc. 89–4283 Filed 2–23–89; 8:45 am]

BILLING CODE 4160–18–M

Family Support Administration

Forms Submitted to the Office of Management and Budget for Clearance

The Family Support Administration (FSA) will publish on Fridays, information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). Since the last publication on February 3, 1989, the following package was submitted to OMB:

(For a copy of the package below, call the FSA, Reports Clearance Officer on 202–252–5597.)

Adult Quality Control Summary Tables (1–4), Form FSA–4342—0970–0002. This form is needed and used to determine whether public funds appropriated for the financial aid program are properly spent by the three Territories—Guam, Puerto Rico and the Virgin Islands. The information contained in this summary is based on a sample review of the case folders received by the three Territories. The affected public will consist of agencies which administer approved public assistance plans. *Respondents:* Individuals or Households; *Number of Respondents:* 3; *Frequency of Response:* 2; *Average Burden per Response:* 4 hours; *Estimated Annual Burden:* 24 hours.

OMB Desk Officer: Justin Kopca.

Written comments and recommendations for the proposed information collection should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3201, 1725 17th Street NW., Washington, DC 20503.

Date: February 13, 1989.

Naomi B. Marr,

Associate Administrator, Office of Information, and Management Systems, FSA.

[FR Doc. 89–4269 Filed 2–23–89; 8:45 am]

BILLING CODE 4150–04–M

Food and Drug Administration

[Docket No. 88D–0367]

Bacteriological Analytical Manual, Chapter 29—Listeria Isolation; Revised Method of Analysis; Correction

AGENCY: Food and Drug Administration.

ACTION: Notice; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a notice of revised methodology for detecting and confirming the presence of *Listeria monocytogenes* in food that appeared in the Federal Register of November 1, 1988 (53 FR 44148). The revised method will be incorporated into and replace the *Listeria* isolation method in Chapter 29—"Listeria Isolation" of the *Bacteriological Analytical Manual* (6th Edition, Supplement, 1987). The formula for preparing Tryptose Broth and Agar for Serology in the revised methodology was not correct. In addition, the notice and the revised methodology contained typographical errors. This document corrects these errors.

FOR FURTHER INFORMATION CONTACT: George J. Jackson, Center for Food Safety and Applied Nutrition (HFF–234), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–245–1051.

SUPPLEMENTARY INFORMATION: In FR Doc. 88–25236, appearing at page 44148 in the **Federal Register** of Tuesday, November 1, 1988, the following corrections are made:

1. On page 44148, in the 1st column, under "SUMMARY," in the 8th line, "monocytiogenes" should read "monocytogenes"; and in the 18th line, "analytical" should read "analytically".

2. On the same page, in the first column, under **"SUPPLEMENTARY INFORMATION,"** in the fifth and sixth lines, "Association of Analytical Chemists (AOAC)" should read "Association of Official Analytical Chemists (AOAC)".

3. On the same page, in the 3rd column, in the 32nd and 33d lines, "FDA believes that is the public interest" should read "FDA believes that it is in the public interest".

4. On page 44149, Table 3 at the bottom of column three should read:

TABLE 3—CAMP TEST REACTIONS OF LISTERIA SPECIES

Species	Hemolytic reaction	
	Staphylococcus aureus	Rhodococcus equi
L. monocytogenes	+	–
L. ivanovii	–	+
L. innocua	–	–
L. welshimeri	–	–
L. seeligeri	+	–

5. On page 44150, in the 3rd column, under "E. Identification Procedure," in the 12th line, "Monocytogenes" should read "monocytogenes".

6. On page 44151, in the 2nd column, under "9.", in the 17th line, "If not color" should read "If no color".

7. On the same page, in the second column, under "12.", in the fourth line, "35 °C *Listeria*" should read "35 °C. *Listeria*".

8. On the same page, in the second column, under "14.", in the eighth line, "later" should read "latter".

9. On the same page, in the 3rd column, under "F. Serology," in the 6th and 8th lines, "24 h." should read "24 h"; and in the 12th and 13th lines, "Spin at 1600 × T3g for 30 min." should read "Spin at 1600 × g for 30 min."

10. On the same page, in the 3rd column, under "H. CAMP Test," in the 2nd line, *"S. Aureus* and *R. Equi* Are Available" should read *"S. aureus* and *R. equi* are available"; in the 3rd line "From the Division" should read "from the Division"; in the 4th line, "Street, S.W," should read "St. SW.,"; and in the 21st line, "hemollysis" should read "hemolysis".

11. On page 44152, in the 1st column, under "I. Interpretation of Analyses Data for Speciation," in the 13th line, *"L.* or *murrayi."* should read *"L. murrayi."*

12. On the same page, in the 3rd column, under "Chapter 29. Media Supplement," in the 10th and 11th lines, *"2. Purple Carbohydrate Frementation Broth Base (M1 16)"* should read *"2. Purple Carbohydrate Frementation Broth Base (M116)"*.

13. On page 44153, in the second column, under *"9. Tryptose Broth and Agar for Serology,"* in the second line, "NaC1, 0.85% solution. . . . .8.5 g" should read "NaC1. . . . .5 g".

Dated: February 17, 1989.

John M. Taylor,

Associate Commissioner for regulatory Affairs.

[FR Doc. 89-4257 Filed 2-23-89; 8:45 am]

BILLING CODE 4160-01-M

Studies for the Development and Improvement of Analytical Methodology for Animal Drug Residues in Tissues; Request for Cooperative Agreement Applications

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA), Center for Veterinary Medicine (CVM), is announcing the anticipated availability of approximately $100,000 for fiscal year (FY) 1989 for cooperative agreements to support studies on the development of analytical methodologies for residues of animal drugs in tissues. Appropriated FY 1989 funds are currently available for these studies. it is anticipated that one award will be made in FY 1989 and additional awards, at the same level of funding, may be made from the subsequent year appropriation, if Federal fiscal year funds become available. The purpose of these agreements is to provide financial assistance to support research on new or emerging techniques of analytical chemistry that have not been applied to any great extent to the analysis of animal drug residues. Support for this program may be for a period of up to 3 years.

DATES: Applications must be received by 5 p.m., e.s.t., May 19, 1989. The eariest date for award is September 30, 1989.

ADDRESS: Completed applications should be submitted to, and application kits are available from, Barabara C. Moy (address below).

FOR FURTHER INFORMATION CONTACT: Programmatic Aspects of the Program: David B. Batson Center for Veterinary medicine (HFV-500), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-6510.

Business Management Aspects of the Program: Barbara C. Moy, State Contracts and Assistance Agreements Branch (HFA-520), Park Bldg., Rm. 3-20, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-6170.

Note: Applications hand-carried or commercially delivered should be addressed to the Park Bldg., Rm. 3-20, 12420 Parklawn Dr., Rockville, MD 20857.

SUPPLEMENTARY INFORMATION: FDA's authority to fund research projects is set out in section 301 of the Public Health Service Act (42 U.S.C. 241). Cooperative agreements are authorized under Pub. L. 95-224. FDA's research program is described in the catalog of Federal Domestic Assistance No. 13.103.

I. Background

Subpart B of 21 CFR 556.1 contains prescribed tolerances for residues of new animal drugs in red meat, poultry, and milk. To ensure that the established tolerances are not exceeded, FDA requires analytical methods that can be used to monitor and enforce compliance with the approved conditions of safe use of drugs in animals intended for human food.

Because the responsibility for providing analytical methods for specific approved drugs in meat and milk rests primarily with a drug's sponsor, FDA is interested in funding research on: (1) Multi-residue procedures, i.e., methods of analysis that can be used to reliably quantitate and confirm the identity of classes of drug residues; (2) methods for residues of unapproved drugs that may be used illegally in food-producing animals; and (3) chemical-based methods of analysis that can be used to confirm analytical results obtained with currently available antimicrobial screening assays for several approved classes of antibiotics used in food-producing animals.

II. Research Goals and Objectives

These cooperative agreements are intended to provide financial assistance to analytical chemists conducting research and development on procedures to isolate, separate, quantitate, and confirm the identity of selected animal drug residues in tissue matrices. FDA's overall goal is to reduce the incidence of violative drug residues by improving the efficiency and effectiveness of FDA and USDA monitoring and regulatory programs for animal drugs. Thus, special consideration will be given to proposals incorporating new or emerging techniques of analytical chemistry that have not been applied to a large extent to the analysis of animal drug residues.

The agency anticipates that analytical procedures developed under these cooperative agreements will be used primarily to accomplish two ojectives. First, they could be used in residue monitoring programs. Desirable attributes of methods used for this purpose include high sample throughout, multi-residue capability, and a low incidence of false postivies and especially, false negative results. Second, analytical values obtained using these methods could be used to support regulatory actions in courts of law. The high standards of specificity, precision, low and reproducible error, and ruggedness that all good analytical procedures possess are especially critical for regulatory methods.

Although some analytical techniques, such as tandem mass spectrometry, might accommodate all the required attributes of a regulatory method of analysis, two or more separate procedures will be needed for most drug residues. For example, a rapid, multi-residue immunoassay interfaced with a senstive mass spectrometric procedure to confirm the identity of any over-tolerance residues found with the screen might constitute an effective regulatory method.

III. Animal Drug List

The following is a list of animal drugs and the corresponding edible tissue(s) that are of current analytical interest to FDA. Investigators are strongly encouraged to select a class of drugs from this listing for methods development. Predicated upon the quality of the applications received, FDA intends to support research grant activity in each of the drug classes listed below.

1. B-lactams [1] (Kidney and milk)

[1] These drugs require methodologies with measurement sensitivity in the 1 to 10 parts per billion range. Other drugs in the above lists require methods in the 100 parts per billion range.

Ampicillin
Cephapirin
Cloxacillin
Hetacillin
Penicillin

2. Aminoglycosides and related antibiotics (kidney and milk)

Neomycin
Streptomycin
Dihydrostreptomycin
Hygromycin-B
Gentamicin
Spectinomycin

3. Nitrobenzamides and their reduced (amino) metabolites (poultry liver and muscle)

Aklomide
3,5-Dinitrobenzamide
Zoalene

4. Phenothiazine [1] (bovine muscle, kidney, and liver)

5. Piperazine [1] (bovine muscle, kidney, and liver)

IV. Reporting Requirements

A quarterly Financial Status Report (SF–269) and program progress reports shall be required. An original and two copies of these reports shall be submitted to the FDA Grants Management Officer within 30 days following each Federal fiscal quarter, except the fourth report which shall serve as the annual report and shall be due 90 days after the budget expiration date. The Center for Veterinary Medicine (CVM) program staff shall advise the grantee of the suggested format for the program progress report at the appropriate time. A final Financial Status Report (SF–269), program progress report, and invention statement must be submitted within 90 days after the expiration date of the approved project period.

V. Mechanism of Support

A. Award Instrument

Support for this program will be in the form of cooperative agreement awards. These awards will be subject to all policies and requirements that govern the research grant programs of the Public Health Service, including the provisions of 42 CFR Part 52 and 45 CFR Parts 74 and 92. The regulations promulgated under Executive Order 12372 do not apply to this program.

B. Eligibility

These cooperative agreements are available to any public or private nonprofit organization (including State and local units of government) and to any for-profit organization. For-profit organizations must exclude fees or profit from their request for support.

C. Length of Support

The length of support will depend on the nature of the study and may extend beyond 1 year, but not exceed 3 years. For studies where the expected date of completion is more than 1 year, noncompetitive continuation of support beyond the first year will be based upon performance during the preceding year and the availability of Federal fiscal year appropriations.

D. Funding Plan

The number of studies funded will depend on the quality of the applications received and the availability of Federal funds. FDA may fund at least one application from each drugs class; however, this depend on quality and the availability of funds.

VI. Delineation of Substantive Involvement

Inherent in the cooperative agreement award is substantive involvement by the awarding agency. Accordingly, FDA will have a substantive involvement in the programmatic activities of all the projects funded under this request for applications (RFA). Involvement may be modified to fit the unique characteristics of each application. Substantive involvement includes, but is not limited to, the following:

1. FDA will appoint project officers who will actively monitor the FDA-supported program under each award. During monitoring, FDA may direct or redirect the selection of the animal drugs to be studied.

2. FDA will establish an Analytical Advisory Group which will provide guidance and direction to the program with regard to the animal drugs and animal tissues to be investigated. In some cases, FDA scientists will collaborate with grantees in determining the methodological approaches to be used.

3. FDA scientists will collaborate with the recipient and have final approval on the experimental protocol. This collaboration may include protocol design, data analysis, interpretation of findings, and co-authorship of publications.

4. FDA will cooperate extensively in the production of animal tissues containing incurred residues.

VII. Review Procedures and criteria

A. Review Methods

Applications will undergo initial review by experts in the fields of analytical chemistry, drug chemistry, and bioanalysis. The experts will review and evaluate each application based on its scientific merit. The applications will be subject to a second-level review to evaluate them, based on their relevance to FDA's mission in the regulation of animal drugs.

B. Review Criteria

Applications must be responsive to this RFA. Applications that are judged to be nonresponsive will not be considered for funding under this RFA and will be returned to the applicant. Applications will be reviewed according to the following criteria:

1. Responsiveness to the RFA;

2. Whether the proposed study is within the budget and deadlines specified in the RFA;

3. Request for financial support is adequately justified and fully documented;

4. Soundness of the rationale for the proposed study;

5. Appropriateness of the study design to answer the question posed;

6. Availability and adequacy of laboratory and associated animal facilities;

7. Availability and adequacy of support services, e.g., biostatistical, computer, etc., and;

8. Research experience, training, and competence of the principal investigator and support staff.

VIII. Submission Requirements

The original and six copies of the completed Grant Application Form PHS 398 (Rev. 9/86), with sufficient copies of all reprints critical to the review, should be delivered to Barbara C. Moy (address above). The outside of the mailing package and the top of the application face page should be labeled "Response to RFA–FDA–CVM–89–1".

Note: Do not mail the application to the National Institutes of Health.

IX. Method of Application

A. Submission Instructions

Applications will be accepted during normal working hours, 8 a.m. to 4:30 p.m., Monday through Friday, on or before the established closing date, May 19, 1989. Applications will be considered received on time if sent on or before the closing date, as evidenced by a legible U.S. Postal Service postmark or a legible dated receipt from a commercial carrier and received in time for orderly processing. Private metered postmarks shall not be acceptable as proof of timely mailing. Applications not received on time will not be considered for funding and will be returned to the applicant.

Note: Applicants should note that the U.S. Postal Service does not uniformly provide

dated postmarks. Before relying on this method, applicants should check with their local post offices.

B. Format for Applications

Applications must be submitted on Grant Application Form PHS–398 (Rev. 9/86). The face page of the application must reflect the RFA number, RFA–FDA–CVM–89–1. Data included in the application, if restricted with the legend specified below, may be entitled to confidential treatment as trade secret or confidential commercial information within the meaning of the Freedom of Information Act (5 U.S.C. 552(b)(4)) and FDA's implementing regulations (21 CFR 20.61).

The collection of information requested on Form PHS 398 and the instructions have been submitted by the Public Health Service to the Office of Management and Budget (OMB), and were approved and assigned OMB control number 0925–0001.

C. Legend

Unless disclosure is required by the Freedom of Information Act as amended (5 U.S.C. 552), as determined by the freedom of information officials of the Department of Health and Human Services, data contained in the portions of this application that have been specifically identified by page number, paragraph, etc., by the applicant as containing restricted information, shall not be used or disclosed except for evaluation purposes.

Dated: January 19, 1989.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 89–4255 Filed 2–21–89; 11:57 am]

BILLING CODE 4160–01–M

Public Workshop; Factor VIII Concentrates; Current Issues and Future Prospects

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) and the National Heart, Lung, and Blood Institute of the National Institutes of Health have planned a workshop to exchange information on the evolution of Factor VIII concentrates, including viral safety, immunologic effects, cost, and availability. The goal is to provide information which will allow health professionals to make informed choices for treatment of patients with hemophilia and von Willebrand's disease and to identify areas for future research.

DATES: The workshop will be held on March 9, 1989, from 8:30 a.m. to 5:15 p.m., and March 10, 1989, from 8:30 a.m. to 12 p.m.

ADDRESS: The workshop will be held at the Jack Masur Auditorium, Warren Grant Magnuson Clinical Center, Bldg. 10, National Institutes of Health, 9000 Rockville Pike, Bethesda, MD.

FOR FURTHER INFORMATION CONTACT: Registration for Attendance: Nancy Ludewig, Prospect Associates, 301–468–6338, between 8:30 a.m. and 5 p.m.

SUPPLEMENTARY INFORMATION: Among the major topics to be discussed are:

(1) Regulatory issues.

(2) Promotion of research and education in hemophilia treatment.

(3) Evolution of Factor VIII concentrates.

(4) Viral transmission and adverse effects.

Dated: February 17, 1989.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 89–4256 Filed 2–23–89; 8:45 am]

BILLING CODE 4160–01–M

Health Care Financing Administration

Public Information Collection Requirements Submitted to the Office of Management and Budget for Clearance

AGENCY: Health Care Financing Administration, HHS.

ACTION: Heretofore, on each Friday, the Department of Health and Human Services (HHS) published a list of information collection packages it submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (Pub. L. 96–511). The Health Care Financing Administration (HCFA), a component of HHS, will now publish its own notices as the information collection requirements are submitted to OMB. The HCFA has submitted the following requirements to OMB since the last HCFA list was published by HHS.

1. *Type of Request:* Reinstatement; *Title of Information Collection:* Home and Community Based Services Waiver Request; *Form Number:* HCFA–8003; *Frequency:* On occasion; *Respondents:* State Medicaid Agencies; *Estimated Number of Responses:* 50; *Average Hours per Response:* 200; *Total Estimated Burden Hours:* 10,000.

2. *Type of Request:* Revision; *Title of Information Collection:* Regional Office Collateral Contacts; *Form Number:* HCFA–9007; *Frequency:* Continuous; *Respondents:* State Governments and Nonprofit Institutions; *Estimated Number of Responses:* 2,903 *Average Hours per Response:* .25; *Total Estimated Burden Hours:* 726.

3. *Type of Request:* New; *Title of Information Collection:* Information Collection Requirements in Regulation BERC–408, Payment for Kidneys Sent to Foreign Countries or Transplanted in Patients Other Than Medicare Beneficiaries; *Form Number:* HCFA–R–124; *Frequency:* Annually; *Respondents:* Businesses or others for profit and non-profit institutions; *Estimated Number of Responses:* 250; *Average Hours per Response:* 1; *Total Estimated Burden Hours:* 250. *Additional Information or Comments:* Call the HCFA Reports Clearance Officer on 301–966–2088 for copies of the clearance request package.

Written comments and recommendations for the proposed information collections should be sent directly to the following address: OMB Reports Management Branch, Attention: Allison Herron, New Executive Office Building, Room 3208, Washington, DC 20503.

Date: February 13, 1989.

William L. Roper,

Administrator, Health Care Financing Administration.

[FR Doc. 89–4287 Filed 2–23–89; 8:45 am]

BILLING CODE 4120–03–M

Health Resources and Services Administration

Federal Assistance for Rural Hospitals for the Advancement and Improvement of Health Care Services and the Enhancement of Quality Care

The Health Resources and Services Administration (HRSA), announces the availability of funds in Fiscal Year 1989 for grants to hospitals for the purpose of projects to improve services and the quality of care in rural hospitals in unique geographic locations. This is intended to be a one-time program, limited to the three fiscal years specified by Pub. L. 100–607. A Catalog of Federal Domestic Assistance number has been applied for.

Authority

This program is authorized under section 638 "Advancement of Health Care Services," section 704 "Enhancement of Quality of Care," and section 705 "Improving Health Care Services" of the Health Omnibus Programs Extension Act of 1988," (Pub. L. 100–607) (the Act) and amendments

included in the "Antidrug Abuse Act of 1988," Title II, Subtitle G "Miscellaneous Health Amendments" (Pub. L. 100-690).

Criteria

The Department is seeking proposals from hospitals which meet the criteria contained in the Act which describe qualified hospitals under each section of the law. The criteria contained in the Act for a qualified hospital are as follows:

Section 638—Advancement of Health Care Services

For purposes of this section, the term "qualified hospital," as described in the legislation, means a hospital located in a rural county that

(1) Is adjacent to three counties, one of which is a central county of a Metropolitan Statistical Area, and all of which are classified as urban;

(2) Has a workforce of which at least 12.2 percent of such workers commute from the rural county to the central counties of the two immediately adjacent Metropolitan Statistical Areas (out-commuting), and the total in-commuting rate from the two immediately adjacent Metropolitan Statistical Areas to the rural county is at least 6.1 percent, so that when added to the out-commuting rate from the rural county to total in/out-commuting rate is at least 18 percent;

(3) Is also impacted by a third Metropolitan Statistical Area with an out-commuting rate from the rural county to that Metropolitan Statistical Area that is at least .15 percent and the in-commuting rate from the Metropolitan Statistical Area to such rural county is at least .15 percent;

(4) Has more than 73,500 residents but less than 74,000 residents according to the 1980 census; and

(5) That has a health related labor pool that is competitively impacted by, in addition to the normal competitive pressures of an urban labor market, the location in one of the adjacent Metropolitan Statistical Areas of at least three large health-related facilities, each with more than 375 beds, including a State-owned medical school/hospital complex with more than 4,000 employees, and a large Veterans Administration Hospital with more than 400 beds.

Section 704—Enhancement of Quality Care

For purpose of this section, the term "qualified hospital," as described in the legislation, means a hospital that, as of the date of the enactment of this Act, is the only general short-term acute care hospital located in a rural county that is adjacent to 7 counties of which 1 such adjacent county is a county described in paragraph (8)(B) of section 1886(d) of the Social Security Act and, of the remaining 6 such adjacent counties, 5 such counties are (or are treated as) urban counties for purposes of such section 1886(d) and 1 such county is not (or is not treated as) an urban county for purposes of such section.

Section 705—Improving Health Care Services

For purposes of this section, the term "qualified hospital," as described in the legislation, means a hospital located in a rural county,

(1) That is adjacent to 6 counties, of which 3 adjacent counties are urban (2 of the urban counties being located in another State), and of which 2 of the adjacent rural counties are without hospital facilities;

(2) That is located within 7 miles of another urban county in a separate Metropolitan Statistical Area from the Metropolitan Statistical Area in which the urban counties adjacent to the rural counties are located;

(3) That has more than 17,500 residents but less than 17,550 residents according to the 1980 census;

(4) That has a workforce of which more than 39.5 percent of those reporting workplace commute to the adjacent urban counties to (sic) the 1980 census; and

(5) That has a health-related labor pool which is competitively impacted by, in addition to the normal competitive pressures of an urban labor market, the location in 1 of the adjacent urban counties (in another State) of several large health-related facilities, including that State's sole State-owned medical school/hospital complex with more than 5,500 employees, a large Veterans Administration Hospital with more than 1,000 beds, and a United States Army hospital with more than 350 beds.

Availability of Funds

One million three hundred sixty thousand dollars is available for three projects during Fiscal Year 1989. The amount available under section 638 is $500,000. Six hundred and fifty thousand ($650,000) is available under section 704 of the Act. The amount available under section 705 of the Act is $210,000. Where more than one hospital applying for a grant would be eligible to participate in a project, the money provided by that section will be divided equally among the qualified hospitals. Subject to the availability of appropriations, funds may be available for these projects in Fiscal Years 1990 and 1991.

These amounts are available from annual appropriations to carry out Titles VII and VIII of the Public Health Service Act, using one pro rata determination established in the legislation.

Hospital which wish to apply should request application kits (Form PHS 5161 with revised face sheet DHHS Form 424 as approved by the Office of Management and Budget (OMB) under control number 0348-0006) from HRSA by (within 30 days of the date of publication of this notice). Annually, each grantee must submit a continuation application in order to have the grant continued the following Fiscal Year, should appropriations be available.

Supplementary Information

(1) Each qualified hospital must submit to HRSA a written proposal which must contain the following:

(a) A three-year implementation plan which details the project's objectives to better the service or improve the quality of care in the hospital;

(b) A three-year spending plan which describes how funds will be spent during the year for which the grant is sought; and

(c) An annual evaluation of how funds were expended in the prior budget period and how these expenditures related to objectives contained in the plan and what improvements were made toward meeting each objective. This evaluation will be due at the time of the annual application for continuation of the grant and within 90 days after the end of the project period.

All applications in order to receive consideration, must be received by HRSA by (within 90 days of the publication of this notice). Competing applications will be considered to be "on time" if they are either (1) received on or before the established deadline date, or (2) postmarked on or before the deadline date and received in time for orderly processing. A legibly dated receipt from a commercial carrier or U.S. Postal Service will be accepted in lieu of postmark. Private metered postmarks shall not be accepted as proof of timely mailing. Applications which do not meet the deadline will be considered late applications and wills be returned to the applicant.

Reviews

The review of proposals under this program are not subject to requirements of Executive Order 12372. These grants, however, will only be awarded after satisfactory proposals for participation are received and reviewed by the Department.

Information may be obtained from and comments directed to: Director, Office of Program Development, Bureau of Health Professions, Health Resources and Services Administration, Public Health Service, Department of Health and Human Services, 5600 Fishers Lane, Room 8A–55, Rockville, Maryland 20857, (301) 443–1590.

Hospitals may request application materials from, and completed applications must be sent to: Grants Management Officer, Bureau of Health Professions, Health Resources and Services Administration, Public Health Service, Department of Health and Human Services, 5600 Fishers Lane. Room 8C–22, Rockville, Maryland 20857, (301) 443–6880.

Dated: February 17, 1989.

John H. Kelso,

Acting Administrator.

[FR Doc. 89–4259 Filed 2–23–89; 8:45 am]

BILLING CODE 4160–15–M

National Vaccine Injury Compensation Program; List of Petitions Received

AGENCY: Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The Public Health Service (PHS) is publishing this notice of petitions received under the National Vaccine Injury Compensation Program ("the Program"), as required by section 2112(b)(2) of the PHS Act, as amended. While the Secretary of Health and Human Services is named as the respondent in all proceedings brought by the filing of petitions for compensaton under the Program, the United States Claims Court is charged by statute with responsibility for considering and acting upon the petitions.

FOR FURTHER INFORMATION CONTACT: For information about requirements for filing petitions, and the Program generally, contact the Clerk, United States Claims Court, 717 Madison Place NW. Washington, DC 20005, (202) 633–7257. For information on the Public Health Service's role in the Program, contact the Administrator, Vaccine Injury Compensation Program, Parklawn Building, 5600 Fishers Lane, Room 4–101, Rockville, MD 20857, (301) 443–6593.

SUPPLEMENTARY INFORMATION: The Program provides a system of no-fault compensation for certain individuals who have been injured by specified childhood vaccines. Subtitle 2 of Title XXI of the PHS Act, 42 U.S.C. 300aa–10 *et seq*, provides that those seeking compensation are to file a petition with the U.S. Claims Court and to serve a copy of the petition on the Secretary of Health and Human Services, who is named as the respondent in each proceeding. The Secretary has delegated his responsibility under the Program to PHS. The Claims Court is directed by statute to appoint special masters to take evidence, conduct hearings as appropriate, and to submit to the Court proposed findings of fact and conclusions of law. A petition may be filed with respect to injuries, disabilities, illnesses, conditions, and deaths resulting from vaccines described in the Vaccine Injury Table set forth at section 2114 of the PHS Act. This table lists for each covered childhood vaccine the conditions which will lead to compensation and, for each condition, the time period for occurrence of the first symptom or manifestaton of onset or of significant aggravation after vaccine administration. Compensation may also be awarded for conditions not listed in the table and for conditions that are manifested after the time periods specified in the table, but only if the petitioner shows that the condition was caused by one of the listed vaccines.

Section 2112(b)(2) of the PHS Act, 43 U.S.C. 300aa–12(b)(2), requires that the Secretary publish in the **Federal Register** a notice of each petition filed. Set forth below is a list of petitions received by PHS from January 26 through February 13, 1989. Section 2112(b)(2) also provides that the special master "shall afford all interested persons an opportunity to submit relevant, written information" relating to the following, which quote the statute.

1. Any allegation in a petition that the petitioner either:

(a) "Sustained, or had significantly aggravated, any illness, disability, injury, or condition not set forth in the Vaccine Injury Table (see section 2114 of the PHS Act) but which was caused by" one of the vaccines referred to the table, or

(b) "Sustained, or had significantly aggravated, any illness, disability, injury, or condition set forth in the vaccine Injury Table the first symptom or manifestaton of the onset or significant aggravation of which did not occur within the time period set forth in the Table but which was caused by a vaccine" referred to in the table and

2. The existence of evidence "that there is not a preponderance of the evidence that the illness, disability, injury, condition, or death described in the petition is due to factors unrelated to the administration of the vaccine described in the petition.

This notice will also serve as the special master's invitation to all interested persons to submit written information relevant to the issues described above in the case of the petitions listed below. Any person choosing to do so should file an original and three (3) copies of the information with the Clerk of the U.S. Claims Court at the address listed above (under the heading "For Further Information Contact"), with a copy to PHS addressed to Director, Bureau of Health Professions, 5600 Fishers Lane, Room 8–05, Rockville, MD 20857. The Court's caption (Petitioner's Names v. Secretary of Health and Human Services) and the docket number assigned to the petition should be used as the caption for the written submission.

Chapter 35 of Title 44, United States Code, related to paperwork reduction, does not apply to information required for purposes of carrying out the Program.

List of Petitions Received

1. George W. and Catherine Shaw on Behalf of Donald Shaw, Colorado Springs, Colorado, Claims Court Docket Number 89–07–V.
2. Raymond G. and Theresa M. Carter on Behalf of Kimberly Ann Carter, Pittsburgh, Pennsylvania, Claims Court Docket Number 89–08–V.
3. Norman and Sylvia L. Orenstein on Behalf of Jeffrey Orenstein, St. Louis Park, Minnesota, Claims Court Docket Number 89–09–V.
4. Agnes Pruitt and Gerald Scott on Behalf of Harold Ron Scott, Philadelphia, Pennsylvania, Claims Court Docket Number, 89–10–V.
5. Hope and Mike Gilbreth on Behalf of Michael W. Gilbreth, Wichita, Kansas, Claims Court Docket Number 89–11–V.

Dated: February 17, 1989.

John H. Kelso,

Acting Administrator.

[FR Doc. 89–4260 Filed 2–23–89; 8:45 am]

BILLING CODE 4160–15–M

Social Security Administration

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Social Security Administration publishes a list of information collection packages that have been submitted to the Office of Management and Budget (OMB) for clearance in compliance with Pub. L. 96–511, The Paperwork Reduction Act. The following clearance packages have been submitted to OMB since the last list was published in the **Federal Register** on February 10, 1989.

Social Security Administration

(Call Reports Clearance Officer on (301) 965–4149 for copies of package)

1. Authorization for The Social Security Administration to Obtain Account Records From a Financial Institution—0960–0293—The information collected on the form SSA–4641 is used to determine whether resources requirements are met for the Supplemental Security Income program. The respondents are financial institutions.

Number of Respondents: 500,000.

Frequency of Response: 1.

Average Burden Per Response: 6 minutes.

Estimated Annual Burden: 50,000 hours.

2. Social Security Request for Employment Information—(New)—The information collected on the form SSA–4112 will be used by the Social Security Administration (SSA) to determine if the wages which wre reported for an employee who is shown as deceased in SSA's records are correct. The respondents are employers who reported wages for employees who were, according to SSA records, deceased at the time the wages were paid.

Number of Respondents: 15,000.

Frequency of Response: 1.

Average Burden Per Response: 5 minutes.

Estimated Annual Burden: 1,250 hours.

3. Chinese Custom Marriage Statement and Statement Regarding Chinese Custom Marriage—0960–0086—The information collected on forms SSA–1344 and 1345 is used by the Social Security Administration to determine if an alleged Chinese custom marriage is valid for benefit purposes. The respondents are individuals who are applying for benefits based on such a marriage, or persons who were in attendance when the alleged marriage occurred.

Number of Respondents: 200.

Frequency of Response: 1.

Average Burden Per Response: 14 minutes.

Estimated Annual Burden: 47 hours.

4. Summary of Evidence—0960–0430—The information collected on the form SSA–887 is used to provide a list of medical and vocational evidence to be included in claims folders which are being prepared for evidentiary hearings. The respondents are State Disability Determination Services which make determinations regarding entitlement to disability benefits.

Number of Respondents: 49.

Frequency of Response: 556.

Average Burden Per Response: 15 minutes.

Estimated Annual Burden: 6,811 hours.

OMB Desk Officer: Justin Kopca.

Written comments and recommendations regarding these information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address:

OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, DC 20503.

Date: February 21, 1989.

Ron Compston,

Reports Clearance Officer.

[FR Doc. 89–4425 Filed 2–23–89; 8:45 am]

BILLING CODE 4190–11–M

Finding Regarding Foreign Social Insurance or Pension System; The Republic of Korea

AGENCY: Social Security Administration, HHS.

ACTION: Notice of finding regarding foreign social insurance or pension system—The Republic of Korea.

Finding:

Section 202(t)(l) of the Social Security Act (42 U.S.C. 402(t)(l)) prohibits payment of monthly benefits to any individual who is not a United States citizen or national for any month after he or she has been outside the United States for 6 consecutive months. This prohibition does not apply to such an individual where one of the exceptions described in section 202(t)(2) through 202(t)(5) of the Social Security Act (42 U.S.C. 402(t)(2) through 402(t)(5)) affects his or her case.

Section 202(t)(2) of the Social Security Act provides that, subject to certain residency requirements of section 202(t)(11), the prohibition against payment shall not apply to any individual who is a citizen of a country which the Secretary of Health and Human Services finds has in effect a social insurance or pension system which is of general application in such country and which:

(a) Pays periodic benefits, or the actuarial equivalent thereof, on account of old age, retirement, or death; and

(b) Permits individuals who are United States citizens but not citizens of that country and who qualify for such benefits to receive those benefits, or the actuarial equivalent thereof, while outside the foreign country regardless of the duration of the absence.

The Secretary of Health and Human Services has delegated the authority to make such a finding to the Commissioner of Social Security. The Commissioner has redelegated that authority to the Director of the Office of International Policy. Under that authority the Director of the Office of International Policy has approved a finding that the Republic of Korea (usually known as South Korea), beginning January 1988, has a social insuranace system of general application which:

(a) Pays periodic benefits, or the actuarial equivalent thereof, on account of old age, retirement, or death; and

(b) Permits United States citizens who are not citizens of the Republic of Korea to receive such benefits, or their actuarial equivalent, at the full rate without qualification or restriction while outside the Republic of Korea.

Accordingly, it is hereby determined and found that the Republic of Korea has in effect, beginning January 1988, a social insurance system which meets the requirements of section 202(t)(2) of the Social Security Act (42 U.S.C. 402(t)(2)).

This revises our previous finding, published at 23 FR 5674 on July 26, 1958, that the Republic of Korea does not have in effect a social insurance or pension system which meets the requirements of section 202(t)(2) of the Social Security Act.

FOR FURTHER INFORMATION CONTACT: J. Joseph Rausch, Room 1104, West High Rise Building, 6401 Security Boulevard, Baltimore, MD 21235, (301) 965–3567.

(Catalog of Federal Domestic Assistance Programs Nos. 13.802 Social Security—Disability Insurance; 13.803 Social Security—Retirement Insurance; 13.805 Social Security—Survivors Insurance)

Dated: February 14, 1989.

Elizabeth K. Singleton,

Director, Office of International Policy.

[FR Doc. 89–4293 Filed 2–23–89; 8:45 am]—

BILLING CODE 4190–11–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Environment Assessment; Wahweap and Burning Hills Wilderness Study Areas

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability of a draft environmental assessment for a proposed action within two wilderness study areas.

SUMMARY: The Bureau of Land Management, Cedar City District, is proposing to authorize two short fence

projects within the Wahweap and Burning Hills Wilderness Study Areas.

ADDRESS: To obtain a copy of the environmental assessment for the proposed fences contact Martha Hahn, Area Manager, Kanab Resource Area, 318 North First East, Kanab, UT 84741 or telephone 801/644–2672.

DATES: Comments will be accepted for 30 days from the first date of publication of this notice.

Date: February 14, 1989.

Gordon R. Staker,

District Manager.

[FR Doc. 89–4245 Filed 2–23–89; 8:45 am]

BILLING CODE 4310-DQ-M

Declassification From the Bedwawe Known Geothermal Resources Area, NV

January 20, 1989.

AGENCY: Bureau of Land Management, Interior.

ACTION: Declassification from the Beowawe Known Geothermal Resources Area, Nevada.

SUMMARY: Pursuant to the authority vested in the Secretary of the Interior by section 21(a) of the Geothermal Steam Act of 1970 (84 Stat. 1566, 1572; 30 U.S.C. 1020), the delegations of authority in 235 Departmental Manual 1.lk, Bureau of Land Management, the following lands are hereby declassified from the Beowawe Known Geothermal Resourses Areas.

EFFECTIVE DATE: December 1, 1988.

Nevada Beowawe Known Geothermal Resources Area

Mt. Diablo Meridian, Nevada

T. 31 N., R. 47 E.,
Secs. 2, 10, 11, 12, 32.
T. 31 N., R. 48 E.,
Secs. 1, 2, 11, 12, 13–16, 20–24.
T. 31 N., R. 49 E.,
Secs. 6–8, 18.

The above area aggregates 14, 034.79 acres, more or less.

Edward F. Spang,

State Director, Nevada.

[FR Doc. 89–4246 Filed 2–23–89; 8:45 am]

BILLING CODE 4310-HC-M

Declassification From the Brady-Hazen Known Geothermal Resources Area, NV

January 20, 1989.

AGENCY: Bureau of Land Management, Interior.

ACTION: Declassification from the Brady-Hazen Known Geothermal Resources Area, Nevada.

SUMMARY: Pursuant to the authority vested in the Secretary of the Interior by section 21(a) of the Geothermal Steam Act of 1970 (84 Stat. 1566, 1572; 30 U.S.C. 1020), the delegations of authority in 235 Departmental Manual 1.1k, Bureau of Land Management, the following lands are hereby declassified from the Brady-Hazen Known Geothermal Resources Area.

EFFECTIVE DATE: December 1, 1988.

Nevada Brady-Hazen Known Geothermal Resources Area

Mt. Diablo Meridian, Nevada

T. 20 N., R. 25 E.,
Secs. 15, 16, 21–23, 25–28.
T. 20 N., R. 26 E.,
Secs. 27, 29–32.
T. 21 N., R. 25 E.,
Secs. 25, 26.
T. 21 N., R. 26 E.,
Secs. 1–24, 26–34.
T. 21 N., R. 27 E.,
Secs. 6, 7, 18.
T. 22 N., R. 26 E.,
Secs. 27, 28, 33, 34.

The above area aggregates 35,439.05 acres, more or less.

Edward F. Spang,

State Director, Nevada.

[FR Doc. 89–4247 Filed 2–23–89; 8:45 am]

BILLING CODE 4310-HC-M

Designation of the Fish Lake Valley Known Geothermal Resources Area, NV

January 20, 1989.

AGENCY: Bureau of Land Management, Interior.

ACTION: Designation of the Fish Lake Valley Known Geothermal Resources Area, Nevada.

SUMMARY: Pursuant to the authority vested in the Secretary of the Interior by section 21(a) of the Geothermal Steam Act of 1970 (84 Stat. 1566, 1572; 30 U.S.C. 1020), the delegations of authority in 235 Departmental Manual 1.1k, Bureau of Land Management, the following lands are hereby designated as the Fish Lake Valley Known Geothermal Resources Area.

EFFECTIVE DATE: December 1, 1988.

Nevada Fish Lake Valley Known Geothermal Resources Area

Mt. Diablo Meridian, Nevada

T. 1 S., R. 35 E.,
Secs. 11–14.

The above area aggregates 2560.00 acres, more or less.

Edward F. Spang,

State Director, Nevada.

[FR Doc. 89–4248 Filed 2–23–89; 8:45 am]

BILLING CODE 4310-HC-M

Declassification of Lands From the Stillwater-Soda Lake Known Geothermal Reserves Area, NV

January 20, 1989.

AGENCY: Bureau of Land Management, Interior.

ACTION: Declassification of Lands From the Stillwater-Soda Lake Known Geothermal Resources Area, Nevada.

SUMMARY: Pursuant to the authority vested in the Secretary of the Interior by section 21(a) of the Geothermal Steam Act of 1970 (84 Stat. 1566, 1572; 30 U.S.C. 1020), the delegations of authority in 235 Departmental Manual 1.1k, Bureau of Land Management, the following lands are hereby declassified from the Stillwater-Soda Known Geothermal Resources Area.

EFFECTIVE DATE: December 1, 1988.

Nevada Stillwater-Soda Lake Known Geothermal Resources Area

Mt. Diablo Meridian Nevada

T. 19 N., R. 27 E.,
Secs. 1–3, 10–15, 22–27.
T. 19 N., R. 28 E.,
Secs. 1, 6–30, 32–36.
T. 19 N., R. 29 E.,
Secs. 1–36.
T. 19 N., R. 30 E.,
Secs. 6–10, 15–22, 27–34.
T. 19 N., R. 31 E.,
Secs. 3, 4, 9, 10, 15–17, 20, 21, 29.
T. 20 N., R. 27 E.,
Secs. 24, 26, 34, 35, 36 S[.
T. 20 N., R. 28 E.,
Secs. 6, 7, 18 N[, SW§.
T. 20 N., R. 29 E.,
Secs. 1–26, 35, 36.
T. 20 N., R. 30 E.,
Secs. 1–24, 26–30.
T. 20 N., R. 31 E.,
Secs. 3–10, 15–22, 27, 28, 33, 34.
T. 21 N., R. 28 E.,
Secs. 13, 14, 22, 23, 27, 28, 33.
T. 21 N., R. 29 E.,
Secs. 13–36.
T. 21 N., R. 30 E.,
Secs. 13–36.
T. 21 N., R. 31 E.,
Secs. 16–22, 27–34.

The above area aggregates 168,436.59 acres, more or less.

Edward F. Spang,

State Director, Nevada.

[FR Doc. 89–4249 Filed 2–23–89; 8:45 am]

BILLING CODE 4310-HC-M

[NM-030-09-4320-14]

Las Cruces District Grazing Advisory Board; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting.

SUMMARY: The meeting will be held at the Las Cruces District Office, Bureau of Land Management, 1800 Marquess Street, Las Cruces, New Mexico 88005. The purpose of the meeting is to prioritize range improvement projects and discuss road policy.

The agenda is:

1. 9:30 a.m. Approval of Minutes
2. 9:40 a.m. Discussion of 8100 Projects
3. 12:00 noon Lunch
4. 1:00 p.m. Reconvene and Continue with 8100 Projects
5. 3:00 p.m. Public Comment
6. 3:30 p.m. Discussion of Road Policy
7. 4:30 p.m. Adjourn

DATE: Meeting will be held on Thursday, April 13, 1989.

FOR FURTHER INFORMATION CONTACT: H. James Fox, District Manager, Las Cruces District, Bureau of Land Management, 1800 Marquess Street, Las Cruces, NM 88005 or at (505) 525-8228.

H. James Fox,

District Manager.

February 17, 1989.

[FR Doc. 89-4359 Filed 2-23-89; 8:45 am]

BILLING CODE 4310-FB-M

[ID-050-09-4322-14]

Shoshone District Grazing Advisory Board; Meeting

AGENCY: Bureau of Land Management (BLM), Interior.

SUMMARY: This notice sets forth the schedule and proposed agenda for a meeting of the Shoshone District Grazing Advisory Board.

DATE: Thursday, April 6, 1989, at 9:00 a.m.

ADDRESS: BLM District Office, 400 West F Street, Shoshone, ID 83352.

FOR FURTHER INFORMATION CONTACT: K. Lynn Bennett, District Manager, Shoshone District Office, P.O. Box 2B, Shoshone, ID 83352. Telephone (208) 886-2206 or FTS 554-6110.

SUPPLEMENTARY INFORMATION: The proposed agenda for the meeting includes the following items: (1) Disbursement of Grazing Advisory Board funds, (2) responsbility for maintenance of range improvements, (3) discussion of the State/BLM land exchange in the District, (4) discussions of riparian management, and (5) a briefing of grasshopper studies in the District by the University of Idaho.

Operation and administration of the Board will be in accordance with the Federal Advisory Committee Act of 1972 (Pub. L. 92-463; 5 U.S.C. Appendix 1) and Department of Interior regulations, including 43 CFR Part 1984.

The meeting will be open to the public. Anyone may present an oral statement between 10:00 and 11:00 a.m. or may file a written statement regarding matters on the agenda. Oral statements will be limited to ten minutes. Anyone wishing to make an oral statement should notify the Shoshone District by Tuesday, April 4, 1989. Records of the meeting will be available in the Shoshone District Office for public inspection or copying within 30 days after the meeting.

K. Lynn Bennett,

District Manager.

[FR Doc. 89-4312 Filed 2-23-89; 8:45 am]

BILLING CODE 4310-GG-M

[WY-930-09-4212-24; WYW 114327]

Filing of Application for Conveyance of Federally-Owned Mineral Interests; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

EFFECTIVE DATE: February 24, 1989.

SUMMARY: Ocotillo Ranches, Inc., has applied under section 209 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1719, 43 CFR Part 2720; to purchase the Federal locatable and salable mineral interests in the following land:

Sixth Principal Meridian, Wyoming

T. 35 N., R. 111 W.,
sec. 5, lots 2, 3, 4, SW¼NE¼, SE¼NW¼, and NW¼SE¼.
T. 36 N., R. 111 W.,
sec. 17, W½E½ and E½W½;
sec. 19, N½NE¼, SE¼NE¼, and NE¼SE¼;
sec. 20, W½NE¼, NW¼, N½SW¼, and NW¼SE¼;
sec. 21, all;
sec. 22, W½SW¼
sec. 27, W½W½;
sec. 28, all;
sec. 31, lots 2, 3, S½NE¼, SE¼NW¼, NE¼SW¼, N½SE¼, and SE¼SE¼;
sec. 32, SW¼NE¼, S½NW¼, SW¼, and W½SE¼;
sec. 33, N½;
sec. 34, N½NW¼.

FOR FURTHER INFORMATION CONTACT: Jon Johnson, Wyoming State Office, 2515 Warren Avenue, Cheyenne, Wyoming 82001, 307-772-2074, for more information concerning this application.

SUPPLEMENTARY INFORMATION: Upon publication of this notice in the **Federal Register**, the mineral interests described above will be segregated from appropriation under the public land laws, including the mining laws. The segregative effect of the application shall terminate either upon issuance of a patent or other document of conveyance of such mineral interests, upon final rejection of the application, or two years from the date of filing of the application, December 19, 1988, whichever occurs first.

John A. Naylor,

Chief, Branch of Land Resources.

February 9, 1989.

[FR Doc. 89-4253 Filed 2-23-89; 8:45 am]

BILLING CODE 4310-22-M

[AZ-010-09-4212-11; AZA-23352]

Realty Action; Reconveyed Land Opened to Recreation and Public Purposes (R&PP) Act Classification; Arizona

The following public lands in Mohave County, Arizona, have been examined and found suitable for classification for lease or conveyance to Mohave County Community College under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*). The Mohave County Community College proposes to use the lands for a community college.

Gila and Salt River Meridian

T. 41 N., R. 6 W.,
Sec. 16: W½SW¼
Containing 80 acres more or less.

The above described lands were reconveyed to the United States by the State of Arizona and title was accepted April 22, 1985. The lands have been determined suitable for Recreation and Public Purposes under section 212 of the Federal Land Policy and Management Act of 1976.

The lands are not needed for Federal purposes. Lease or conveyance is consistent with current BLM land use planning and would be in the public interest.

The lease/patent, when issued, will be subject to the following terms, conditions, and reservations:

1. Provisions of the Recreation and Public Purposes Act and to all applicable regulations of the Secretary of the Interior.

2. All valid existing rights documented on the official public land records at the time of lease/patent issuance.

3. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove the minerals.

4. Any other reservations that the authorized officer determines appropriate to ensure public access and proper management of Federal lands and interests therein.

Detailed information concerning this action is available for review at the Bureau of Land Management, Combined Resource Areas Office, 225 North Bluff, St. George, UT 84770.

Upon publication of this notice in the **Federal Register**, the lands will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease or conveyance under the Recreation and Public Purposes Act and leasing under the mineral leasing laws. For a period of 45 days from the date of publication of this notice, interested persons may submit comments regarding the proposed lease/conveyance or classification of the lands to the District Manager, Arizona Strip District Office, 390 N. 3050 E., St. George, UT 84770. Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification will become effective 60 days from the date of publication of this notice.

G. William Lamb,

District Manager.

[FR Doc. 89-4254 Filed 2-23-89; 8:45 am]

BILLING CODE 4310-32-M

[AZ-010-09-3110-10-6101; A-22775]

Realty Action; Reconveyed Land Opened to Exchange of Public Lands for Private Lands in Mohave County, AZ

The following described public lands have been determined to be suitable for disposal by exchange under section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716:

Gila and Salt River Meridian

T. 42 N., R. 6 W., Sec. 32, Lots 3 & 4
W½E½NENWSE, W½E½NWSE,
W½NWSE, W½SESENWSE, N½SW.

Containing 168.37 acres.

The above-described lands were reconveyed to the United States by the State of Arizona and title was accepted April 22, 1985. The lands have been determined suitable for private exchange under section 206 of the Federal Land Policy and Management Act of 1976.

In exchange for these lands, the Federal Government will acquire two tracts of non-federal lands in Mohave County from the United Effort Plan, described as follows:

Gala & Salt River Meridian

T. 40 N., R. 6 W., Sec. 17, S½
T. 40 N., R. 6 W., Sec. 5, Lot 1.

Containing 361.20 acres.

The purpose of the exchange is to achieve management goals by transferring public land within the center of Colorado City to private ownership to allow for the orderly growth and development of the community. The non-federal lands to be received in the exchange would serve the public better in public ownership because of its high values for wilderness and livestock grazing.

The exchange is consistent with the Bureau's planning for the lands involved. The management programs of the BLM and public interest will be well served by making the exchange.

The value of the lands to be exchanged is approximately equal, and the acreage will be adjusted or money will be used to equalize the values uon completion of the final appraisal of the lands.

Lands to be transferred from the United States will be subject to the following reservations, terms, and conditions:

(1) A right-of-way thereon for ditches and canals contracted by the authority of the United States, pursuant to the Act of August 30, 1890 (26 Stat. 391; U.S.C. 945).

(2) A reservation to the United States of all minerals together with the right to explore, prospect for, mine and remove same under all applicable laws and regulations.

(3) All valid existing rights and reservations of record.

Under the provisions of 43 CFR 2201.1 this Notice of Realty Action shall segregate the lands from appropriation under the mining laws and mineral leasing laws subject to valid existing rights or leases. This segregation shall terminate upon publication in the **Federal Register** of a termination notice or after two years and the exchange is not consummated, whichever occurs first.

Detailed information concerning the exchange, including the environmental analysis, is available for review at the combined Resource Areas Office, 225 North Bluff, St. George, UT 84770.

For a period of forty-five (45) days, interested parties may submit comments to the District Manager, Arizona Strip District, 390 N. 3050 E., St. George, UT 84770.

G. William Lamb,

District Manager.

[FR Doc. 89-4360 Filed 2-23-89; 8:45 am]

BILLING CODE 4310-32-M

[A-23631]

Realty Action; Exchange of Public Lands in Maricopa, Yuma, Pima, Pinal, and Yavapai Counties, AZ

The BLM proposes to exchange public land in order to achieve more efficient management of the public land through consolidation of ownership.

The following public land is being considered for exchange pursuant to section 206 of the Federal Land Policy and Management Act of October 21, 1976, 43 U.S.C. 1716.

Gila and Salt River Meridian, Arizona

Aquila/Wenden/Salome Area

T. 5 N., R. 12 W.,
Sec. 6.
T. 5 N., R. 13 W.,
Sec. 23.
T. 6 N., R. 13 W.,
Secs. 27, 28.
T. 7 N., R. 6 W.,
Secs. 17, 18, 27, 34.
T. 7 N., R. 7 W.,
Secs. 16, 33.
T. 8 N., R. 7 W.,
Secs. 1, 10, 11, 14, 15, 22, 23, 24, 26, 34.
T. 8 N., R. 9 W.,
Sec. 25.
The area described above aggregates 4,186.28 acres.

I-10 Area

T. 1 S., R. 6 W.,
Secs. 4, 5.
T. 1 S., R. 7 W.,
Sec. 1.
T. 1 N., R. 6 W.,
Secs. 17, 20.
T. 2 N., R. 9 W.,
Sec. 8.
T. 2 N., R. 10 W
Sec. 11.
T. 3 N., R. 9 W.,
Sec. 31.
T. 3 N., R. 10 W.,
Sec. 8.
T. 3 N., R. 11 W.,
Sec. 2.
T. 3 N., R. 12 W.,
Sec. 16.
The area described above aggregates 4,388.87 acres.

Peeples and Skull Valley Area

T. 12 N., R. 5 W.,
Secs. 9, 16, 22.
T. 12 N., R. 9 W.,
Secs. 11 14.
T. 13 N., R. 4 W.,

Sec. 33.
T. 14 N., R. 4 W.,
Secs. 24, 25, 35.
The area described above aggregates 2,097.36 acres.

Lower Gila South Area

T. 8 S., R. 14 W.,
Secs. 5, 6, 7, 8, 17, 18.
T. 7 S., R. 11 W.,
Secs. 6, 7, 8, 13, 15, 30, 31.
T. 7 S., R. 12 W.,
Secs. 21, 22, 25, 27, 28, 33, 34.
T. 7 S., R. 14 W.,
Sec. 24.
T. 6 S., R. 4 W.,
Sec. 31.
T. 6 S., R. 7 W.,
Sec. 15.
T. 6 S., R. 10 W.,
Secs. 5, 6, 7, 8, 18, 19, 20, 29, 30, 31, 32, 33.
T. 6 S., R. 11 W.,
Secs. 13, 23, 24, 27.
T. 6 S., R. 12 W.,
Secs. 4, 5.
T. 6 S., R. 13 W.,
Secs. 17, 18, 19.
T. 6 S., R. 14 W.,
Secs. 34, 35.
T. 5 S., R. 10 W.,
Sec. 18.
T. 1 S., R. 9 W.,
Secs. 14, 16.
T. 1 N., R. 10 W.,
Secs. 13, 24.
T. 3 N., R. 12 W.,
Sec. 27.

The area described above aggregates 12,179.64 acres.

The total area of all areas aggregates 22,852.15 acres more or less. A complete list of legal descriptions for the lands listed in this notice is available at the Phoenix District Office, and will be sent upon request.

Final determination on exchange will await completion of an environmental analysis.

In accordance with the regulations of 43 CFR 2201.1(b), publication of this notice will segregate the public lands, as described in this notice, from appropriation under the public land laws, including the mineral laws, but not the mineral leasing laws or Geothermal Steam Act.

The segregation of the above-described lands shall terminate upon issuance of a document conveying such lands or upon publication in the Federal Register of a Notice of Termination of the segregation; or the expiration of two years from the date of publication, whichever occurs first.

This Notice will cancel and replace the segregative effects of all previously published Notices on the public lands described herein.

For a period of forty-five (45) days from the date of publication, interested parties may submit comments to the District Manager, Phoenix District Office, 2015 W. Deer Valley Road, Phoenix, Arizona 85027.

Date: February 16, 1989.

Henri R. Bisson,

District Manager.

[FR Doc. 89-4313 Filed 2-23-89; 8:45 am]

BILLING CODE 4310-32-M

[AZ-921-09-4212-13; A-23085-A]

Realty Action; Exchange of Public and Private Lands in Cochise, Maricopa and Pima Counties, AZ

February 15, 1989.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of exchange of land.

SUMMARY: This action informs the public of the completion of an exchange between the United States and San Pedro Investment Group, an Arizona General Partnership. The United States transferred 2,971.74 acres in Maricopa County and San Pedro Investment Group conveyed approximately 1,432 acres in Cochise and Pima Counties.

FOR FURTHER INFORMATION CONTACT: Lisa Schaalman, BLM, Arizona State Office, P.O. Box 16563, Phoenix, Arizona 85011, (602) 241-5534.

SUPPLEMENTARY INFORMATION: The Bureau of Land Management transferred the following described land by Patent No. 02-89-0005 pursuant to the Federal Land Policy and Management Act of October 21, 1976:

Gila and Salt River Meridian

T. 6 N., R. 2 W.,
Sec. 5, S½;
Sec. 6, lots 6 and 7, SE¼SE¼NE¼, E½SW¼, SE¼;
Sec. 7, lots 1 to 4, incl., E½, E½W½;
Sec. 8, all;
Sec. 17, all;
Sec. 18, lots 1 to 4, incl., W½NE¼, SE¼NE¼, E½W¼, E½SE¼.
The area described comprises 2,971.74 acres in Maricopa County.

In exchange approximately 1,432 acres of land was reconveyed to the United States in Cochise and Pima Counties.

The following reconveyed land lies within and is now a part of the Coronado National Forest subject to all the laws, rules, and regulations applicable thereto:

Gila and Salt River Meridian

T. 19 S., R. 16 E.,
Sec. 15, W½SW¼ lying northerly of the Greaterville Road as now established except one acre;
Sec. 16, S½, except metes and bounds;
Sec. 17, E½E½SW¼NW¼, SW¼SW¼SW¼NW¼, SE¼NW¼, NE¼SW¼, NE¼NW¼SW¼, S½NW¼SW¼, SE¼, S½SW¼, except metes and bounds;
Sec. 18, S½NE¼NE¼NW¼, SE¼NW¼NE¼NW¼, S½NE¼NW¼, SE¼NW¼, NE¼SW¼, S½N½SE¼, S½SE¼, except metes and bounds;
Sec. 19, E½NW¼, NE¼SW¼, except metes and bounds;
Sec. 21, NW¼, except metes and bounds.
The area described comprises 1,154 acres, more or less, in Pima County.

The remaining reconveyed land described below will be administered by the Bureau of Land Management for its public values:

Gila and Salt River Meridian

T. 21 S., R. 22 E.,
Sec. 19, lots 3 and 4, E½SW¼, and portion of the N½SE¼, SW¼SE¼ lying west of the west boundary of Southern Pacific Railroad;
Sec. 30, portion lot 1 lying west of the west boundary of the Southern Pacific Railroad right of way, lots 2 and 3, except metes and bounds.
The area described comprises 278 acres, more or less, in Cochise County.

The purpose of this notice is to inform the public and interested State and local government officials of the exchange of public and private land.

Marsha L. Luke,

Acting Chief, Branch of Lands Operations.

[FR Doc. 89-4314 Filed 2-23-89; 8:45 am]

BILLING CODE 4310-32-M

[CO-070-09-4212-11; C-49007]

Realty Action; Recreation and Public Purposes (R&PP) Act Classification; Colorado

The following public lands in Garfield County, Colorado, have been examined and found suitable for classification for lease or conveyance to the State of Colorado, acting by and through its Department of Highways and Division of Wildlife, under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*). The Colorado Department of Highways proposes to use a portion of the lands for a highway maintenance facility and the Colorado Division of Wildlife proposes to use the remaining portion of the lands for a wildlife area.

Sixth Principal Meridian, Colorado

T. 6 S., R. 93 W.
Sec. 8: Lot 2
Containing 35.35 acres, more or less.

The lands are not needed for Federal purposes. Lease or conveyance is consistent with current BLM land use planning and would be in the public interest.

The lease/patent, when issued, will be subject to the following terms, conditions, and reservations:

1. Provisions of the Recreation and Public Purposes Act, as amended, and to all applicable regulations of the Secretary of the Interior.

2. A right-of-way for ditches and canals constructed by the authority of the United States.

3. All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove the minerals.

4. The reservation of pipeline right-of-way C–018388A.

5. The reservation for public access on the existing road, C–36806.

6. The reservation of oil and gas lease, C–42198.

7. The reservation for public access on Garfield County Road 244.

Detailed information concerning this action is available for review in the Glenwood Springs Resource Area Office at 50629 Highway 6 and 24, P.O. Box 1009, Glenwood Springs, Colorado 81602.

For a period of 45 days from the date of first publication of this notice, interested parties may submit comments to the District Manager, Grand Junction District, Bureau of Land Management, 764 Horizon Drive, Grand Junction, Colorado 81506. Objections will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this Notice of Realty Action will become the final determination of the Department of the Interior and the classification will become effective 60 days from the date of publication of this notice in the **Federal Register**.

The publication of the notice in the **Federal Register** will segregate the public lands described above to the extent that they will not be subject to appropriation under the public land laws, including the general mining laws, except for lease or conveyance under the Recreation and Public Purposes Act and leasing under the mineral leasing laws.

Douglas McVean,

Acting District Manager, Grand Junction District.

[FR Doc. 89–4250 Filed 2–23–89; 8:45 am]

BILLING CODE 4310–JB–M

[WY–040–09–4400–90]

Resource Management Plan; Pinedale Resource Area, WY

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability of Record of Decision (ROD) for the Pinedale Resource Management Plan/ Environmental Impact Statement (RMP/EIS), the approved Pinedale Resource Management Plan (RMP), and notice of off-road vehicle (ORV) designations for the Pinedale Resource Area.

SUMMARY: The Pinedale Resource Area includes portions of Lincoln, Sublette, and Teton counties in southwest Wyoming. The planning area covered by the RMP includes portions of Lincoln and Sublette counties. The Pinedale ROD identifies the selection of the approved Pinedale RMP. The approved RMP presents multiple-use management prescriptions for 931,000 acres of public land and 1,185,000 acres of Federal mineral estate in portions of Lincoln and Sublette counties. The Pinedale Draft RMP/EIS was made available for public review and comment in February of 1987. Comments received on the Draft RMP/EIS were considered in preparing the proposed RMP/Final EIS. The Pinedale Proposed RMP/Final EIS was made available for review and protest in December of 1987.

Management prescriptions are presented for all resources uses and values found within the planning area, including the following resources: Minerals (mostly oil and gas), watershed values, wildlife, livestock grazing, wild horses, forest resources, cultural values, and recreation (including off-road vehicles). Since other documents address wilderness values, the Pinedale RMP/EIS and ROD do not address wilderness values.

The approved Pinedale RMP is a comprehensive multiple-use land use plan. It is a refinement of the preferred alternative presented in the draft EIS and the proposed plan presented in the final EIS. Comments from the public, review by BLM staff, and new information developed since the distribution of the final EIS have prompted some clarifications in the approved RMP.

This notice also serves as the notice of off-road vehicle (ORV) designations for the Pinedale Resource Area as identified in the approved Pinedale RMP. The ORV designations are listed below.

ADDRESS: Information on the approved Pinedale RMP may be obtained from the Pinedale Resource Area Office, P.O. Box 768, Pinedale, Wyoming 82941 (307) 367–4358.

FOR FURTHER INFORMATION CONTACT: Arlan Hiner, Pinedale Resource Area Manager, at the above address or Renee Dana, Planning Team Leader, Rock Springs District Office, P.O. Box 1869, Rock Springs, Wyoming 82902–1869, (307) 382–5350. Copies of the Pinedale ROD and approved plan are available in the Pinedale Resource Area Office and the Rock Springs District Office.

SUPPLEMENTARY INFORMATION: The Pinedale ROD designates 3,458 acres within the Beaver Creek area, as the Beaver Creek Area of Critical Environmental Concern (ACEC). Within the boundaries of the ACEC are approximately 480 acres of privately owned surface. The designation pertains only to the Federal land surface and Federal mineral estate managed by the BLM. The non-BLM administered surface will not be affected by the designation.

The primary management objective for the Beaver Creek ACEC is to optimize fisheries habitat for the Colorado River cutthroat trout and elk calving habitat. Management direction includes preparation of a detailed activity plan to provide specific management guidelines for the area. Use limitations include restricting but not precluding, stream crossings, surface disturbing activities, timber harvesting, and limiting ORV activity to existing roads and trails. Such activities will be allowed, provided Colorado River cutthroat trout habitat will not be adversely affected.

The previously established Rock Creek ACEC (5,264 acres) will remain a designated ACEC. The Rock Creek ACEC was originally designated in 1982. The primary management objective in the area is to protect Colorado River cuttthroat trout habitat. Use limitations include no surface occupancy for mineral exploration and development activities, avoidance for rights-of-way, closure to locatable minerial entry in the Rock Creek drainage, restricted timber harvesting, and an ORV closure.

Management of wilderness values is not addressed in this RMP/EIS. The two wilderness study areas (WSAs) within the Pinedale Resource Area (Scab Creek WSA and Lake Mountain WSA) are addressed in the Draft Scab Wilderness Suitability Report and EIS, December 1981, and the Revised Draft Rock Springs District Wilderness EIS, September, 1988.

Parties who are interested in and who wish to be involved in future activity planning and implementation of management actions that may involve or affect the resource values addressed in the approved plan, are requested to identify themselves. Please contact the Rock Springs BLM District Office at the above address and request to be placed on a future contact list for activity planning and implementation activities concerning the Pinedale RMP.

The approved Pinedale RMP includes the following ORV designations:

OFF-ROAD VEHICLE DESIGNATIONS FOR THE PINEDALE RESOURCE AREA

Name of area	Type of designation	Season/Dates of restriction	Acres	Resource being protected
Scab Creek Area	Closed	Year Round	7,636	Solitude, naturalness
Rock Creek ACEC	Closed	Year Round	4,200	Wildlife, watershed
Holden Hill	Closed	Year Round	120	Cultural
Bench Corral Feedground	Limited to authorized personnel only	11/15–4/30	42,230	Wildlife
Fall Creek Feedground	Limited to authorized personnel only	11/15–4/30	714	Wildlife
Finnegan Feedground	Limited to authorized personnel only	11/15–4/30	2,698	Wildlife
Franz Feedground	Limited to authorized personnel only	11/15–4/30	1,160	Wildlife
North Piney Feedground	Limited to authorized personnel only	11/15–4/30	2,519	Wildlife
Scab Creek Feedground	Limited to authorized personnel only	11/15–4/30	1,870	Wildlife
Miller Mountain	Limited	11/15–4/30	118,543	Wildlife
Deer and Antelope Winter Range	Limited	11/15–4/30 as needed.	158,600	Wildlife
Mount Airy Proposed Open Area	Open	Year Round	8,178	Recreation
Big Piney Proposed Open Area	Open	Year Round	1,600	Recreation
Desert General Use Area	Open to general ORV uses	Year Round	224,850	All
Remainder of Resource Area	Limited to existing roads and trails	Year Round	357,662	All
Total Acres			931,000	
Soda Lake Road	Limited	4/15–5/9 as needed.	2.0	Wildlife, watershed
Irish Canyon Road	Limted	4/1–6/30 as needed.	6.5	Watershed, recreation
Total Miles			8.5	

February 15, 1989.

Ray **Brubaker,**

State Director, Wyoming.

[FR Doc. 89–4358 Filed 2–23–89; 8:45 am]

BILLING CODE 4310–22–M

[NM–940–09–4214–11; NM NM 46831]

Proposed Continuation of Withdrawal; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of Agriculture, Forest Service, proposes that the withdrawal for the Gallinas Administrative Site continue for an additional 20 years. The land would remain closed to location and entry under the United States mining laws. The land will remain open to all uses other than the mining laws.

EFFECTIVE DATE: Comments should be received by May 25, 1989.

ADDRESS: Comments should be sent to: New Mexico State Director, BLM, P.O. Box 1449, Santa Fe, New Mexico 87504–1449.

FOR FURTHER INFORMATION CONTACT: Clarence Hougland, BLM, New Mexico State Office, (505) 988–6545.

SUPPLEMENTARY INFORMATION: The U.S. Department of Agriculture, Forest Service, proposes that the existing land withdrawal made by Secretarial Order dated April 1, 1907, be continued for a period of 20 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714. The land is described as follows:

New Mexico Principal Meridian Santa Fe National Forest Gallinas Administrative Site

T. 17 N., R. 14 E.,
sec. 14: NE¼SE¼.
The area described contains 40.00 acres in San Miguel County.

The withdrawal is essential for protection of substantial capital improvements on the Gallinas Administrative Site, Las Vegas Ranger District. The withdrawal closed the described land to location and entry under the United States mining laws, but not to all uses other than the mining laws. No change in the segregative effect or use of the land is proposed by this action.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuation may present their views in writing to the New Mexico State Director at the address indicated above.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether the withdrawal will be continued and if so, for how long. The final determination on the continuation of the withdrawal will be publisned in the **Federal Register**. The existing withdrawal will continue until such final determination is made.

Dennis R. Erhart,

Acting State Director.

Dated: February 14, 1989.

[FR Doc. 89–4252 Filed 2–23–89; 8:45 am]

BILLING CODE 4310–FB–M

Bureau of Mines

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

A request extending the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made directly to the Bureau clearance officer and to the Office of Management, Paperwork Reduction Project (1032–0113), Washington, DC 20503, telephone 202–395–7340.

Title: Helium Distribution Contracts.

OMB Approval Number: 1032–0113

Abstract: Respondents supply information which will be used by the Bureau of Mines Division of Helium Field Operations to (a) determine legitimacy of applicants for distribution

contracts, (b) establish accountability of helium transfer between distributors, and (c) report annual sales, transfers, and purchases of Bureau helium as certification on compliance with 30 CFR Part 602. The Bureau will use information supplied on the three forms as described to implement and manage and effective helium distribution system in accordance with 30 CFR Part 602.

Bureau Form Number: 6–1575–A, 6–1580–A, and 6–1581–A

Frequency: Annually

Description of Respondents: Industrial gas suppliers who elect to distribute Bureau of Mines helium

Estimated Completion Time: 30 minutes

Annual Responses: 48

Annual Burden Hours: 24

Bureau clearance officer: James T. Hereford, 202–634–1125.

T S Ary,

Director, Bureau of Mines.

February 7, 1989.

[FR Doc. 89–4215 Filed 2–23–89; 8:45 am]

BILLING CODE 4310–53–M

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

A request extending the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made directly to the Bureau clearance officer and to the Office of Management and Budget, Paperwork Reduction Project (1032–0111) Washington, DC 20503, telephone 202–395–7340.

Title: Helium Purchase Contract Application.

OMB Appraisal Number: 1032–0111

Abstract: This application is a form which requires the company name, address, and amount of original volume of helium desired on initial order with amount of cash advance required. Part 601 of 30 CFR gives information in regard to address and telephone number for securing the forms.

Bureau Form Number: 6–1584–X

Frequency: Occasional

Description of Respondents: Purchasers of Government Helium

Estimated Completion Time: 15 minutes

Annual Responses: 19

Annual Burden Hours: 5

Bureau clearance officer: James T. Hereford, 202–634–1125

February 7, 1989.

T S Ary,

Director, Bureau of Mines.

[FR Doc. 89–4276 Filed 2–23–89; 8:45 am]

BILLING CODE 4310–53–M

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

A request extending the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made directly to the Bureau of clearance officer and to the Office of Management and Budget Paperwork Reduction Project (1032–0112), Washington, DC 20503, telephone 202–395–7340.

Title: Gas Well Data—Survey of Helium-Bearing Natural Gas.

OMB Approval Number: 1032–0112.

Abstract: Respondents supply information which will be used by the Bureau of Mines Division of Helium Field Operations, to evaluate the helium resources of the United States. This evaluation helps assure a continued supply of the valuable natural resource to meet essential Government needs. Results of the gas analyses, along with the data supplied, are published to provide valuable information to industry and to the public when those data are released by the supplier.

Bureau Form Number: 6–1579–A.

Frequency: Annually.

Description of Respondents: Owners and operators of helium-bearing natural gas wells and transmission lines.

Estimated Completion Time: 15 minutes.

Annual Responses: 200.

Annual Burden Hours: 50.

Bureau clearance officer: James T. Hereford, 202–634–1125.

February 7, 1989.

T S Ary,

Director, Bureau of Mines.

[FR Doc. 89–4277 Filed 22–23–89; 8:45 am]

BILLING CODE 4310–53–M

Fish and Wildlife Service

Petition by World Wildlife Fund To Impose a Moratorium on the Import of African Elephant Ivory From the Democratic Republic of Somalia and Moratorium on Ivory Imports From Somalia

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: Effective immediately, the United States establishes a moratorium on the importation of ivory from the Democratic Republic of Somalia. A similar moratorium will be applied to any country accepting ivory from Somalia. Simultaneously, the U.S. Fish and Wildlife Service is requesting comments from all interested parties on a petition received from the World Wildlife Fund dated January 6, 1989, requesting that a moratorium be placed on the import of African elephant ivory from the Democratic Republic of Somalia. The Service also requests comments on whether it should suspend the moratorium established with this notice.

DATE: The ban is effective immediately February 17, 1989. Comments on the petition must be received on or before April 25, 1989.

ADDRESSES: Comments and materials concerning this notice should be mailed to the Office of Management Authority, Arlington Square, 4th Floor, U.S. Fish and Wildlife Service, 18th and C Streets, NW., Washington, DC 20240. Comments and materials may be delivered directly to Room 3024, Main Interior Department Building, 18th and C Streets, NW., Washington, DC between the hours 8:00 AM and 4:00 PM, Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Mr. Marshall P. Jones, Chief, Office of Management Authority, at the above address, telephone (202) 343–4968 until 10 March 1989, or (202) 343–4646 after that date.

SUPPLEMENTARY INFORMATION: On October 7, 1988, the President signed into law the African Elephant Conservation Act (Act), the purpose of which is to "perpetuate healthy populations of African elephants." (16 U.S.C. 4201–4245). The authority of the Act supplements that already provided in the Endangered Species Act of 1973 (ESA). Since May 12, 1978, the African elephant has been listed as a threatened species under the ESA, and has been subject to protective regulations promulgated pursuant to section 4(d) of the ESA (16 U.S.C. 1533(d)) that further

the conservation of the African elephant. See 50 CFR 17.40(e).

On January 6, 1989, the World Wildlife Fund (WWF) submitted a written petition pursuant to section 2202(d) of the Act asking the Fish and Wildlife Service (Service) to establish a moratorium on African elephant ivory imports from the Democratic Republic of Somalia. A copy of the Summary and Conclusion section of the petition is included as an Appendix of this notice. A copy of the complete petition may be inspected at the Office of Management Authority at the address noted above under **ADDRESSES.**

Background

Section 2202(d)(2) requires the Service to publish a notice of receipt of such a petition in the **Federal Register**, to provide an opportunity for public comment, and to issue a decision on the petition no later than 90 days after the close of the comment period. The decision on whether to establish a moratorium requested in a petition must be made according to sections 2202(a)(1) and 2201(b)(1) for ivory producing countries or section 2202(b) for intermediary countries.

Independent of the duty to decide on section 2202(d) petitions, the Service is required by sections 2202(a)(1) and 2202(b) to establish a moratorium on the import of ivory from an ivory producing or intermediary country immediately whenever the Service finds the country has failed to meet the appropriate criteria.

Pursuant to section 2202(a)(1), the Service must establish a moratorium on imports of ivory from an ivory producing country that fails to meet the criteria set forth in section 2201(b)(1):

(A) The country is a party to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) and adheres to the CITES Ivory Control System.

(B) The country's elephant conservation program is based on the best available information, and the country is making expeditious progress in compiling information on the elephant habitat condition and carrying capacity, total population and population trends, and the annual reproduction and mortality of the elephant populations within the country.

(C) The taking of elephants in the country is effectively controlled and monitored.

(D) The country's ivory quota is determined on the basis of information referred to in subparagraph (B) and reflects the amount of ivory which is confiscated or consumed domestically by the country.

(E) The country has not authorized or allowed the export of amounts of raw ivory which exceed its ivory quota under the CITES Ivory Control System.

Pursuant to section 2202(b), the Service must establish a moratorium on imports of ivory from an intermediary country that meets any of the following criteria:

(1) Is not a party to CITES;

(2) Does not adhere to the CITES Ivory Control System;

(3) Imports raw ivory from a country that is not an ivory producing country;

(4) Imports raw or worked ivory from a country that is not a party to CITES;

(5) Imports raw or worked ivory that originates in an ivory producing country in violation of the laws of that ivory producing country;

(6) Substantially increases its imports of raw or worked ivory from a country that is subject to a moratorium under this title during the first three months of that moratorium; or

(7) Imports raw or worked ivory from a country that is subject to a moratorium under this title after the first three months of that moratorium, unless the ivory is imported by vessel during the first six months of that moratorium and is accompanied by shipping documents which show that it was exported before the establishment of the moratorium.

Section 2202(f) of the Act provides that ivory confiscated by an ivory producing or intermediary country and disposed of pursuant to the CITES Ivory Control System shall not be the sole grounds for establishment of a moratorium, provided that all proceeds from the sale of the confiscated ivory are used to enhance wildlife conservation or the conservation purposes of CITES.

The World Wildlife Fund Petition

In June 1988, Somalia established an ivory export quota of 5,000 tusks under the Ivory Control System administered by the Secretariat of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). In November 1988, Somalia increased its quota to 8,000 tusks. Somalia has stated that all of the ivory was confiscated.

The Service's records indicate that approximated 290 shipments of ivory originating in Somalia entered the United States during 1987 and 1988. The vast majority of these shipments were imports of worked ivory exported by Hong Kong. The declared value of these shipments approximately $2,400,000.

WWF's petition shows that Somalia has sold and exported over 21,000 tusks in the last three years and has declared that all of these tusks were confiscated and of Somalian origin. This number of tusks correlates with approximately 13,800 elephants. The petition attaches a copy of Somalia's 1986 annual CITES report, which declares that 16,986 tusks were exported that year, representing about 9,440 elephants. The best population estimates, however, indicate that Somalia's elephant population was no greater than 4,500 elephants in 1987, and was no higher than 8,600 in 1985.

The WWF petition presents information indicating that a large percentage of these tusks must have been poached in either Kenya or Ethiopia, two countries that share a border with Somalia. The information includes a copy of a letter dated March 19, 1987, and signed by President Barre of Somalia that appears to authorize the import into Somalia of ivory tusks from Kenya and Ethiopia. Kenya, which is a party to CITES, prohibits all hunting of elephants and all private commerce in ivory. Ethiopia, which is not a party to CITES, prohibits the taking of elephants except for a limited number of sport hunting licenses issued each year.

Based on this information, which is discussed in greater detail in the Summary and Conclusion of the petition which is appended to this notice and in the complete petition on file at the Office of Management Authority, WWF asks the Service to establish a moratorium on imports of ivory from Somalia into the United States for the following reasons:

1. The large number of tusks exported by Somalia in recent years and planned for export in the near future, all of which are claimed by Somalia to have been taken in Somalia, indicate that Somalia is not effectively controlling and monitoring the taking of elephants within its borders. These are grounds for establishment of a moratorium on Somalia as an ivory producing country under section 2202(b)(1)(C) of the Act.

2. The disparity between the size of Somalia's elephant population and the number of tusks Somalia declared in its 1986 annual report to CITES as having been taken in Somalia indicates that Somalia falsely declared to CITES the country of origin of the exported tusks. Somalia, therefore, is not adhering to the CITES Ivory Control System, which is cause for establishment of a moratorium on Somalia as either an ivory producing country under section 2201(b)(1)(A) or an intermediary country under section 2202(b)(2).

3. Imports of ivory from Ethiopia, which is not a party to CITES, that took place after the October 7, 1988, enactment of the Act with the authorization of the Somali government

would be cause for establishment of a moratorium on Somalia as an intermediary country under section 2202(b)(4).

4. The imports of ivory from either Kenya or Ethiopia into Somalia were in violation of the laws of those countries, and would be cause for establishment of a moratorium under section 2202(b)(5) if they were sanctioned by the Somali government. If these unlawful imports were indeed confiscated as claimed in Somalia, and the proceeds from the sale of the ivory were not used solely for wildlife conservation purposes, then the confiscated ivory provisions of the Act (section 2202(f)) would not apply, and a moratorium could be established under section 2202(b)(5) of the Act.

Pursuant to section 2202(d)(2) of the Act, the Service requests comments on the information contained in and actions requested by the WWF petition in order to assist the Service in analyzing and responding to the petition.

All comments received by the date above under DATES will be considered. The Service will render a decision on the petition within 90 days after the close of the comment period.

Establishment of Moratorium

The Service has an independent duty under sections 2202(a)(l) and 2202(b) to establish a moratorium immediately whenever the information available to the Service demonstrates that an ivory producing or intermediary country meets any of the criteria for establishment of a moratorium. In this case, the Service finds that the available information is sufficient to support establishment of a moratorium on imports of ivory from Somalia based upon several of the sections 2201(b)(1) and 2202(b) criteria.

Somalia has exported over 21,100 tusks in the last three years, which represents about 13,800 elephants. Somalia's 1986 annual report to CITES declares that, in 1986 alone, Somalia exported 16,986 tusks, which represents about 9,440 elephants. In the 1986 annual report to CITES and in other statements, Somalia has declared that all of these tusks are of Somali origin and that all the tusks were confiscated. Yet, the best estimates of Somalia's elephant population are that the population was no greater than 4,500 in 1987 and was no more than 8,600 in 1985. Somalia thus has declared exports of domestic ivory in the last three years that represent approximately three times the number of elephants remaining in Somalia. The Service considers the great disparity between these figures to be sufficient to support findings that (1) Somalia cannot be effectively controlling and monitoring the taking of elephants in Somalia, and (2) ivory is being imported into Somalia from its neighboring countries of Kenya and Ethiopia.

Section 2202(a)(l) of the Act requires the Service to establish a moratorium on ivory imports from an ivory producing country immediately upon finding that the country fails to meet any of the criteria of section 2201(b)(1). The evidence showing that Somalia is not effectively controlling and monitoring the taking of domestic ivory demonstrates Somalia fails to meet section 2201(b)(1)(C). Although Somalia's 1986 annual report to CITES declares that all of the ivory orignated in Somalia, the information available to the Service indicates Somalia actually imported at least part of the ivory. This false declaration to CITES demonstrates Somalia is not adhering to the CITES Ivory Control System, as required by section 2201(b)(l)(A).

Section 2202(b) of the Act requires the Service to establish a moratorium on imports of ivory from an intermediary country immediately upon finding that the country meets any of the criteria of that section. Because the evidence demonstrates that Somalia has acted as an intermediary country, the evidence of its failure to adhere to the CITES Ivory Control System also shows that Somalia meets the section 2202(b)(2) criterion.

The discrepancies between the amount of ivory exported by Somalia and the number of elephants remaining in the country demonstrates that ivory is being imported into Somalia from Kenya and Ethiopia. Somalia therefore meets both the section 2202(b)(4) and (5) criteria since both Kenya and Ethiopia prohibit the taking of elephants and Ethiopia is not a party to CITES. The Service interprets section 2202(b) in conjunction with section 2202(f) to mean that imports of ivory into Somalia by private parties that are confiscated by the Somali government do not require establishment of a moratorium on Somali ivory provided (1) the Somali government has not sanctioned the imports, and (2) the Somali government disposes of the ivory pursuant to the requirements of section 2202(f). Although the evidence indicates that Somalia must have known the origin of the ivory, the evidence does not show clearly that the Somali government actively authorized the imports. The WWF does present evidence to support its contention that the Somali government sanctioned the imports, but the Service wishes to reserve judgment on this issue in order to consider information that may be received during the comment period on the petition. In addition, however, the available information does not show clearly that Somalia has disposed of the ivory according to the requirements of section 2202(f). The Service specifically requests comments on this issue.

For the above reasons the Service finds that Somalia fails to meet all of the criteria of section 2201(b)(1) of the Act, and meets at least one of the criteria of section 2202(b). The Service therefore establishes a moratorium on imports of ivory from Somalia into the United States effective on the date of this notice.

The Service also requests comments on whether this moratorium should be suspended. All comments received by the date listed above under DATES will be considered. Consistent with section 2202(c) the Service will consider suspension of the moratorium concurrently with its consideration of the WWF petition.

This Notice was prepared by Frank McGilvrey, U.S. Fish and Wildlife Service, Office of Management Authority.

Dated: February 17, 1989.

Frank M. Dunkle,

Director, Fish and Wildlife Service.

Appendix—Summary and Conclusion of the WWF Petition

In the last three years Somalia has sold at least 21,140 tusks and has been intending to sell an additional 3,846 tusks as soon as possible. The government claims that these are all confiscated tusks of Somalia origin. The total represents some 13,800 elephants, however, a figure far higher than Somalia's entire estimated elephant population.

If all these elephants, or even a fifth of them, were actually killed in Somalia, in violation of Somali law, it would be *prima facia* evidence that the taking of elephants in Somalia is not effectively controlled and monitored and would be cause for the Secretary to establish an immediate moratorium on imports of ivory from Somalia.

Simple arithemtic, however would indicate that a large percentage of these tusks must have been poached in neighboring countries where elephants are fully protected by law. It is well documented that the intensive poaching in Kenya's Meru and Tsavo National parks has been conducted by Somali tribesmen who can move freely across the Kenya/Somalia border. Three poachers apprehended in Tsavo in November 1988 reportedly carried identification cards from Somalia. Much of the ivory poached in Tsavo reportedly moves up by the coast by Dhow from Mombassa to Mogadishu. The attached letter signed by Somalia's president confirms reports from other sources that the poaching and illegal trade through Somalia is condoned and facilitiated by Somalian officials.

If this is the case, and if the Somali government in its annual CITES report has falsely identified the country of origin of these tusks, it is not adhering to the CITES Ivory Control System. This is cause for an immediate moratorium.

If any of the 8,000 tusks in Somalia's quota originated in Ethiopia, which is not a party to CITES, it would be unlawful under ESA to import them into the United States. If any of them entered Somalia after October 7, 1988, with the authorization of the Somali government, it would be cause for an immediate moratorium under AECA.

If, as seems certain, many of the 8,000 tusks were imported into Somalia from Ethiopia or Kenya, it was in violation of the laws of those countries and is cause for an immediate moratorium, if such imports were sanctioned by the government of Somalia or if the proceeds from the sale of such ivory are not used solely for conservation purposes.

Because Somalia has informed the CITES Secretariat that all 8,000 tusks were confiscated, they are presumed to be government property. Whether government funds were used to compensate or reward the poachers or middlemen and whether such persons benefit from the government's sale of this confiscated ivory are questions that should be answered before any more Somali ivory is allowed into internatonal trade. The Secretary needs to be assured prior to the sale of the remaining tusks that the government of Somalia has not sanctioned the import of ivory from Ethiopia and Kenya and that all proceeds from the sale of any confiscated ivory is to be used solely to enhance wildlife conservation programs or conservation purposes of CITES.

For all the reasons cited above, World Wildlife Fund believes that Somalia has provided sufficient grounds for the Secretary to establish a moratorium immediately on all imports of raw and worked ivory from Somalia into the United States. WWF urges the Secretary to act quickly before Somalia sells any more elephant tusks. If a moratorium is imposed on Somalia, other intermediary countries would not purchase the Somali ivory without having a moratorium imposed on their own ivory exports to the United States. WWF believes that immediate action by the Secretary against Somalia could prevent additional tusks from entering international trade until all questions as to their origin and legality are answered satisfactorily. Such bold action is absolutely necessary to destroy financial incentive for poachers and middlemen and to save Kenya's elephants from extinction.

In conclusion, WWF respectfully requests the Secretary to impose an immediate moratorium on Somalia and, following that, to impose a similar moratorium on any country that purchases or accepts any of the elephant tusks now awaiting sale in Somalia.

[FR Doc. 89-4258 Filed 2-23-89; 8:45 am]

BILLING CODE 4310-55-M

INTERSTATE COMMERCE COMMISSION

Agricultural Cooperative; Notice to the Commission of Intent To Perform Interstate Transportation for Certain Nonmembers

Date: February 21, 1989.

The following Notices were filed in accordance with section 10526(a)(5) of the Interstate Commerce Act. These rules provide that agricultural cooperatives intending to perform nonmember, nonexempt, interstate transportation must file the Notice, Form BOP 102, with the Commission within 30 days of its annual meetings each year. Any subsequent change concerning officers, directors, and location of transportation records shall require the filing of a supplemental Notice within 30 days of such change.

The name and address of the agricultural cooperative (1) and (2), the location of the records (3), and the name and address of the person to whom inquiries and correspondence should be addressed (4), are published here for interested persons. Submission of information which could have bearing upon the propriety of a filing should be directed to the Commission's Office of Compliance and Consumer Assistance, Washington, DC 20423. The Notices are in a central file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, DC

Harvest States Cooperatives

(1) _____

P.O. Box 64594
St. Paul, MN 55164

(2) _____

1667 N. Snelling Avenue

(3) _____

St. Paul, MN 55108

Russell J. Eichman
P.O. Box 64594
St. Paul, MN 55164

(4) _____

Noreta R. McGee,
Secretary.

[FR Doc. 89-4309 Filed 2-23-89; 8:45 am]

BILLING CODE 7035-01-M

[Ex Parte No. 274 (Sub-No. 13)]

Rail Abandonments; Use of Rights-of-Way as Trails; Supplemental Trails Act Procedures

AGENCY: Interstate Commerce Commission.

ACTION: Notice of policy statement.

SUMMARY: The Commission has reexamined its rules governing implementation of section 208 of the National Trails System Act, 16 U.S.C. 1247(d), adopted in *Rail Abandonments—Use of Rights-of-Way as Trails*, 2 I.C.C.2d 591 (1986) and *Rail Abandonments—Supplemental Trails Act Procedures*, 4 I.C.C.2d 152 (1987), and codified at 49 CFR 1152.29, in light of the court's decision in *National Wildlife Federation* v. *I.C.C.* 850 F.2d 694 (D.C. Cir. 1988). We now: (1) Readopt the current procedures for invoking the Trails Act; and (2) address the question of whether application of the Trails Act may constitute a compensable taking of the property interests of reversionary landowners. We find that we are not the proper forum to decide any compensation claims. Because the Tucker Act (28 U.S.C. 1491) is available to address any takings claims that landowners might have, landowners are entitled to seek relief in the United States Claims Court, where the allegation that a compensable taking has occurred can be tested.

DATES: This notice is effective February 24, 1989.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275-7245 (TDD for hearing impaired: 202-275-1721)

SUPPLEMENTARY INFORMATION: In 1983 Congress amended section 8 of the National Trails System Act (Trails Act), 16 U.S.C. 1247 (d), to implement a declared national policy of preserving railroad rights-of-way for future reactivation of rail service. As amended, section 1247(d) provides that rights-of-way that might otherwise be abandoned may be preserved and used on an interim basis as trails. Under the terms of the amendment "such interim use shall not be treated, for purposes of any law or rule of law, as an abandonment of the use of such rights-of-way for railroad purposes." Congress also provided that the trail user is to assume responsibility for liability in connection with the trial use, including managing and paying taxes on the corridor. Thus, section 1247(d) allows for the route to remain intact and available for future railroad use (rail banking), while relieving the railroad of liability and financial responsibility for the right-of-way during the period of interim trail use.

A railroad's decision to enter into a Trails Act agreement is similar to a carrier's decision to seek discontinuance rather than full abandonment authority for a particular line. Discontinuance authority, like rail banking, allows a railroad to cease operating a line for an

indefinite time while preserving the rail corridor for the possible reactivation of rail service in the future. By contrast, once a carrier exercises the authority granted in a regular abandonment certificate the line is no longer part of the national transportation system. Because the carrier's full interest in such lines generally is sold upon abandonment, the rail corridor would have to be reassembled prior to the resumption of any rail service.

In April 1986, we issued final regulations implementing section 1247(d). (Supplemental regulations were issued in 1987.) Our rules set forth procedures for prospective trail users and railroads voluntarily to enter into interim trail use agreements. In addition, we rejected the claim that section 1247(d) should be construed as not preempting State laws that might otherwise cause a reversion of right-of-way upon the discontinuation of rail operations. We took the position that adjacent landowners have no proprietary interests that require protection or compensation under the Fifth Amendment because all that the rules (and statute) provide for is temporary postponement of the vesting of reversionary interests (from the time when rail operations cease until the time a full abandonment certificate is issued).

In *National Wildlife Federation* v. *I.C.C.*, 850 F.2d 694 (D.C. Cir. 1988) (*NWF*), the United States Court of Appeals for the District of Columbia Circuit affirmed our view that section 1247(d) permits only voluntary transfers.[1] The court also rejected the argument that rail banking is necessarily a fiction (*i.e.*, that no railroad that has made the decision to abandon realistically intends to reactivate rail service). Moreover, it upheld (850 F.2d at 705) Congress' authority to decide in the Trails Act to preempt State law and defeat the vesting of reversionary interests when property is converted from rail use to trail use. However, the court remanded for further consideration our conclusion that the application of our rules could never constitute a compensable taking of the property of the holders of reversionary interests in the rights-of-way.[2] *See id.* We reconsider that taking question here.

Many railroad rights-of-way are on land that the railroads do not own but rather hold under easements or other fee simple determinable interests (herein collectively "easements" or "reversionary interests"). These easements may or may not be limited specifically to railroad use and may or may not revert if rail use is abandoned. Frequently, however, these easements provide that, upon abandonment of rail operations, the property reverts to the abutting landowner. State law generally governs the disposition of reversionary interests, subject to our plenary jurisdiction to regulate abandonments and impose conditions affecting post-abandonment of use of the property. *See Chicago and N.W. Transp. Co.* v. *Kalo Brick & Tile Co.*, 450 U.S. 311, 330 (1981); *Hayfield Northern R. Co.* v. *Chicago & N.W. Transp. Co.*, 467 U.S. 622, 633 (1984).

Usually, once an unconditional abandonment certificate has been issued, becomes effective, and has been consummated, a railroad's operating easement will be extinguished. The Trails Act was intended to allow transportation corridors subject to such easements to be used on an interim basis as recreational trails, while being preserved for possible future railroad use.

Under the Trails Act rules, when the trail operator agrees to be financially and managerially responsible for the right-of-way or enters into an agreement to purchase it, and the railroad voluntarily agrees to transfer its interest in the right-of-way to the trail operator, we issue either a Certificate of Interim Trail Use or Abandonment (CITU) or, in an exemption proceeding, a Notice of Interim Trail Use or Abandonment (NITU). A CITU or NITU allows the railroad to discontinue service and permits the carrier and trail operator to negotiate an agreement for interim trail use subject to the rail banking and liability conditions in the statute permitting the trail operator to acquire the right-of-way. If a trail use agreement is reached, then abandonment cannot be accomplished under the CITU or NITU until the trail use terminates (without restoration of rail service). If no trail use agreement is reached within 180 days, the CITU or NITU converts into a certificate or notice of abandonment.

The question presented here is whether, by permitting the trail operator to take possession under these circumstances, and, in turn, postponing a reversionary interest that would otherwise have vested,[3] our Trails Act rules result in a taking of private property interests for public use for which just compensation must be paid under the Fifth Amendment to the U.S. Constitution.[4] Petitioners in various proceedings both before us and in court have tried to challenge the constitutionality of Section 1247(d) on its face. However, every court that has considered the matter has found that section 1247(d) is a valid exercise of the United States' Commerce Clause power. *See Glosemeyer, infra*, explaining that in light of our plenary authority over abandonments, the means selected (postponement of abandonment to encourage interim trail use) were reasonably adapted to the end permitted (rail banking). *Accord, NWF, supra; Preseault* v. *ICC*, 853 F.2d 145 (2d Cir. 1988). Because it is clear that Congress had the authority to enact section 1247(d), the only question before us is whether compensation is available for any taking found to have occurred.

Several courts have recently addressed the issue of whether section 1247(d) effects a Fifth Amendment taking without compensation. As indicated above, the D.C. Circuit, in *NWF* rejected this agency's argument that section 1247(d) could never effect a taking. The court indicated that the analysis in our Trails Act rules had been too simplistic and explained that, even though the Trails Act is a valid exercise of Congressional authority, the issue of whether compensation is required is a separate question that depends on State law, the nature of the property interest, and the facts of the particular case. However, in *Preseault, supra*, the Second Circuit adopted the argument that we had urged in the D.C. Circuit and flatly rejected the argument that landowners' property had been taken by indefinitely postponing (for the period of interim trail use) the reversion of an interest that would otherwise have vested under state law. Moreover, in *Glosemeyer, infra*, the district court, in upholding the constitutionality of the statute but rejecting a taking claim because it was not brought in the Claims Court under the Tucker Act, noted that Congress *either* did not believe that postponement of a railroad's abandonment for the period of interim trail use constituted a taking (the *Preseault* approach) *or* assumed that the Tucker Act would

[1] *Accord, Washington* v. *ICC*, 829 F.2d 877 (9th Cir. 1987); *Connecticut Trust* v. *ICC*, 841 F.2d 479 (2d Cir. 1988).

[2] While the court remanded this rulemaking proceeding for further consideration, the court's decision did not strike down any of our rules and, hence, does not affect our administration of the statute. Nor does it void authority granted under the rules or require specific amendments to our Trails Act procedures.

[3] In every Trails Act case, we will already have found that the public convenience and necessity permit abandonment (or that regulatory approval is not required under 49 U.S.C. 10505).

[4] The Fifth Amendment provides "Nor shall private property be taken for public use, without just compensation."

provide an adequate remedy for any taking that might be found to have taken place.

In short, section 1247(d) does not effect an unconstitutional taking of private property without just compensation. There can be no violation of the Fifth Amendment Takings Clause unless a money remedy is unavailable. Because the Tucker Act is available to redress any takings claims that landowners might have, property owners are entitled to seek relief in the Claims Court, where the allegation that a taking has occurred can be tested.

Given the fact that the compensation issue is still being actively litigated (*Glosemeyer* is on appeal in the Eighth Circuit and a petition for certiorari was filed in *Preseault*), we have decided not to take any position on the merits of the different interpretations at this time. Nor will we attempt to establish parameters for when a compensable taking might occur. If *Preseault* is correctly decided, then the application of the Trails Act can never effect a compensable taking. On the other hand, if the D.C. Circuit's position should prevail, the Claims Court would undertake a case-by-case analysis of State law, the nature of the property interest, and the facts of the particular case to determine whether compensation is required.

In any event, this agency is not the proper forum to decide whether, in individual cases, a compensable taking has occurred. Rather, the United States Claims Court has jurisdiction under the Tucker Act, 28 U.S.C. 1491, to consider claims and award compensation for any taking that might be found under this statute. *See Glosemeyer* v. *Missouri-Kansas-Texas R. Co.*, 685 F. Supp. 1108 (E.D. Mo. 1988). That forum is in the best position to determine whether a compensable taking has occurred. The Claims Court, not the ICC, has the expertise to decide taking questions. Whether compensation is required is fact-dependent and does not turn on any laws that we administer and thus we have no expertise to bring to bear on the compensation issues.

In this regard, we will briefly address plaintiff Beres' argument before the court in *NWF* that the rail banking purpose of the Trails Act is a fiction that can and should be disregarded. The court expressly rejected the argument that rail banking necessarily is a fiction. We would go further, by stating our firm belief that the legitimacy of rail banking can be presumed in every case.

Congress clearly intended to preserve as many transportation corridors as possible as an important national resource. *See* H.R. Rep. No. 28, 98th Cong., 1st Sess. 8–9 (1983), cited in *NWF* at n. 10. *See also id.* at 697–98 and the discussion in *Glosemeyer* of the history of this statute and the fact that Congress for sometime prior to amending the Trails Act in 1983 had been concerned about the loss of rail corridors as an important public resource. Congress did not distinguish between short- and long-term rail banking, and, therefore, we do not believe that specific contingency plans for reactivation of a line are necessary to justify retention of a potentially valuable national asset. In any event, the fact that the railroad agrees to trail use is indication in and of itself that the corridor may be valuable in the future for transportation.[5]

Finally, having addressed the taking issue in light of *NWF* (and the other relevant court cases) we will, as the court directed, also consider whether any modification of our rules is necessary.[6] We find that no changes to our Trails Act procedures are required, and that this statement of policy, reflecting the opportunity to seek relief in the Claims Court under the Tucker Act, is sufficient to address the concern of the *NWF* court as to the availability of redress for any takings claims the property owners may have. Because we have decided not to amend our rules, but merely to clarify the appropriate avenue for seeking relief for any taking claims, as required by the court in its order of remand, we are issuing this policy statement without seeking public comment, and our decision will be effective immediately.

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

[5] If the railroad refuses to negotiate a Trails Act agreement, it obtains a full abandonment certificate and, following consummation, the line is no longer subject to our jurisdiction for any purpose. Accordingly, the railroad can dispose of its property (including the right-of-way) in any way it wants. This is not the case if a railroad agrees to interim trail use. Moreover, because of the rail banking condition in the statute, we retain jurisdiction over the property and any disposal of the property is subject to the possibility that rail service may be resumed on the corridor. We do not believe that railroads would agree to rail banking if they did not believe that a rail corridor could be valuable for rail purposes in the future.

[6] As indicated above (*see* n. 2, *supra*), the *NWF* decision did not void authority granted under the Trails Act rules or require specific amendments to our regulations. Any authority granted under our rules remains in full force and effect.

Decided: February 10, 1989.

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

Noreta R. McGee,

Secretary.

[FR Doc. 89–4206 Filed 2–23–89; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB–159 (Sub-No. 2X)]

The Monongahela Railway Co.; Abandonment Exemption; in Marion County, WV

Applicant has filed a notice of exemption under 49 CFR Part 1152 Subpart F—*Exempt Abandonments* to abandon its 4.3-mile line of railroad, known as the Fairmont Secondary Track, beginning at milepost 63.4 (Picket Creek Junction) and extending to milepost 67.7 (end of line) in Marion County, WV.

Applicant has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; and (3) no formal complaint filed by a user of rail service on the line (or a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on March 26, 1989 (unless stayed pending reconsideration). Petitions to stay that do not involve environmental issues,[1]

[1] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation)

formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking statements under 49 CFR 1152.29 must be filed by March 6, 1989.[3] Petitions for reconsideration and requests for public use conditions under 49 CFR 1152.28 must be filed by March 16, 1989, with:

Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with Commission should be sent to applicant's representative:

Fritz R. Kahn, Verner, Liipfert, Bernhard, McPherson, and Hand, Chartered, Suite 700, The McPherson Building, 901 15th Street, NW., Washington, DC 20005–2301.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by March 1, 1989. Interested persons may obtain a copy of the EA from SEE by writing to it (Room 3115, Interstate Commerce Commission, Washington, DC 20423) or by calling Carl Bausch, Chief, SEE at (202) 275–7316. Comments on environmental and energy concerns must be filed within 15 days after the EA becomes available to the public.

Environmental, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: February 16, 1989.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 89–4128 Filed 2–23–89; 8:45 am]

BILLING CODE 7035–01–M

cannot be made prior to the effective date of the notice of exemption. *See Exemption of Out-of-Service Rail Lines*, 4 I.C.C.2d 400 (1988). Any entity seeking a stay involving environment concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[2] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987), and final rules published in the **Federal Register** on December 22, 1987 (52 FR 48440–48446).

[3] The Commission will accept a late-filed trail use statement so long as it retains jurisdiction to do so.

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 88–78]

Lawrence Lerner, M.D., Revocation of Registration

On August 10, 1988, the Administrator of the Drug Enforcement Administration (DEA), issued to Lawrence Lerner, M.D. (Respondent) of 6218 South Central Avenue, Chicago, Illinois 60638, 8909 West 125th Street, Palos Park, Illinois 60464 and 10332 South Harlem Avenue, Palos Hills, Illinois 60465, an Order to Show Cause proposing to revoke his DEA Certificates of Registration, AL7037369, AL9171505 and AL9221754 and to deny any pending applications for the renewal of such registrations. The Order to Show Cause alleged that Respondent's continued registration would be inconsistent with the public interest, as set forth in 21 U.S.C. 823(f) and 824(a)(4), and as evidenced by, in substance, that: (1) In 1978, Respondent pled guilty to a charge of marijuana possession and his license to practice medicine in California was suspended for ten years; (2) an accountability investigation of Respondent's controlled substance dispensing practices in 1985 disclosed that he could not account for almost 379,000 dosage units of various controlled substances in tablet form and 875 gallons of various controlled substances in liquid form, and also revealed overages in excess of 68,000 dosage units of various controlled substances, and that as a result, a civil complaint was filed against Respondent in the United States District Court for the Northern District of Illinois alleging violations of 21 U.S.C. 827 and 842(a)(5); (3) after the Government's motion in that proceeding for summary judgment on all counts was granted on August 31, 1987, Respondent entered into a consent decree on June 15, 1988, in which he agreed to pay civil penalties totaling $30,000.00, to surrender his DEA Certificates of Registration on or before September 6, 1988, and not ro reapply for registration with DEA for a period of three years from the date of surrender; and (4) that from July 29 through August 4, 1988, Respondent ordered more than 900,000 dosage units of controlled substances even though he would not be authorized to handle controlled substances as of September 6, 1988. Additionally, citing his preliminary finding that Respondent's continued registration posed an imminent danger to the public health and safety, the Administrator ordered the immediate suspension of the Respondent's DEA Certificates of Registration during the pendency of these proceedings. 21 U.S.C. 824(d).

The Order to Show Cause/Immediate Suspension was personally served on Respondent on August 11, 1988. Respondent, through counsel, requested a hearing on the issues raised by the Order to Show Cause and the matter was docketed before Administrative Law Judge Mary Ellen Bittner. On September 26, 1988, Government counsel filed a motion for summary disposition. On October 17, 1988, Respondent's counsel filed an opposition to the Government's motion for summary disposition. Judge Bittner considered the motion for summary disposition and the response thereto, and on December 21, 1988, issued her opinion and recommended decision. No hearing was held, since no factual issues were involved. Neither side filed exceptions to the recommended ruling of the Administrative Law Judge. On January 19, 1989, Judge Bittner transmitted the record in this matter to the Administrator. The Administrator, having considered the record in its entirety, hereby enters his final order in this matter pursuant to 21 CFR 1316.67.

In discussing the Government's motion for summary disposition and the Respondent's opposition and countermotion, the Administrative Law Judge concluded that it is clear that pursuant to the consent decree filed June 15, 1988, in the United States District Court for the Northern District of Illinois, Respondent had surrendered his DEA registrations and had agreed not to apply for a new registration until 1991. Thus, Respondent is not entitled to a DEA registration at this time. Judge Bittner concluded that in a case such as this one, a motion for summary disposition is properly entertained and must be granted. She dismissed Respondent's assertion that a ruling on the Government's motion for summary disposition should be deferred pending the taking of depositions. The Administrative Law Judge found Respondent's motion to be without merit. There is no formal discovery in these proceedings and there is no reason to withhold a ruling now because of the mere speculation that in several years there may be another similar proceeding involving the same Respondent.

It is well-settled that when no fact question is involved, or when the facts are agreed, a plenary, adversary administrative proceeding involving evidence and cross-examination of witnesses is not obligatory, even though a pertinent statute prescribes a hearing. In such situations, the rationale is that Congress does not intend administrative

agencies to perform meaningless tasks. *U.S. v. Consolidated Mines and Smelting Co., Ltd.*, 445 F.2d 432, 453 (9th Cir. 1971); see *NLRB v. International Association of Bridge, Structural and Ornamental Ironworkers, AFL–CIO*, 549 F.2d 634 (9th Cir. 1977); *Alfred Tennyson Smurthwaite, N.D.*, Docket No. 77–29, 43 FR 11873 (1978); *Philip E. Kirk, M.D.*, Docket No. 82–36, 48 FR 32887 (1983), aff'd. *sub nom Kirk v. Mullen*, 749 F.2d 297 (6th Cir., 1984).

With respect to Respondent's contention that the immediate suspension of Respondent's registrations constituted an *ex parte* action which deprived Respondent of due process, the Administrative Law Judge found that such suspensions were within the discretion delegated to the Administrator pursuant to 21 U.S.C. 824(d) and that such suspensions remain in effect until the conclusion of the administrative proceedings unless earlier withdrawn by the Attorney General or dissolved by a court of competent jurisdiction. Thus, Judge Bittner concluded that consideration of the property of the suspension was not within the purview of her administrative tribunal.

The Administrative Law Judge recommended that Respondent's DEA registrations be revoked. The Administrator adopts the Administrative Law Judge's opinion and recommended decision in its entirety. Respondent is without authority to possess a DEA registration. Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that DEA Certificates of Registration AL7037369, AL9171505 and AL9221754, previously issued to Lawrence Lerner, M.D., be, and they hereby are revoked, and any applications for the renewal of such registrations, be, and they hereby are, denied. This order is effective immediately.

When the Order to Show Cause/ Immediate Suspension was served on Respondent, all controlled substances possessed by him under the authority of his then-suspended registrations were placed under seal and removed for safekeeping. 21 U.S.C. 824(f) provides that no disposition may be made of such controlled substances under seal until all appeals have been concluded or until the time for taking an appeal has elapsed. Accordingly, these controlled substances shall remain under seal until March 27, 1989, or until any appeal of this order has been concluded. At that time, all such controlled substances shall be forfeited to the United States and shall be disposed of pursuant to 21 U.S.C. 881(e).

John C. Lawn,

Administrator.

Dated: February 16, 1989.

[FR Doc. 89–4306 Filed 2–23–89; 8:45 am]

BILLING CODE 4410–09–M

[Docket No. 88–9]

Woodridge Pharmacy, Inc.; Denial of Application

On December 3, 1987, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) issued on Order to Show Cause to Woodridge Pharmacy, Inc. [Respondent], 1215 Good Hope Road SE., Washington, DC 20020, proposing to deny its application, executed on August 16, 1987, as a retail pharmacy under 21 U.S.C. 823(f). The Order to Show Cause alleged that Respondent's registration would be inconsistent with the public interest, as that term is used in 21 U.S.C. 823(f) and 824(a)(4).

By letter dated January 14, 1988, Respondent requested a hearing on the issues raised by the Order to Show Cause, and the matter was docketed before Administrative Law Judge Francis L. Young. Following prehearing procedures, a hearing was held in Washington, DC on May 25, 1988. On December 5, 1988, the Administrative Law Judge issued his opinion and recommended ruling. The Administrative Law Judge recommended that the Administrator deny Respondent's DEA Certificate of Registration. On January 24, 1989, Judge Young transmitted the record of these proceedings to the Administrator. The Administrator has considered the record in its entirety and, pursuant to 21 CFR 1316.67, hereby issues this final order based upon findings of fact and conclusions of law as hereinafter set forth.

The Administrative Law Judge found that in 1975, DEA conducted an investigation into the dispensing practices of Respondent pharmacy, owned at all relevant times by Patrick M. Williams. Investigators performed an accountability audit which targeted Ritalin and Preludin, both Schedule II controlled substances. The audit covered the two-year period from April 1973 to April 1975. The audit revealed that 95% of the controlled substances filled at Respondent pharmacy were for Ritalin and Preludin.

As part of the audit, numerous prescriptions were seized. Many of the prescriptions were forgeries and it was obvious many had been photocopied. More Preludin and Ritalin were dispensed than the pharmacy could account for with purchase orders. Mr. Williams attributed the overages to missing order forms.

During the time of the audit, DEA Investigators also surveyed three drug companies to learn how much Preludin and Ritalin Respondent pharmacy was purchasing. During the period from May 1, 1974 to July 31, 1975, Respondent had purchased 7.4% of all the Preludin sold to Washington, DC area pharmacies by the Washington Wholesale Exchange, a wholesale distributor, and 14.6% of all the Preludin sold to Washington, DC area pharmacies by the Gelpin Co., another distributor. These are extraordinarily large percentage for any one pharmacy to have purchased. At the time of these large Preludin purchases by Respondent, it was widely known that Preludin was being heavily abused on the streets of the Washington, DC area. DEA reports between April 30, 1974 and May 1, 1975, showed that 20 deaths in the Washington, DC area resulted from the abuse of Preludin in combination with some other drug. Of 186 firearm fatalities, 30 victims had Preludin in their system. Intelligence reports placed the price of a Preludin tablet on the street at $6–$7 per tablet. Taking into account the statistics for Preludin abuse, it is not unreasonable to believe that Preludin from the Respondent pharmacy had found its way into the hands of illegal dealers and drug abusers.

As a result of the 1975 audit, a civil action was filed against Respondent in the U.S. District Court for the District of Columbia. On July 12, 1975, District Judge John Pratt made 20 separate findings of fact, including that Mr. Williams must have known that many of the Preludin prescriptions were forged, that some had been mechanically reproduced and that the bulk of them had not been issued in the course of legitimate medical practice. The Court also found that Mr. Williams failed to maintain complete and accurate records of his controlled substances in the course of a reckless pursuit of profit that amounted to willfulness. On July 12, 1976, judgment was entered against Mr. Williams for a civil penalty of $35,000 and he was ordered to immediately cease and desist from filling prescriptions in violation of 21 U.S.C. 842(a)(1).

The Administrative Law Judge found that on August 12, 1983, DEA Special Agents and Investigators executed a Federal search warrant on the premises

of Respondent pharmacy. Various records including invoices, prescriptions and order forms were seized pursuant to the warrant. Forty-eight Schedule II prescriptions were seized, all of which were for Dilaudid and were issued by one doctor. These forty-eight prescriptions represented approximately 2,000 Dilaudid tablets in a four-month period. Each prescription was filled for exactly 100 Dilaudid tablets. These prescriptions were issued to people with fictitious names and addresses. Further investigation by the DEA and the FBI revealed that Mr. Williams often received $100 to $300 for each bogus Dilaudid prescription. Taking into account the forged Dilaudid prescriptions, Respondent was short 700 dosage units. Not counting the forged Dilaudid prescriptions, Respondent was short 2,000 dosage units.

When DEA Investigators confronted Mr. Williams with the results of the search, he admitted to knowingly filling the illegal prescriptions. As a result, on September 24, 1984, Mr. Williams was convicted of Conspiracy to Distribute a Controlled Substance in violation of 18 U.S.C. 371 and sentenced to five years imprisonment. The five-year term was suspended and Mr. Williams was placed on probation for five years.

Based on the criminal conviction, on February 19, 1987, the Washington, DC Board of Pharmacy suspended Mr. Williams' pharmacist license for six months from that date. The Board of Pharmacy succinctly summed up Mr. Williams' conduct: "Respondent's abuse of his license to fill prescriptions jeopardized the health and safety of his clients, degrades the pharmacy profession and lessens the public's trust in a pharmacist's capability to competently and professionally provide for the public's welfare." The suspension ended in July of 1987, only one month prior to Mr. Williams' application for a controlled substance registration.

The Administrative Law Judge found that Respondent has a history of egregious violations with respect to controlled substances. Since 1973, Respondent has repeatedly demonstrated his unwillingness to handle controlled substances in compliance with the requirements of Federal law and regulations. Initially, Mr. Williams was subjected to a substantial fine in a civil proceeding for his controlled substance-related violations. He apparently learned little from that experience in 1975. In 1984, he was convicted of conspiracy to distribute Dilaudid, a felony offense. To grant Mr. Williams' application in the face of two separate instances of violative behavior would make ludicrous the high standards of behavior which are expected of those entrusted to handle dangerous drugs.

The Administrator adopts the opinion and recommended ruling, findings of fact, conclusions of law and decisions of the Administrative Law Judge in their entirety. Based on Mr. Williams' past experience, the civil fine, criminal conviction, pharmacist license suspension and numerous violations of state and Federal law, the Administrator concludes that Respondent's registration would be inconsistent with the public interest.

Having concluded that Woodridge Pharmacy's registration would be inconsistent with the public interest, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), orders that the application for registration executed by Woodridge Pharmacy, Inc. on August 16, 1987, be, and it hereby is, denied.

This order is effective February 24, 1989.

John C. Lawn,

Administrator.

Dated: February 17, 1989.

[FR Doc. 89-4307 Filed 2-23-89; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination; Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersede as decisions thereto, contain no expiration dates and are effective from their date of notice in the Federal Register, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provision of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution

Avenue, NW., Room S–3504, Washington, DC 20210.

Corrections to General Wage Determination Decisions

Pursuant to the provisions of the Regulations set forth in Title 29 of the Code of Federal Regulations, Part 1, § 1.6(d), the Administrator of the Wage and Hour Division may correct any wage determination that contains clerical errors.

Corrections being issued in the Government Printing Office document entitled "Gerneral Wage Determinations Issued Under the Davis-Bacon and Related Acts" are indicated by Volume and are included immediately following the transmittal sheet(s) for the appropriate Volume(s).

Volume II:

Wage Decision Nos. NM86–1, NM87–1, NM88–1, NM89–1

Volume III:

Wage Decision No. AZ87–3, Modification 2
Wage Decision No. AZ88–3
Wage Decision No. AZ89–3
Wage Decision No. CA87–4, Modifications 7 through 9
Wage Decision No. CA88–4, through Modification 3
Wage Decision No. CA88–2, Modifications 5 and 6
Wage Decision No. CO88–2, Modifications 3 through 5
Wage Decision No. CO89–2, through Modification 2

Pursuant to the Regulations, 29, CFR Part 1, § 1.6(d), such corrections shall be included in any bid specifications containing the wage determinations, or in any on-going contracts containing the wage determinations in question, retroactively to the start of construction.

New General Wage Determination Decisions

The numbers of the decisions added to the Government Printing Office document entitled "General Wade Determinations Issued Under the Davis-Bacon and Related Acts" are listed by Volume, State, and page number(s).

Volume I:

Pennsylvania:
PA 89–25—pp. 1016a–1016b
Tennessee:
TN 89–17—pp. 1122a–1122d

Volume II:

New Mexico:
NM 89–4—pp. 772a–772b

Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I:

District of Columbia:
DC 89–1 (Jan. 6, 1989)—p. 81
New York:
NY 89–3 (Jan. 6, 1989)—p. 702
NY 89–8 (Jan. 6, 1989)—p. 756
NY 89–12 (Jan. 6, 1989)—p. 790
NY 89–13 (Jan. 6, 1989)—p. 800, 803
NY 89–14 (Jan. 6, 1989)—p. 808
NY 89–15 (Jan. 6, 1989)—p. 812
NY 89–18 (Jan. 6, 1989)—p. 828
Pennsylvania:
PA 89–1 (Jan. 6, 1989)—p. 838–841
PA 89–2 (Jan. 6, 1989)—p. 850–852
PA 89–5 (Jan. 6, 1989)—p. 879–883, 890–891
PA 89–6 (Jan. 6, 1989)—p. 894
PA 89–8 (Jan. 6, 1989)—p. 917
PA 89–9 (Jan. 6, 1989)—p. 926
PA 89–14 (Jan. 6, 1989)—p. 949
PA 89–15 (Jan. 6, 1989)—p. 958
PA 89–18 (Jan. 6, 1989)—p. 972
PA 89–22 (Jan. 6, 1989)—p. 994, 997, 1002
PA 89–24 (Jan. 6, 1989)—p. 1012
Tennessee:
TN 89–16 (Jan. 6, 1989)—p. 1119–1121
Listing by Location (index)—pp. xx, vvvvii, xxxix–xlii
Listing by Decision (index)—p. lviii

Volume II:

Listing by Location (index)—pp. xxxix–xl
Listing by Decision (index)—p. lv

Volume III:

Alaska:
AK 89–1 (Jan. 6, 1989)—p. 3
Arizona:
AZ 89–3 (Jan. 6, 1989)—p. 30
California:
CA 89–2 (Jan. 6, 1989)—p. 47–64B
CA 89–4 (Jan. 6, 1989)—p. 70, 72–73, 79, 81–82
Colorado:
CO 89–2 (Jan. 6, 1989)—p. 116
Idaho:
ID 89–5 (Jan. 6, 1989)—p. 170

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under the Davis-Bacon And Related Acts." This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783–3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC this 17th day of February 1989.

Robert V. Setera,

Acting Director, Division of Wage Determinations.

[FR Doc. 89–4251 Filed 2–23–89; 8:45 am]
BILLING CODE 4510–27–M

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 89–6; Exemption Application No. D–7700 plus 7701 et al.]

Grant of Individual Exemptions; Money Purchase Pension Plan and Trust of the Edmonds Family Medicine Clinic et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, DC. The notices also

invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of pendency were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury of issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

Money Purchase Pension Plan and Trust of the Edmonds Family Medicine Clinic (the Plan)

Location in Edmonds, Washington

[Prohibited Transaction Exemption 89–6; Exemption Application Nos. D–7700 and D–7701]

Exemption

The restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the assumption and immediate repayment of a mortgage note (the Note) by Robert A. Bettis, M.D. (Dr. Bettis) to his individually directed separate account in the Plan, provided that the amount paid to Dr. Bettis' individual account in the Plan is no less than the greater of the unpaid principal balance of the Note plus any accured interest due as of the date of assumption, or the fair market value of the Note as of the date of assumption as established by an independent and qualified appraiser.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on January 9, 1989 at 54 FR 714.

FOR FURTHER INFORMATION CONTACT: Joseph L. Roberts III of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

Retirement Plan for Sales & Administrative Employees of M. L. Claster & Sons, Inc. and Retirement Plan for Hourly Employees of M. L. Claster & Sons, Inc. (collectively, the Plans)

Located in Bellefonte, Pennsylvania

[Prohibited Transaction Exemption 89–7; Exemption Application Nos. D–7421 and D–7422]

Exemption

The restrictions of section 406(a), 406 (b)(1) and (b)(2) and 407(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the continuing leases (the Leases) and sales (the Sales) of two parcels of real property, located respectively, in Altoona, Pennsylvania and Lewistown, Pennsylvania (collectively, the Properties) by the Plans to M. L. Claster & Sons, Inc., the sponsoring employer and a party in interest with respect to the Plans, provided that the terms of the Leases are at least as favorable to the Plans as those obtainable in an arm's-length transaction with an unrelated party and provided that the consideration paid for the Properties is not less than the greater of either the sum of $376,000 or the fair market value of the Properties on the date of the Sales.

For a more complete statement of the facts and representations supporting the Department's decison to grant this exemption refer to the notice of proposed exemption published on December 27, 1988, at 53 FR 52255.

EFFECTIVE DATE: This exemption is effective July 1, 1986.

FOR FURTHER INFORMATION CONTACT: Mr. C. E. Beaver of the Department, telephone (202) 523–881. (This is not a toll-free number.)

Grand Valley Manufacturing Company Profit Sharing Plan (the Plan)

Located in Erie, Pennsylvania

[Prohibited Transaction Exemption 89–8; Exemption Application No. D–7437]

Exemption

The restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the cash sale by the Plan of certain real property located in Titusville, Pennsylvania and five overhead industrial cranes to the Grand Valley Manufacturing Company (the Employer), the sponsor of the Plan; provided that such sale is on terms no less favorable to the Plan than those which the Plan could obtain in an arm's-length transaction with an unrelated party.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on November 10, 1988 at 53 FR 45628.

Written Comments: The Department received one written comment and request for a hearing. The comment addressed concerns about the rate of return which the subject Plan assets have produced for the Plan as a result of the transactions proposed in the notice of proposed exemption. A response to this comment was submitted by the Marine Bank (the Trustee) of Erie, Pennsylvania, the trustee of the Plan since 1969. The Trustee responded that efforts over the past two years to sell the subject Plan assets to an unrelated buyer have been unsuccessful. In addition, the Trustee stated that (as set forth in the notice of proposed exemption) the Plan has received payments of funds as corrections and remedies of violations cited by the Philadelphia Area Office of the Department in its examination of the Plan and the assets subject to this exemption. Further, the Trustee has reviewed the investment of the Plan assets in the subject property and has determined that a sale of the subject property to the Employer would be in the best interests of the participants and beneficiaries of the Plan.

After consideration of the entire record, the Department has determined to grant the exemption without conducting a hearing.

FOR FURTHER INFORMATION CONTACT: Ronald Willett of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

State Street Bank and Trust Company (the Bank)

Located in Boston, Massachusetts

[Prohibited Transaction Exemption 89–9; Exemption Application No. D–7454]

Exemption

The restrictions of section 406(b)(2) of the Act shall not apply to (1) the proposed purchase and sale of equity securities between collective investment index funds (the Index Funds) sponsored by the Bank; (2) the proposed purchase and sale of equity securities between the Index Funds and various model-driven collective investment funds (the Model-Driven funds) sponsored by the Bank; (3) the proposed purchase and sale of equity securities between the Model-Driven Funds; and (4) the proposed purchase and sale of equity securities between the Index funds or Model-Driven Funds (together, the Funds) and various large pension plans (the Large Plans), under the terms and conditions set forth in the notice of proposed exemption.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on August 30, 1988 at 53 FR 33198.

Written comments: The applicant submitted three comments on the notice of proposed exemption (the Notice).

First, the applicant states that Paragraph 1 of the Notice correctly reflects the fact that the Bank's client accounts (the Client Accounts) that are identified as being either Index Funds or Model-Driven Funds which may participate in the proposed direct cross-trading program, including various employee benefit plans subject to Title I of the Act (the Client Plans), may be managed either as separate accounts for a single client or as commingled accounts for multiple clients. However, the applicant states that the operative language of the Notice is too narrow because it refers to only *collective* investment Index Funds and Model-Driven Funds sponsored by the Bank. The applicant represents that since the purpose of the proposed exemption would be to facilitate the various transaction cost savings which direct cross-trading can achieve, the objectives of the proposed exemption would be best achieved by allowing the maximum number of potential Client Accounts to participate in the program. Therefore, the applicant requests that the proposed exemption be clarified to specifically cover direct cross-trading of securities between and among Index Funds and Model-Driven Funds which consist of either a single Client Account or multiple Client Accounts.

Based on the facts and representations contained in the Notice and the application, the Department understands that the Funds may include either single Client Accounts or multiple Client Accounts. Accordingly, the Department recognizes that the final exemption will cover all such Index Funds or Model-Driven Funds sponsored by the Bank, which engage in the direct cross-trading of securities, subject to the terms and conditions set forth in the Notice.

Second, the applicant states that the proposed exemption would permit direct cross-trading of securities between the Funds and the Large Plans. Paragraph 6 of the Notice states that the Bank acts as a "trading adviser" to the Large Plans but does not act as a fiduciary for the Large Plans with respect to the underlying asset allocation decision which results in the Large Plan allocating assets to the Funds. In addition, paragraph 10 of the Notice states that the proposed cross-trading of securities between the Funds and the Large Plans would be effected only if the following conditions are satisfied: (1) The Large Plan's fiduciary, which is independent of the Bank, is fully informed in writing in advance of the cross-trading opportunity; (2) such fiduciary provides advance written approval, authorizing the Bank to engage in a cross-trade transaction; and (3) the Large Plan's fiduciary is informed in writing of the results of all direct cross-trading activity.

The applicant requests that the exemptive relief proposed in the Notice for the cross-trading transactions involving the Funds and the Large Plans be extended to include such transactions for all large Client Accounts (the Large Accounts) for which the Bank acts as a "trading adviser" in order to maximize the availability of cross-trading opportunities. These Large Accounts would include government retirement plans, university endowment funds and private foundations. Thus, the applicant states that all references in the Notice to the Large Plans should be broadened to refer to the Large Accounts, except for the separate discussion in Paragraph 10 of the Notice regarding the additional protection for Large Plans. The applicant notes that these additional protections should be required only when the Large Account is a Large Plan covered by Title I of the Act. Therefore, the applicant proposes that the references to Large Plans in Paragraph 10 of the Notice be retained.

In this regard, the Department believes that there is not enough information in the record regarding the Bank's relationship to the Large Accounts to allow the Department to make a finding that the cross-trading of securities between the Funds and all such Large Accounts would be in the best interests of the Client Plans. Therefore, the Department cannot determine on the basis of the record whether the applicant's suggested modification is appropriate in the context of the current application.

Third, the applicant states that the fifth sentence of Paragraph 4 of the Notice correctly notes that the Bank has agreed that if a cross-trade opportunity arises by reason of the Bank's exercise of its discretion to change the underlying computer models for any of the Model-Driven Funds, then the proposed exemption would not be available. However, the applicant states that the parenthetical in the fifth sentence of Paragraph 4 refers back to the third "triggering event" described in Paragraph 3 of the Notice, which includes all changes in the computer models upon which the Model-Driven Funds are based. Paragraph 4 of the Notice acknowledges that changes in the computer models may be based either upon independent determinations and events or upon the Bank's own exercise of discretion. The applicant requests a clarification that only those situations described in the third "triggering event" with respect to which the Bank has exercised discretion should be covered by the reference made in the parenthetical in the fifth sentence of Paragraph 4. The applicant suggests, as an alternative, that the parenthetical simply be deleted from that sentence in the Notice.

The Department agrees that for sake of clarification the parenthetical in the fifth sentence of Paragraph 4 of the Notice should be deleted.

After consideration of the entire record, the Department has determined to grant the exemption.

FOR FURTHER INFORMATION CONTACT: Mr. E.F. Williams of the Department, telephone (202) 523–8883. (This is not a toll-free number)

William E. Pearson, P.S.C. Defined Benefit Pension Plan (the Plan)

Located in Owensboro, KY

[Prohibited Transaction Exemption 89–10; Exemption Application No. D–7620]

Exemption

The restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to: (1) The contribution, on March 15, 1988, to the Plan of certain agricultural real property (the Property) by William E. Pearson,

P.S.C. (the Employer), the sponsor of the Plan, provided the Property was valued at no greater than its fair market value at the time of the contribution; and (2) the proposed guarantee by the Employer and Dr. William E. Pearson of the Plan's full recoupment of the contribution value of the Property, plus all acquisition and holding costs associated with such land upon its sale to an unrelated party, provided the terms of the guarantee are at least as favorable to the Plan as those obtainable in an arm's length transaction with an unrelated party.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on December 27, 1988 at 53 FR 52259.

EFFECTIVE DATE: This exemption is effective as of March 15, 1988 with respect to the Employer's contribution of the Property to the Plan.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

Dr. Leroy Young, Inc. Profit Sharing Plan and Trust (the Plan)

Located in Moore, Oklahoma

[Prohibited Transaction Exemption 89–11; Exemption Application No. D–7731]

Exemption

The restrictions of section 406(a) and 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the cash sale by the Plan of two adjoining parcels (the Parcels) of unimproved real property to Dr. Leroy Young, Inc., the sponsor of the Plan; provided that the sale price is the greater of the total cost to the Plan of acquiring and holding the Parcels or the fair market value of the Parcels on the date of the sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on December 27, 1988 at 53 FR 52262.

FOR FURTHER INFORMATION CONTACT: Angelena C. Le Blanc of the Department, telephone (202) 523–8883. (This is not a toll-free number.)

Peruri S. Rao, Ltd., Retirement Plan and Trust (the Plan)

Located in Libertyville, IL

[Prohibited Transaction Exemption 89–12; Exemption Application No. D–7750]

Exemption

The sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the proposed cash sale by the Plan of a certain parcel of unimproved real property (the Property) to Sankara Rao Peruri, M.D. (Dr. Peruri), a disqualified person with respect to the Plan;[1] provided that the sales price for the Property is not less than the fair market value of the Property on the date of sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on January 9, 1989 at 54 FR 718.

FOR FURTHER INFORMATION CONTACT: Mr. E.F. Williams of the Department, telephone (202) 523–8883. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries.

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 17th day of February, 1989.

Robert J. Doyle,

Director of Regulations and Interpretations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 89–4333 Filed 2–23–89; 8:45 am]

BILLING CODE 4510–29–M

[1] Because Dr. Peruri is the only participant in the Plan and the sponsor of the Plan, Peruri S. Rao, Ltd., was wholly-owned by Dr. Peruri, there is no jurisdiction under Title I of the Act pursuant to 29 CFR 2510.3–3(b). However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the code.

[Application No. D–7595] et al.

Proposed Exemptions; Isler Homes, Inc., Profit Sharing Plan, et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemptions, unless otherwise stated in the Notice of Pendency, within 45 days from the date of publication of this Federal Register Notice. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Regulations and Interpretations, Room N–5671, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No. stated in each Notice of Pendency. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N–5507, 200 Constitution Avenue, NW., Washington, DC 20210.

Notice of Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the Federal Register. Such notice shall include a copy of the notice of pendency of the exemption as published in the Federal Register and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of pendency are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Isler Homes, Inc. Profit Sharing Plan (the Plan) Located in Okeana, Ohio

[Application No. D–7595]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted, the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to (1) the sale of certain lots of unimproved real property (the Property) from the Plan to Isler Homes, Inc. (the Employer), a disqualified person with respect to the Plan, provided the Plan receives no less than fair market value for the lots at the time of sale and (2) a short-term extension of credit by the Plan to the Employer as a result of the sale, provided the terms of the transaction are not less favorable than the Plan could obtain in an arm's-length transaction with an unrelated party.[1]

Summary of Facts and Representations

1. The Employer is an Ohio corporation engaged primarily in the business of real estate development and home construction. Robert Isler (Isler) is the president and sole shareholder of the Employer. Isler is also the trustee of the Plan and the only participant in the Plan. The Plan is a profit sharing plan which had total assets of $291,915 as of December 31, 1987.

2. The Property consists of 25 acres of undeveloped real estate located in the City of Eaton, Ohio. The Plan acquired the Property for $72,000 ($2,880 per acre) in cash from an unrelated party in August 1986. Since the time of purchase, the Plan has made no improvements to the Property. Any taxes or expenses related to the Plan's holding of the Property have been paid by the Employer.

3. According to the applicant, the plan originally purchased the Property for investment purposes. However, in July 1987 the City Council of Eaton, Ohio, approved a zoning change for 9.73 acres of the Property from A–1 Agricultural to PD–1 Planned Unit Development. The zoning change, which was requested by the Plan, created lots containing one-half acre or less. The A–1 Agricultural designation would have required a minimum one acre for residential use.

4. The applicant obtained an appraisal on eight lots of the Property on October 26, 1987, from P. Lincoln Mitchell, Jr. (Mitchell) of the real estate firm of Fred A. Schmidt in Cincinnati, Ohio, updated by a letter dated April 20, 1988. The applicant represents that Mitchell is independent of the Plan and the Employer. According to Mitchell, the eight lots are part of a subdivision which is located in a good residential neighborhood. Mitchell states that in recent years purchasers seeking new homes in the $100,000 plus range have gone to surrounding towns because of the lack of suitable building sites within the City of Eaton and that the subdivision should make such sites available. Homes selling for over $100,000 are normally built on lots selling for $20,000 and up. Allowing $15,000 of this amount for development cost, selling time and developer's profit, the value per lot is estimated to be $5,000. Accordingly, Mitchell estimates the fair market value of the eight lots to be $40,000.

5. As a result of the change in zoning, the Plan now believes it can realize an advantageous price for certain lots of the Property. Accordingly, the Plan proposes to sell the eight lots of the Property which are the subject of the appraisal to the Employer. The price will be the higher of $5,000 per lot for a total purchase price of $40,000 of fair market value at the time of sale, as established by an updated independent appraisal. The Employer anticipates that it will build homes selling for approximately $100,000 on these lots after developing the lots. Each lot to be sold is about one-half acre in size. Under the terms of a proposed sales contract (the Contract) between the Plan and the Employer, $1,000 of the $40,000 purchase price would be paid at the time of signing of the Contract and the balance would be paid as each lot is transferred to the Employer. The Employer will pay the Plan interest at the rate of ten percent per annum from the date of the signing of the Contract to the date of transfer, based on the unpaid balance of the purchase price. The Oak Hills Savings and Loan Co. of Cincinnati, an unrelated lending institution, stated in a letter dated October 14, 1988, that it considers ten percent to be appropriate for an extension of credit of this kind. The Plan anticipates that the eight lots will be transferred and paid for during 1989. The Employer will pay cash for the lots and is not purchasing or assuming any debt in connection with the lots. The Plan will pay no fees or commissions in regard to the transaction. The applicant states that the remaining lots of the Property are for sale to the general public and that the Plan hopes to eventually sell these lots at the highest possible price.

6. In summary, the applicant represents that the proposed transaction will satisfy the statutory criteria of section 4975(c)(2) of the Code because: (1) The Employer will pay no less than fair market value for the lots at the time of sale; (2) the fair market value of the lots will be established by a current independent appraisal of the lots; (3) the Employer will pay cash for each lot as the lots are transferred to the employer; and (4) the Plan will pay no fees or commissions in connection with the transaction.

Notice to Interested Persons: Because Isler is the applicant and the only participant in the Plan, it has been determined that there is no need to distribute the notice of pendency to interested persons. Comments and requests for a hearing must be received

[1] Because Robert Isler is the sole shareholder of the Employer and the only participant in the Plan, there is no jurisdiction under Title I of the Act pursuant to 29 CFR 2510.3–3(b). However, there is jurisdiction under Title II of the Act under section 4975 of the Code.

by the Department within 30 days of the date of publication of this notice of proposed exemption.

FOR FURTHER INFORMATION CONTRACT: Paul Kelty of the Department, telephone (202) 523-8883. (This is not a toll-free number.)

Northwest Ironworkers—Employers Vacation Trust Fund (the Vacation Trust) and the Pacific Northwest Ironworkers and Employers Apprenticeship and Training Trust Fund (the Training Trust; together, the Trusts) Located in Seattle, Washington

[Application Nos. D-7657 and D-7658]

Proposed Exemption

The Department is considering granting and exemption under the authority of section 408(a) of the Act and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(b)(2) of the Act shall not apply to the proposed transfer of $235,000 is unclaimed, surplus funds from the Vacation Trust to the Training Trust.

Summary of Facts and Representations

1. The Vacation Trust is a multiemployer welfare plan established in accordance with section 302 of the Labor Management Relations Act of 1947, as amended. The Vacation Trust was established on December 21, 1971, and was revised and susperseded pursuant to the terms and conditions of a revised trust agreement (the Vacation Trust Agreement) on December 31, 1975. The signatories to the Vacation Trust Agreement are the Ironworkers District Council of Pacific Northwest (the District Council), the International Association of Bridge, Structural and Reinforced Ironworkers (the International Union) Locals Nos. 14, 29, 66, 114, 505, and 598 (the Union Locals), and three employer associations, the Associated General Contractors (AGC) of America, Inc. (Seattle Chapter, Tacoma Chapter, Inland Empire Chapter, and Oregon-Columbia Chapter), the Steel and Wire Fabricators Association, Inc., and the Montana Contractors Association, Inc. The Vacation Trust maintains its principal place of business in Seattle, Washington. The Vacation Trust holds and administers payments received by contributing employers that are signatories to certain collective bargaining agreements with the Union in order to provide vacation benefits to participants in the Vacation Trust. As of June 30, 1987, the Vacation Trust had 2,253 participants and total net assets of $2,065,269.

2. The Training Trust is also a multiemployer welfare plan that was established in accordance with the Labor Management Relations Act of 1947, as amended. The Training Trust was established on July 1, 1976, and was revised and superseded pursuant to the terms and conditions of a revised trust agreement (the Training Trust Agreement) on July 1, 1987. The signatories to the Training Trust Agreement are the District Council, the International Union, the Union Locals, the AGC (Seattle and Tacoma Chapters) and two employer associations, the Northwest Ironworkers Employers Association and the Missoula Construction Council. The Training Trust provides for the training of apprentice ironworkers and the retraining of journeyman ironworkers for the performance of work within the authority of the Union. As of June 30, 1988, the Training Trust had 2,771 participants and total net assets of $82,156.

3. The geographic jurisdictions covered by the collective bargaining agreements under which the Trusts have been established include various counties in the States of Washington, Montana, and Oregon. The applicant represents that the participants of the Vacation Trust and the Training Trust are essentially the same group of persons.

The Training Trust is administered by a board of trustees which has twelve members (the Training Trust Trustees), six representing employers and six representing the employees. The Vacation Trust is administered by a board of trustees which has eighteen members (the Vacation Trust Trustees), nine of which represent the employers and nine of which represent the employees. The Training Trust Trustees all serve on the Vacation Trust as Vacation Trust Trustees. However, the other Vacation Trust Trustees do not serve as trustees of the Training Trust.

The applicant states that although the Vacation Trust and the Training Trust have common trustees, the Trusts are not parties in interest with respect to each other within the meaning of section 3(14) of the Act. The Trusts are administered by Welfare and Pension Administrative Services, Inc. of Seattle, Washington (The Plan Administrator).

4. The Vacation Trust provides vacation benefits to the participants based upon employer contributions. The applicant states that a contribution of $1.00 per hour is made by an employer to the Vacation Trust for each hour of covered work performed by an employee. Amounts paid are maintained by a credit union in a separate account for each participant for the purpose of providing vacation benefits to the participant. All such accounts are established for the participant in the name of the Vacation Trust. Amounts which have accumulated in a participant's account may be withdrawn from the account by the participant twice a year. The participants' accounts are maintained in the credit union of the Union Local in the jurisdiction where the participants performed their work.

5. Article X, Section 4 of the Vacation Trust Agreement provides that the amount credited to a participant's account in the Vacation Trust may accumulate from year to year. However, as a result of an amendment to the Vacation Trust Agreement effective January 1, 1981, Article X, Section 4 provides further that if a participant's funds are not withdrawn by the participant (or by his or her beneficiary if the participant is deceased) for a period of five years, and if communications from the Plan Administrator to the participant are returned with no forwarding address known for the five year period, the funds are returned to the Vacation Trust. The amended Article X, Section 4 of the Vacation Trust Agreement also provides that those unclaimed funds which are returned to the Vacation Trust may be used by the Vacation Trust to discharge certain administrative expenses of the Trust, or may be paid over to training trusts of the Union Locals that are signatories to the Vacation Trust Agreement.

6. As of June 30, 1987, the Vacation Trust had approximately $429,000 is surplus funds that have gone unclaimed for a period of more than five years. The Trustees attribute the surplus funds to the failure by participants of the Vacation Trust to withdraw the funds in a timely manner despite diligent efforts by the Plan Administrator to locate the participants. These efforts include sending letters to the participants at their last known address in order to inform participants to withdraw their unclaimed vacation funds from the Union Local's credit union. Quarterly statements are sent by the credit unions, and efforts are made by the credit unions to contact persons with any unclaimed funds through the Union Local. The applicant represents that these efforts continue throughout a five-year period, after which the funds that have not been claimed are turned over to and held in the Vacation Trust. The applicant states that if any participant should later be found and can prove his identity, he or she is entitled to receive

the amount disbursed by the credit union to the Vacation Trust, but without interest after the disbursement. The applicant states further that prior to the involvement of the credit unions, the Vacation Trust sent quarterly statements to the participants and routinely checked with the Union Locals on at least an annual basis to update addresses where there were unclaimed funds. The Vacation Trust maintains records of the names and amounts due to each of the participants.

In addition to the efforts of the Vacation Trust and the credit unions, whenever the Vacation Trust or the credit unions have requested the Union Locals to locate participants, the Union Locals have requested assistance from the District Council, which periodically has checked its records, the records of the International Union, and the home Union Local of the participant to try to find the current address of the participant whose funds have been returned unclaimed. The District Council states that this has been done at least once for each of the persons on the Vacation Trust's list.

7. The Trustees request an administrative exemption in order to transfer $235,000 of the unclaimed, surplus funds of the Vacation Trust to the Training Trust. The proposed transfer of funds will help to upgrade and improve the training provided by the Training Trust. The applicant states that the transferred funds will not inure to the benefit of any contributing employer and will be used for the exclusive purpose of providing benefits to participants and defraying reasonable expenses of administering the Training Trust.

The Trustees have provided a statement, dated August 9, 1988, in which they represent that the proposed transfer of funds is in the best interests of the participants of the Trusts because such funds are presently surplus funds resulting from unclaimed funds of participants who cannot be located, after diligent efforts, and that such funds are not needed for the operation of the Vacation Trust and can be put to effective use by the Training Trust.

In addition, the Training Trust Trustees have executed an indemnification agreement (the Agreement), dated August 9, 1988. The Agreement provides that the Training Trust will indemnify the Vacation Trust in an amount up to $235,000 for any unclaimed Vacation Trust contributions that are required to be paid to the participants of the Vacation Trust that have accumulated as of the date that the Vacation Trust transfers to the Training Trust the unclaimed, surplus funds. The indemnification of the Vacation Trust under the Agreement will continue so long as any Vacation Trust participant has the right to make a claim for vacation contributions from the Vacation Trust for contributions accruing as of the date for the proposed transfer.

8. In summary, the applicant represents that the proposed transaction will satisfy the statutory criteria of section 408(a) of the Act because: (a) The transaction will be a one-time transfer of funds between the Vacation Trust and the Training Trust; (b) the funds to be transferred are surplus funds resulting from the unclaimed funds of participants who cannot be located despite diligent efforts by the Vacation Trust Trustees and the Plan Administrator; (c) the rights of the Vacation Trust participants will be protected by the Agreement whereby the Training Trust will indemnify the Vacation Trust for any unclaimed Vacation Trust contributions that are required to be paid to the participants in an amount up to $235,000; and (d) the Trustees of the Trusts have determined that the proposed transfer of funds is in the best interests of the participants and beneficiaries of the Trusts.

FOR FURTHER INFORMATION CONTACT: Mr. E.F. Williams of the Department, telephone (202) 523-8883. (This is not a toll-free number.)

Hinderliter Profit Sharing Plan and Trust (the Plan) Located in Tulsa, Oklahoma

(Application No. D-7743)

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of sections 406(a) and 406(b) (1) and (2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the sale of a parcel of unimproved real property (the Property) from the Plan to Hinderliter Industries, Inc. (the Employer), a party in interest with respect to the Plan, provided the Plan receives no less than fair market value for the Property at the time of sale and provided further that the Plan experiences no loss as a result of the previous acquisition and holding of the Property.

Summary of Facts and Representations

1. The Employer manufacturers various products used in the oil and gas industries. The Plan is a profit sharing plan having total net assets of $1,048,344 as of June 30, 1988. There are approximately 541 participants in the Plan.

2. The Plan acquired the Property for $29,900 in cash in December 1980 from unrelated third parties. The purchase originally was made for investment purposes. The Property consists of 9,100 square feet of vacant land located in Tulsa, Oklahoma. A lease between the sellers and another party terminated in April 1981, according to the terms of the sales agreement. Since that time, the Property has not been leased and is subject to no encumbrance. Also, as provided in the sales agreement, during 1981 the sellers removed a house which was then located on the Property in return for a credit of $2,000 in the original sales price, and the Property has been vacant land since that time. Since the purchase, the Plan has paid no real estate taxes and has incurred no holding costs with respect to the Property. The Property is adjacent to property owned by the Employer which it plans to lease to an unrelated party. The Property has not been used for any purpose by the Employer or any of its affiliates.

3. The Plan obtained an appraisal on the Property from Warren G. Morris (Morris), a real estate appraiser located in Tulsa. The applicant represents that Morris is unrelated to the Plan and to the Employer. According to Morris, the highest and best use of the Property would be to attach the parcel to the adjacent property owned by the Employer and use it for commercial or industrial purposes. Considering this proximity to property owned by the Employer and taking account of comparable sales of similar parcels of property, Morris estimated that the fair market value of the Property as of June 26, 1988, is $15,000.

4. Since the Plan purchased the Property, the economy in the Tulsa area has deteriorated, according to the applicant, so that the Property has depreciated in value. Also, the Property has produced no income for the Plan. For these reasons, the Employer has offered to buy the Property from the Plan. The Employer proposes to pay $35,000 in cash for the Property. This purchase price is $20,000 greater than the fair market value of the Property as established in the appraisal. The Employer will treat the difference between the purchase price and the fair market value of the Property as an

employer contribution and the applicant represents that such contribution will be within the limits of section 415 of the Code. The Plan will pay no commissions or other expenses in regard to the sale of the Property.

5. In summary, the applicant represents that the proposed transaction will satisfy the statutory criteria of section 408(a) of the Act because: (1) The sale of the Property will be entirely for cash and the Plan will pay no commissions or other expenses in regard to the sale; (2) the fair market value of the Property will be established by an appraiser who is independent of the Plan and the Employer; (3) the Employer will pay more than the current fair market value of the Property so that the Plan will not experience a loss as a result of the acquisition and holding of the Property; and (4) the transaction will relieve the Plan of an investment which has depreciated in value and which has produced no income for the Plan.

FOR FURTHER INFORMATION CONTACT: Paul Kelty of the Department, telephone (202) 523–8883. (This is not a toll-free number.)

Herbert S. Kaufman, M.D. Pension Plan (the Plan)

Located in San Francisco, California

[Application No. D–7759]

Proposed Exemption

The Department is considering granting an exemption under the authoirty of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (D) of the Code shall not apply to the proposed cash sale by the Plan of a parcel of unimproved real property (the Land) located in Napa, California to Herbert S. Kaufman (Dr. Kaufman), a party in interest with respect to the Plan; provided that the terms of the sale are no less favorable to the Plan than similar terms negotiated at arm's length between unrelated third parties; and provided further that the sales price is not less than the fair market value of the Land.

Summary of Facts and Representations

1. The Plan was a money purchase defined compensation plan with five (5) participants and assets of $979,977, as of December 31, 1987. It is represented that the Plan terminated November 1, 1987, and that IRS issued a favorable determination letter on August 15, 1988, on such termination. Dr. Kaufman is a participant in the Plan and serves as trustee to the Plan. Dr. Kaufman is also an officer and 100% shareholder of Herbert S. Kaufman, M.D., (the Employer), the corporate sponsor of the Plan. The Employer is engaged in the practice of medicine in San Francisco, California.

2. The Plan purchased the Land for $32,795 on July 1, 1977, from Mr. William H. Peterson and Mrs. Barbara I. Peterson, unrelated third parties with respect to the Plan. It is represented that the expenses to the Plan to hold the Land since 1977 were negligible and included primarily the cost of general maintenance and property taxes. As of October 31, 1988, the Land represents only 7.06% of the total assets of the Plan.

3. The Land is described as a residential homesite located in a planned unit development adjacent to the Silverado Country Club area of Napa County, California, approximately two (2) miles distant from the center of the Napa City business district. The Land is vacant, unimproved, and has an irregular shape. It is represented that the Land is situated on the northeastern corner of the intersection of Westgate and Canyon Drives and consists of approximately .08 acres. Power and telephone utilities are available to the site. Water and sanitation service are represented to be under the control of the Silverado Community Services District. It is represented that attempts have been made to sell the Land by displaying a "for sale" sign on the site, but no inquiries from persons interested in purchasing the Land have been received.

4. Accordingly, Dr. Kaufman proposes to purchase the Land for cash from the Plan at the greater of $89,600 or the fair market value of the Land on the date of sale. It is represented that Dr. Kaufman will pay all costs associated with the sale and that the Plan will not pay any costs involved with the proposed transaction. Dr. Kaufman represents that the transaction is in the interest of the Plan and its participants and beneficiaries because:

(a) Benefits from the Plan could be distributed to participants with a minimum of delay;

(b) The Plan would avoid marketing expenses or paying a real estate brokerage commission;

(c) Benefits from the Plan could be distributed without conflicts arising over the ownership of the Land;

(d) Participants could roll their benefits based on the proceeds of the sale into basic IRA's since only cash or equivalents will be distributed and thereby avoid the greater expense associated with the administration of IRA's which accept real property as rollover assets from qualified plans.

5. Marcelle M. Kerruish (Ms. Kerruish), a realtor/broker with Browns Valley Realty located at 3243 Brown Valley Road in Napa, California, has appraised the value of the Land at $89,600 as of November 17, 1988. Because the Land is unimproved raw land, Ms. Kerruish did not employ the replacement value method in her appraisal. Rather, she represents that the fair market value of the Land was based on comparable undeveloped vacant land in residential areas in the same vicinity as the Land and were of similar size with comparable access to town and tourist sites. Ms. Kerruish represents that there are no notable physical features on the Land that would distinguish it from other comparables. Ms. Kerruish represents that she is independent of any personal association with Dr. Kaufman and has no present interest in the Land. Ms. Kerruish's qualifications include experience as a full-time realtor and broker in the Napa Valley since September 1970. In that time, Ms. Kerruish represents that she has prepared valuations on more than 125 properties in the Napa Valley, the majority of which sold at or near her appraised value.

6. In summary, Dr. Kaufman represents that the proposed transaction meets the statutory criteria for an exemption under section 408(a) of the Act because:

(a) The sale of the Land will be a one time transaction for cash;

(b) The Plan will not incur expenses on the sale;

(c) The sales price is based on a fair market appraisal prepared by a qualified independent appraiser; and

(d) Participants will receive timely distribution of their accrued benefits at maximum value from the cash proceeds of the sale of the Land.

FOR FURTHER INFORMATION CONTACT: Angelena C. Le Blanc of the Department, telephone (202) 523–8883. (This is not a toll-free number.)

Leanin' Tree Publishing Co. Profit Sharing Trust (the Plan)

Located in Boulder, Colorado

[Application No. D–7787]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act

and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to a proposed cash sale by the Plan of two unimproved parcels of real property and an outlot (Outlot 1) which is an addition to one of the parcels (collectively, the Property) to Edward P. Trumble, a party in interest with respect to the Plan, provided that the Plan receives the greater of $671,000 or the fair market value at the time of the sale.

Summary of Facts and Representations

1. The Plan, adopted in 1969, is a single employer profit sharing plan. The Plan had 195 participants and $1,257,598.70 in net assets as of December 31, 1987. The current trustees of the Plan are Edward P. Trumble, John B. Trumble, Thomas E. Trumble, and J. David Snyder (the Trustees). All the Trustees are full-time employees of Leanin' Tree Publishing Co. (the Employer), a Colorado corporation incorporated in 1965. Edward P. Trumble and Thomas E. Trumble are also shareholders of the Employer. The Property consists of three parcels of real property, Lot 3, Lot 5, and Outlot 1. All three parcels are located in Longbow Park Subdivision, Boulder County, Colorado. The Property is presently unimproved and does not yield any income. It has been represented that the Property has remained vacant and unoccupied since it was acquired by the Plan.[2]

2. On July 13, 1973, Lot 3 was purchased from the Employer for $73,925 on behalf of the Plan by its trustee at the time, First National Bank (the Bank) in Boulder, Colorado. On July 10, 1974, Lot 5 was purchased from the Employer on behalf of the Plan by the Bank for $66,386. The Bank was later terminated as the trustee of the Plan and the trusteeship was assumed by Edward P. Trumble and John Trumble.

Outlot 1 was created when Longbow Drive was realigned to a new location adjacent to the Plan's Lot 5, by Valley Lab Inc. (Valley), an unrelated Colorado corporation. Valley owned land adjoining Lot 5. It is represented that as an adjoining lot owner, it was necessary for the Plan to agree to this realignment. Longbow Drive was realigned in such a way that 5,227 square feet of Valley's land was severed. This severed portion became Outlot 1 which on December 10, 1987, was deeded to the Plan by Valley and became part of Lot 5. In exchange for the transfer of Outlot 1, Valley received the consent of the Plan to the realignment of Longbow Drive. Other than agreeing, the Plan did not pay any money or provide any actual consideration to Valley in exchange for the conveyance of Outlot 1. It is represented that the transfer of Outlot 1 by Valley to the Plan was an arms-length transaction between two unrelated entities, and did not involve any consideration or elements other than those described above.

3. The applicant proposes to sell Lots 3, 5 and Outlot 1 to Edward P. Trumble. An appraisal of the Property was prepared by Mark D. Walker (Mr. Walker), staff appraiser with Bradford M. Beeler, M.A.I. The appraisal, dated December 31, 1987, estimates the aggregate value of the Property to be $671,000. In a letter dated December 19, 1988, Burton Lee (Mr. Lee), a staff appraiser also with Bradford M. Beeler, M.A.I., addresses the fact that Lots 3 and 5 are adjacent to Lot 4, which is owned by Edward P. Trumble, personally. Mr. Lee concludes that this factor does not merit a premium in the value to Mr. Trumble of Lots 3, 5, and Outlot 1.

Mr. Walker and Mr. Lee represented that they are qualified in that they have experience as real estate staff appraisers since 1987 and are both canidates for M.A.I. from the American Institute of Real Estate Appraisers. Mr. Walker and Mr. Lee represent that they are independent in that they have no present or prospective interest in the Property and have no personal interest or bias with respect to the parties involved.

The applicant represents that the transaction is in the interest of the Plan because it is a one time cash sale. Also, the transaction converts non-income producing land into cash, thus allowing the Plan's portfolio to be diversified. The applicant represents that attempts to find an independent third party purchaser would take a prolonged period of time, given the current real estate market in Boulder, Colorado. The Plan will pay no transaction costs associated with the purchase. The fair market value of the Property has been determined by an independent appraisal. The applicant represents that he will pay the greater of the value of the Property established by an independent appraisal or the fair market value at the time of the sale.

4. In summary, the applicant represents that the transaction satisfies the statutory criteria of section 408(a) of the Act and 4975(c)(2) of the Code because:

(a) The proposed sale is a one time transaction for cash;

(b) The price to be paid to the Plan will be the greater of $671,000 as established by an independent appraisal or the fair market value of the Property at the time of the sale.

(c) The Plan will pay no expenses associated with the sale; and

(d) The sale will allow the Plan to liquidate its investment portfolio and to diversify its assets.

FOR FURTHER INFORMATION CONTACT: Ekaterina A. Uzlyan, of the Department, telephone (202) 523–8194. (This is not a toll-free number.)

Malcolm M. McHenry, M.D., Inc. Defined Benefit Pension Plan (the Plan) Located in Sacramento, California

[Application No. D–7800]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975).[3] If the exemption is granted the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the proposed sale by the Plan for cash of certain real property (the Real Property) to Malcolm M. McHenry, M.D., trustee of the Plan, and hence a disqualified person with respect to the Plan, provided that the price paid be no less than the fair market value of the Real Property as of the date of sale, as established by an independent and qualified appraiser.

Summary of Facts and Representations

1. The Plan is a defined benefit pension plan sponsored by Malcolm M. McHenry M.D., Inc. (the Plan Sponsor). Malcolm M. McHenry M.D. and his wife, Anne B. McHenry, are 100% owners of the capital stock of the Plan sponsor,

[2] In this proposed exemption the Department expresses no opinion as to whether acquisition and holding of the Property by the Plan violated any provision of Part 4 of the Title 1 of the Act.

[3] The applicant represents that Malcolm M. McHenry, M.D. and his wife, Anne B. McHenry, are 100% owners of all of the issued and outstanding capital stock of Malcolm M. McHenry, M.D., Inc., the Plan sponsor, and the sole participants in the Plan. Accordingly, there is no jurisdiction under Title I of the Act pursuant to 29 CFR 2510.3–3(b). However, there is jurisidction under Title II of the Act pursuant to section 4975 of the Code.

and trustees of and sole participants in the Plan. As of June 30, 1988, the total value of Plan assets was $847,180.

2. On September 21, 1976, the Plan purchased Lot 1171, Auburn Lake Trails Unit No. 5 from Transamerica Land Development Co., an unrelated party, for $17,500. On July 22, 1982, the Plan purchased Lot 1172, Auburn Lake Trails Unit No. 5 From Joseph A. and Janice K. Yound, unrelated parties, for $25,000. These two lots (the Real Property) are located in the town of Cool, in El Dorado County, California, on a ridge overlooking a proposed dam site near Auburn, California.

3. The Real Property, intended to serve as an investment in lakeside lots, has decreased in value because of the failure to complete the Auburn dam project. At this time there is no reasonable prospect for the completion of the dam and hence for the formation of the lake.

4. The applicant represents that the Plan will be terminated in the near future. Conversion of the value of the Real Property into liquid assets will allow for greater flexibility in rolling over the Plan's assets into Individual Retirement Accounts, and would replace a non-productive asset with income producing assets.

5. On September 3, 1988, Edward P. Goodrum, CREA, an independent and qualified real estate appraiser located in Sacramento, California, appraised the fair market value of the Real Property at $34,100.

6. Accordingly, the applicant proposes that the Plan sell the Real Property for cash to Malcolm M. McHenry M.D. (Dr. McHenry) for the fair market value of the Real Property as of the date of sale as determined by an independent and qualified appraiser. The applicant represents that the Plan will not be required to pay any transfer or sales costs and expenses in connection with the sale.

7. In summary, the applicant represents that the proposed transaction will satisfy the criteria of section 4975(c)(2) of the Code because: (a) The Real Property will be sold for its fair market value as of the date of sale as determiend by an independent and qualified appraiser; (b) the sale represents a one-time transaction for cash which can be easily verified; (c) the sale will not require the payment of any commissions, fees, or taxes by the Plan; and (d) Dr. McHenry and his wife, the sole participants in and trustees of the Plan and the only persons affected by the transaction, desire that the transaction be consummated.

Notice of Interested Persons: Because Dr. McHenry and his wife are the only participants in the Plan, it has been determined that there is no need to distribute the notice of pendency to interested persons. Comments and requests for a hearing must be received by the Department within 30 days of the date of publication of this notice of proposed exemption.

FOR FURTHER INFORMATION CONTACT: Joseph L. Roberts III of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

Elarbee, Thompson and Trapnell Savings Incentive and Salary Deferral Plan (the 401(k) Plan) and Elarbee, Thompson and Trapnell Profit Sharing Plan (the Profit Sharing Plan; collectively, and Plans), Located in Atlanta, GA

[Application Nos. D-7841, D-7842 and D-7843]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the proposed sale of certain unimproved real property (the Tracts), for the total cash consideration of $57,978, by Mr. John R. Trapnell (Mr. Trapnell), a party in interest, to his individual accounts (the Accounts) in the Plans, provided such amount is not greater than the fair market value of the Tracts on the date of the sale.

Summary of Facts and Representations

1. The Plans consists of the 401(k) Plan which contains a cash or deferred arrangements and the Profit Sharing Plan. As of the plan year ending September 30, 1987, the 401(k) Plan had 21 participants and total assets having a fair market value of approximately $4,872,036. As of November 2, 1987, the Profit Sharing Plan had 20 participants and total assets having a fair market value of $81,868. As of September 30, 1988, Mr. Trapnell, a 13.68 percent partner in the law firm of Elarbee, Thompson and Trapnell of Atlanta, Georgia (the Partnership), had total assets having a fair market value of $227,970 and $5,876 in his individual accounts in the 401(k) Plan and the Profit Sharing Plan, respectively. The trustees of the Plans (the Trustees) are Mr. Trapnell and Messrs. William M. Earnest and Robert L. Thompson. Both of the Plans provide for participant-directed investment.

2. The Partnership is a general partnership formed under the laws of the State of Georgia. The Partnership is the sponsor of the Plans as well as the Plans' administrator.

3. Mr. Trapnell wishes to direct the investment of a portion of his Accounts in the 401(k) Plan and the Profit Sharing Plan in certain real property located in Newberry, South Carolina. Mr. Trapnell believes the property would represent an excellent investment opportunity for the Accounts. The subject property consists of approximately 348.5 acres of undeveloped land that has been divided into eleven tracts which range in size from 1.1 acres to 80.5 acres. Mr. Trapnell acquired a 20 percent interest in the Tracts from his mother and the remainder from other relatives, between April 1975 and April 1983. Mr. Trapnell paid appriximately $85,000 to $87,000 for the Tracts. The property of which the Tracts are comprised is not encumbered by a mortgage or a deed of trust nor is it presently being used or leased by parties in interest with respect to the Plans.

4. The fair market value of the entire property is $86,776 or $249 per acre. This amount was determined on April 26, 1988 by Mr. Hugh M. Bedenbaugh, Jr. (Mr. Bedenbaugh), C.R.E.A., an independent appraiser from Newberry, South Carolina. In his appraisal report, Mr. Bedenbaugh states that be based his opinion of value on comparable sales of properties in Newberry, South Carolina. In an October 20, 1988 update to his appraisal report, Mr. Bedenbaugh states that he personally inspected the property and he explains that he believes the highest and best use of the land is for the production of timberland and pulpwood. He also states that the $249 per acre value he determined for the property would apply equally to the individual Tracts.

5. The purchase price for the Tracts will be paid by the Accounts in cash. Such purchase price will be allocated among the 401(k) Plan and the Profit Sharing Plan so that not more than 25 percent of Mr. Trapnell's Account in each Plan will be invested in the property. Specifically, Mr. Trapnell's Account in the 401(k) Plan will purchase a portion of the property worth approximately $56,709. This will represent approximately 24.87 percent of Mr. Trapnell's Account in the 401(k) Plan. Mr. Trapnell's Account in the Profit Sharing Plan will purchase a portion of the property worth approximately $1,269 and which

represents about 21.6 percent of that Account's assets. Tracts 1, 3, 5, 7, 8 and 9 (consisting of 24.5 acres, 37.7 acres, 16.75 acres, 9.9 acres, 80.5 acres and 58.4 acres, respectively) will be purchased by Mr. Trapnell's Account in the 401(k) Plan; Tracts 10 and 11 (consisting of 1.1 acres and 4 acres) will be purchased by Mr. Trapnell's Account in the Profit Sharing Plan. The remainder of the Tracts will be retained by Mr. Trapnell. Title to the property will be held by the Trustees of each Plan for the benefit of Mr. Trapnell's Accounts.

6. The Accounts will incur no real estate commissions or fees in connection with the sale. In addition, there will be no co-ownership arrangement of the Tracts between Mr. Trapnell and the Accounts. Following the sale, the property acquired by the Accounts will be used for the production of timber or pulpwood. It is not anticipated that such land will used by or leased to parties in interest with respect to the Plans.

7. In summary, it is represented that the proposed transaction will satisfy the statutory criteria for an exemption under section 408(a) of the Act because: (a) The sale will be a one-time transaction for cash; (b) the sales price for the Tracts has been based upon the fair market value of the property as established by an independent appraiser; (c) the Tracts acquired by the Accounts will not represent more than 25 percent of the assets of such Accounts; (d) the Accounts will not be required to pay any real estate fees or commissions in connection with the sale; and (e) Mr. Trapnell, who is the only participant in the Plans whose individual Accounts will be affected by the subject transaction, desires that the sale be consummated.

NOTICE TO INTERESTED PERSONS: Because Mr. Trapnell is the only participant in the Plans whose Accounts will be affected by the proposed transaction, it has been determined that there is no need to distribute the notice of proposed exemption to interested persons. Written comments and requests for a public hearing are due 30 days following the date of publication of the notice of proposed exemption in the Federal Register.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 17th day of February, 1989.

Robert J. Doyle,

Director of Regulations and Interpretations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 89-4334 Filed 2-23-89 8:45 am]

BILLING CODE 4510-29-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Dance Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Dance Advisory Panel (Overview Section) to the National Council on the Arts will be held on March 14-15, 1989 from 9:00 a.m.-5:30 p.m. in Room MO-9 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public on March 14, 1989 from 9:00 a.m.-5:30 p.m. and March 15, 1989 from 10:30 a.m.-5:30 p.m. The topics for discussion will be policy issues.

The remaining session of this meeting on March 15, 1989 from 9:00 a.m.-10:30 a.m. is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

If you need special accommodations due to a disability, please contact the Office for Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington DC 20506, 202/682-5532, TTY 202/682-5496 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682-5433.

February 16, 1989.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 89-4242 Filed 2-23-89; 8:45 am]

BILLING CODE 7537-01-M

Literature Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Literature Advisory Panel (Professional Development Section) to the National Council on the Arts will be held on March 17, 1989 from 9:00 a.m.-5:30 p.m. and March 18, 1989 from 9:00 a.m.-2:00 p.m. in Room 714 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public on March 18, 1989 from

11:00 a.m.–2:00 p.m. The topics for discussion will be policy issues.

The remaining session of this meeting on March 17, 1989 from 9:00 a.m.–5:30 p.m. and March 18, 1989 from 9:00 a.m.–11:00 a.m. is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the Federal Register of February 13, 1980, these sessions will be closed to the public pursuant to subsection (c) (4), (6) and (9)(B) of section 552b of Title 5, United States Code.

If you need special accommodations due to a disability, please contact the Office for Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5433.

February 16, 1989.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 89–4243 Filed 2–23–89; 8:45 am]

BILLING CODE 7537–01–M

Media Arts Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Media Arts Advisory Panel (Film/Video Production Section) to the National Council on the Arts will be held on March 22–23, 1989 from 9:15 a.m.—6:30 p.m., and March 24, 1989 from 9:15 a.m. to 5:30 p.m. in room 716 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman published in the Federal Register of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

February 16, 1989.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 89–4244 Filed 2–23–89; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL SCIENCE FOUNDATION

Alan T. Waterman Award Committee; Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Science Foundation announces the following meeting:

Name: Alan T. Waterman Award Committee.

Date: Wednesday, March 15, 1989.

Time: 9 a.m. to 5 p.m.

Place: Room 543, National Science Foundation, 1800 G Street NW., Washington, DC 20550.

Type of Meeting: Closed.

Contact Person: Mrs. Lois J. Hamaty, Executive Secretary, Alan T. Waterman Award Committee, National Science Foundation, Washington, DC 20550. Telephone: 202/357–7512.

Purpose of Committee: To provide advice and recommendations in the selection of the Alan T. Waterman Award recipient.

Reason for Closing: The nominations being reviewed include information of a personal nature where disclosure would constitute unwarranted invasions of personal privacy. These matters are within exemption 6 of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Authority to Close Meeting: The determination made on February 16, 1989 by the Director of the National Science Foundation pursuant to the provisions of section 10 (d) of Pub. L. 92–463.

M. Rebecca Winkler,

Committee Management Officer.

February 21, 1989.

[FR Doc. 89–4268 Filed 2–23–89; 8:45 am]

BILLING CODE 7555–01–M

Advisory Panel for Archaeology; Meeting

The National Science Foundation announces the following meeting:

Name: Advisory Panel for Archaeology.

Date and Time: April 3 and 4, 1989, 9:00 a.m.—6:00 p.m. each day.

Place: Atlanta Hilton and Towers, Atlanta, Georgia.

Type of Meeting: Closed.

Contact Person: Dr. John E. Yellen, Program Director, Anthropology Program, Room 320, National Science Foundation, Washington, DC 20550 Telephone (202) 357–7804.

Minutes: May be obtained from contact person listed above.

Purpose of Meeting: To provide advice and recommendations concerning support for research in archaeology.

Agenda: To review and evaluate research proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions 4 and 6 of the Government in the Sunshine Act.

M. Rebecca Winkler,

Committee Management Officer.

February 21, 1989.

[FR Doc. 89–4265 Filed 2–23–89; 8:45 am]

BILLING CODE 7555–01–M

Advisory Panel for Cultural Anthropology; Meeting

The National Science Foundation announces the following meeting:

Name: Advisory Panel for Cultural Anthropology.

Date and Time: March 30 and 31 1989, 9:00 a.m.–5:00 p.m. each day.

Place: National Science Foundation, 1800 G Street NW., Room 523, Washington, DC 20550.

Type of Meeting: Part Open—Open 3/31: 10–11 a.m.; Closed 3/30: 9 a.m.–5 p.m.; Closed 3/31: 9 a.m.–10 a.m.; 11 a.m.–5 p.m.

Contact Person: Dr. Stuart Plattner, Program Director, Cultural Anthropology Program, Room 320, National Science Foundation, Washington, DC 20550, Telephone (202) 357–7804.

Minutes: May be obtained from contact person listed above.

Purpose of Meeting: To provide advice and recommendations concerning support for research in physical anthropology.

Agenda: Open—General discussion of the current status and future plans of the Anthropology Program. *Closed*—To review and evaluate research proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions 4 and 6 of the Government in the Sunshine Act.

February 21, 1989.

M. Rebecca Winkler,

Committee Management Office.

[FR Doc. 89-4264 Filed 2-23-89; 8:45 am]

BILLING CODE 7555-01-M

Advisory Panel for Ecology; Meeting

The National Science Foundation announces the following meeting:

Name: Advisory Panel for Ecology.

Date and Time: April 5-7, 1989; April 5, 1:00 p.m.-5:00 p.m.; April 6 and 7, 8:30 a.m.-5:00 p.m.

Place: Room 523 (04/05/89) and Room 1243 (04/06-07/89), National Science Foundation, 1800 G Street NW., Washington, DC 20550.

Type of Meeting: Part Open. Closed 04/05/89, 1:00 p.m.-5:00 p.m.; 04/06/89, 8:30 a.m.-10:00 a.m. and 1:00 p.m.-5:00 p.m.; 04/07/89, 8:30 a.m.-5:00 p.m. Open 04/06/89, 10:00 a.m.-12:00 noon.

Contact Person: Dr. Patrick J. Webber, Program Director, Ecology (202) 357-9734, Room 215, National Science Foundation, Washington, DC 20550.

Summary Minutes: May be obtained from the Contact Person at the above address.

Purpose of Meeting: To provide advice and recommendations concerning support for research in ecology.

Agenda: Review and evaluation of research proposals and projects as part of the selection process of awards. Open on 04/06/89, 10:00 a.m.-12:00 noon to discuss long-range planning in ecology.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

February 21, 1989.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 89-4266 Filed 2-23-89; 8:45 am]

BILLING CODE 7555-01-M

Advisory Panel for Ecosystem Studies; Meeting

The National Science Foundation announces the following meeting:

Name: Advisory Panel for Ecosystem Studies.

Date and Time: March 30 and 31, 1989—8:30 a.m. to 5:00 p.m. each day.

Place: Room 642, National Science Foundation, 1800 G Street NW., Washington, DC 20550.

Type of Meeting: Closed.

Contact Person: Dr. William J. Parton, Program Director, Ecosystem Studies (202) 357-9596, Room 215, National Science Foundation, Washington, DC 20550.

Summary Minutes: May be obtained from the Contact Person at the above address.

Purpose of Meeting: To provide advice and recommendations concerning support for research in ecosystem studies.

Agenda: Review and evaluation of research proposals and projects as part of the selection process of awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

M. Rebecca Winkler,

Committee Management Officer.

February 21, 1989.

[FR Doc. 89-4267 Filed 2-23-89; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-325 and 50-324]

Carolina Power & Light Co.; Withdrawal of Application for Amendment to Facility Operating License

The United States Nuclear Regulatory Commission (the Commission) has granted the request of Carolina Power & Light Company (the licensee) to withdraw its November 13, 1986 application, as supplemented January 28, 1987, for a proposed amendment to the Brunswick Steam Electric Plant, Units 1 and 2, located in Southport, North Carolina. The proposed amendment would have deleted the requirement to perform temperature sensor response time testing on various switches and thermocouples listed in the Table 3.3.2-3 of the plant Technical Specifications. The Commission issued a Notice of Consideration of Issuance of Amendment published in the Federal Register on February 26, 1987 (52 FR 5850). By letter dated November 2, 1988 licensee withdrew its application for the proposed amendment.

For further details with respect to this action, see the application for amendment dated November 13, 1986, as supplemented January 28, 1987, and the licensee's letter dated November 2, 1988, withdrawing the application for license amendment. The above documents are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC, and at the University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403-3297.

Dated at Rockville, Maryland, this 16th day of February 1989.

For the Nuclear Regulatory Commission.

Edward A. Reeves,

Acting Project Director, Project Directorate II-1, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 89-4316 Filed 2-23-89; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-250-OLA-4; 50-251-OLA-4, ASLBP No. 89-584-01-OLA; (P/T Limits)]

Florida Power and Light Co. (Turkey Point Plant, Units 3 and 4); Oral Argument

February 17, 1989.

Before Administrative Judges: B. Paul Cotter, Jr., Chairman; Glenn O. Bright; Jerry Harbour.

Please take notice that a one-day oral argument will be held on Tuesday, March 21, 1989, beginning at 9:00 a.m. in the United States District Courthouse, Courtroom 4, Old Building, 300 NE. First Avenue, Miami, Florida. The argument will address the petition to intervene and the admissibility of contentions offered by the Center of Nuclear Responsibility and Joette Lorion, individually, concerning the license amendment of certain technical specifications governing operation of the captioned plant. Other matters to be considered include scheduling of further activities should petitioners be admitted to the proceeding and other matters that may aid in the orderly disposition of the proceeding.

Members of the public are invited to attend the conference. Limited

appearance statements, as authorized by 10 CFR 2.715(a), will not be taken at this session of the proceeding. Documents relating to this proceeding are on file at the Commission's Public Document Room 2120 L Street, NW., Washington, DC 20555, and at the Urban and Regional Documents Collection, Library, Florida International University, University Park, Miami, Florida 33199.

For the Atomic Safety and Licensing Board.

B. Paul Cotter, Jr.,

Chairman, Administrative Judge.

Dated at Bethesda, Maryland, this 17th day of February, 1989.

[FR Doc. 89-4317 Filed 2-23-89; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-220]

Niagara Mohawk Power Corp.; Consideration of Issuance Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendment to Facility Operating License No. DPR-63, issued to Niagara Mohawk Power Corporation (the licensee), for operation of the Nine Mile Point Nuclear Station Unit No. 1 located in Oswego County, New York.

The amendment would make the following changes in accordance with the licensee's application for amendment dated January 13, 1989.

The amendment would revise the Technical Specifications to: (1) Eliminate current Specification 3.1.7d which allows operation up to seven days with an inoperable core spray system; (2) to indicate Specifications 3.1.4 a, b, c, and d are applicable in the Hot Shutdown, Startup, and Run Conditions (i.e., when reactor coolant temperature is greater than 212 °F); (3) to add new Specification 3.1.4 f, g, h, and i to Section 3.1.4 which are applicable in the Cold Shutdown and Refuel Conditions; (4) to indicate that Surveillance Requirement 4.1.4g is applicable when the reactor coolant temperature is greater than 212 °F only; (5) to delete Specification 3.1.7h; (6) to redesignate existing Specification 3.1.4g to be 3.1.4e; (7) to revise Specification 3.1.4f; and (8) to delete Specification 3.3.7f.

The change to delete the section allowing operation with one core spray system inoperable is required in accordance with the current reload analysis to meet Appendix K to 10 CFR Part 50 requirements. The reduction of 15 days to 7 days in Specification 3.1.4b reflects that two core spray systems must be functional. The change to 4.1.4g is to require the surveillance to be performed when core spray is required to be operable. The test is performed to ensure a water hammer will not occur. In addition to the above changes, the Specifications are being revised to allow less stringent core spray operability requirements during cold shutdown and refuel conditions when only one loop of the core spray systems is required to provide sufficient water to adequately cool the core. This is consistent with standard Technical Specifications. Specification 3.1.4h will require that all maintenance be suspended if it has the potential to cause reactor vessel drainage when a required core spray subsystem is inoperable. The current 3.1.4f identifies potential methods of draining the reactor vessel during maintenance. The remaining changes are administrative. Section 3.1.4h is deleted because its requirements are included as a Safety Limit in Specification 2.1.1e. The changes to the Bases 3.1.4 and 4.1.4 delete references to the backup diesel generator power. The changes should have been made as part of Amendment No. 55 which restated the definition of operable to include not only the specific component/system, but necessary supporting requirements. Specification 3.3.7f is being deleted because it contains Limiting Conditions of Operation (LCO's) for the Containment Spray System when the suppression pool is dewatered. The suppression pool is only dewatered below 215 °F. The Containment Spray System is required to be operable above 215 °F. Therefore, they are not applicable. All other changes are the redesignation of previous specifications due to the addition of new ones.

Before issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendments requested involve no significant hazards considerations. 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 of a new or different kind of accident from any 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 evaluated the proposed changes against the standards in 10 CFR 50.92 and has provided the following analysis:

The operation of Nine Mile Point Unit 1, in accordance with the proposed amendment, will not involve a significant increase in the probability of consequences of an accident previously evaluated.

The change to require both Core Spray systems to be operable when irradiated fuel is in the reactor vessel and the reactor coolant temperature is greater than 212 °F will assure that the plant will be operating in accordance with analyzed conditions to meet the requirements of Appendix K to 10 CFR Part 50. The change will assure compliance with the Nuclear Regulatory Commission Regulations. Therefore, it does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Since there is not a potential for a water hammer during Cold Shutdown or Refuel conditions, the change to require Surveillance Requirement 4.1.4g to be performed only when the reactor coolant temperature is greater than 212 °F will not increase the probability or consequences of an accident.

Since only one Core Spray system is required to provide adequate cooling to the core in the Cold Shutdown and Refuel conditions, requiring one system or two subsystems to be operable provides adequate redundancy to assure a core spray loop is available to mitigate the consequences of an accident. Therefore, the change to require one system or one subsystem in each Core Spray system to be operable during Cold Shutdown or Refuel conditions will not increase the probability or consequences of an accident previously evaluated.

The change to redesignate existing specifications is administrative in nature and has no impact on the probability or consequences of an accident previously evaluated.

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 accident previously evaluated.

The proposed changes do not involve any changes to the plant or changes in test practices. The changes will reduce allowable out-of-service times for the Core Spray system. The change to Surveillance Requirement 4.1.4g will allow the Core Spray keep fill system to be inoperable when the reactor coolant temperature is less than or equal to 212 °F when it is not required to prevent an accident or transient. Therefore, the proposed changes cannot create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change regarding the redesignation of specifications is administrative and will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The operation of Nine Mile Point Unit 1, in accordance with the proposed amendment, will not involve a significant reduction in a margin of safety.

The proposed changes are being made to assure that there is adequate redundancy in the Core Spray system operability to assure that a Core Spray system is available to mitigate the consequences of an accident. Therefore, the proposed amendment will not result in a reduction in a margin of safety. It assures that the existing margins of safety are maintained. The changes involving the redesignation of the existing technical specification sections are administrative in nature and have no impact on a margin of safety.

Based upon the above, the NRC staff proposes to determine that the TS changes proposed for Nine Mile Point 1 involve no significant hazards considerations.

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 received a request for a hearing.

Comments should be addressed to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attn: Docketing and Service Branch.

By March 27, 1989, 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 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 particularly 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 aspects(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 that 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 a final determination is that the amendment requested involves no significant hazards considerations, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of this amendment.

If the final determination is that the amendment requested involves significant hazards considerations, 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 considerations. The final determination will consider all public and State comments received. 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, Gelman Building, 2120 L 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 Robert A. Capra: Petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number to this Federal Register notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Troy B. Conner, Jr., Esquire, Conner and Wetterhahn, Suite 1050, 1747 Pennsylvania Avenue, NW., Washington, DC 20006, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board designated to rule on the petition and/or request, that the petitioner has made a substantial showing of good cause for the granting of a late petition and/or request. That determination will be based upon a balancing of the factors specified in 10 CFR 2.714(a)(1) (i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room 2120 L Street, NW.,

Washington, DC 20555, and at the Local Public Document Room, Penfield Library, State University of New York, Oswego, New York.

Dated at Rockville, Maryland, this 16th day of February 1989.

For the Nuclear Regulatory Commission.

Marylee M. Slosson,

Project Manager, Project Directorate I–1, Division of Reactor Projects I/II.

[FR Doc. 89–4318 Filed 2–23–89; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–361 and 50–362]

Southern California Edison Co. et al.; Consideration of Issuance of Amendments to Facility Operating Licenses and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. NPF–10 and NPF–15 issued to Southern California Edison Company (SCE), San Diego Gas and Electric Company, the City of Riverside, California and the City of Anaheim, California (the licensees), for operation of San Onofre Nuclear Generating Station, Units 2 and 3 located in San Diego County, California. The request for amendments was submitted by letter dated December 19, 1988 and identified as Proposed Change PCN–282.

The proposed change would revise Technical Specification (TS) 3/4.1.3.3, "Position Indicator Channel-Shutdown." Technical specification 3/4.1.1.3 requires each of the Control Element Assembly (CEA) Reed Switch Position Transmitter (RSPT) indicator channels to be determined operable by performing a Channel Functional Test. The RSPTs are used to detect CEA positions and provide input to both the Core Protection Calculators (CPCs) and Control Element Assembly Calculators (CEACs). This surveillance provides assurance that the CPC/CEACs actually respond to rod motion by testing the RSPTs response over the entire range of possible rod positions from full-in to full-out. The proposed change would revise the surveillance interval of these tests form at least once per 18 months to at least once per refueling interval.

Before issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By March 27, 1989 the licensees may file a request for a hearing with respect to issuance of the amendments to the subject facility operating licenses, 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 request for hearing and 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 Panel 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 pre-hearing conference schedule 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 pre-hearing 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 amendments 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.

A request for a hearing or a petition for leave to intervene shall 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, 2120 L 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 or representative for the petitioner promptly inform the Commission by a toll-free telephone call to Western Union at 1–(800)325–6000 (in Missouri 1–(800)342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to George W. Knighton: 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, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Mr. Charles R. Kocher, Esq., Southern California Edison Company, 2244 Walnut Grove Avenue, P.O. Box 800, Rosemead, California 91770 and Orrick, Herrington and Sutcliffe, Attention: David R. Pigott, Esq., 600 Montgomery Street, San Francisco, California 94111, attorneys for the licensees.

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 the factors specified in the 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

If a request for hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendments which is available for

public inspection at the Commission's public Document Room, 2120 L Street NW., Washington, DC, and at the General Library, University of California at Irvine, Irvine, California 92713.

Dated at Rockville, Maryland, this 16th day of February, 1989.

For the Nuclear Regulatory Commission.

George W. Knighton,

Director, Project Directorate V, Division of Reactor Projects—III, IV, V and Special Projects.

[FR Doc. 89-4319 Filed 2-23-89; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-361 and 50-362]

Southern California Edison Co. et al.; Consideration of Issuance of Amendments to Facility Operating Licenses and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. NPF-10 and NPF-15 issued to Southern California Edison Company (SCE), San Diego Gas and Electric Company, the City of Riverside, California and the City of Anaheim, California (the licensees), for operation of San Onofre Nuclear Generating Station, Units 2 and 3 located in San Diego County, California. The request for amendments was submitted by letter dated January 16, 1989 and identified as Proposed Change PCN-281.

The proposed change would revise Technical Specification (TS) 3/4.3.3.3, "Seismic Instrumentation." The operability of the seismic instrumentation ensures that sufficient capability is available to promptly determine the magnitude of a seismic event and evaluate the response of those features important to safety. This capability is required to permit comparison of the measured response to that used in the design basis for the facility to determine if plant shutdown is required pursuant to Appendix A of 10 CFR Part 100. Surveillance Requirement 4.3.3.3.1 requires performance of channel calibrations at least once every 18 months. The proposed change would revise the interval of these surveillance tests from at least once every 18 months to once per refueling interval.

Before issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By March 27, 1989, the licensees may file a request for a hearing with respect to issuance of the amendments to the subject facility operating licenses, 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 request for hearing and 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 Panel 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 pre-hearing conference schedule 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 pre-hearing 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 amendments 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.

A request for a hearing or a petition for leave to intervene shall 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, 2120 L 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 or representative for the petitioner promptly inform the Commission by a toll-free telephone call to Western Union at 1-(800)325-6000 (in Missouri 1-(800)342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to George W. Knighton: 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, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Mr. Charles R. Kocher, Esq., Southern California Edison Company, 2244 Walnut Grove Avenue, P.O. Box 800, Rosemead, California 91770 and Orrick, Herrington and Sutcliffe, Attention: David R. Pigott, Esq., 600 Montgomery Street, San Francisco, California 94111, attorneys for the licensees.

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 the factors specified in the 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

If a request for hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendments which is available for

public inspection at the Commission's public Document Room, 2120 L Street NW., Washington, DC, and at the General Library, University of California at Irvine, Irvine, California 92713.

Dated at Rockville, Maryland, this 16th day of February, 1989.

For the Nuclear Regulatory Commission.

George W. Knighton,

Director, Project Directorate V, Division of Reactor Projects—III, IV, V and Special Projects.

[FR Doc. 89-4320 Filed 2-23-89; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-361 AND 50-362]

Southern California Edison Co. et al.; Consideration of Issuance of Amendments to Facility Operating Licenses and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. NPF-10 and NPF-15 issued to Southern California Edison Company (SCE), San Diego Gas and Electric Company, the City of Riverside, California and the City of Anaheim, California (the licensees), for operation of San Onofre Nuclear Generating Station, Units 2 and 3 located in San Diego County, California. The request for amendments was submitted by letter dated December 30, 1988 and identified as Proposed Change PCN-266.

The proposed change would revise Technical Specification 3/4.3.2, "Engineered Safety Features Actuation System Instrumentation," Table 4.3-2, Item 12.c; and Technical Specification 3/4/3.3.1. "Radiation Monitoring Instrumentation," Table 4.3-3, Item 1.b. Radiation monitoring instruments provide two trains of continuous monitoring, recording, and indication of containment area radiation (Gamma) levels. These systems also provide alarm annunciation and Containment Purge Isolation trip initiation signals whenever technical specification limits for area radiation levels are approached or exceeded.

Surveillance Requirement 4.3.2.1, Table 4.3-2, Instrument 12.c, and Surveillance Requirement 4.3.3.1, Table 4.3-3, Instrument 1.b, state that each containment purge isolation area monitor shall be demonstrated operable by the performance of a Channel Calibration at least once per 18 months. The proposed change would revise this interval from at least once per 18 months to at least once per refueling.

Before issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By March 27, 1989 the licensees may file a request for a hearing with respect to issuance of the amendments to the subject facility operating licenses, 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 request for hearing and 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 Panel 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 pre-hearing conference schedule 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 pre-hearing 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 amendments under consideration. A petition 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 evidnce and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene shall 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, 2120 L 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 or representative for the petitioner promptly inform the Commission by a toll-free telephone call to Western Union at 1-(800)325-6000 (in Missouri 1-(800)342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to George W. Knighton: 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, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Mr. Charles R. Kocher, Esq., Southern California Edison Company, 2244 Walnut Grove Avenue, P.O. Box 800, Rosemead, California 91770 and Orrick, Herrington and Sutcliffe, Attention: David R. Pigott, Esq., 600 Montgomery Street, San Francisco, California 94111, attorneys for the licensees.

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 the factors specified in the 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

If a request for hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it

publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendments which is available for public inspection at the Commission's public Document Room, 2120 L Street NW., Washington, DC, and at the General Library, University of California at Irvine, Irvine, California 92713.

Dated at Rockville, Maryland, this 16th day of February, 1989.

For the Nuclear Regulatory Commission.

George W. Knighton,

Director, Project Directorate V, Division of Reactor Projects—III, IV, V and Special Projects.

[FR Doc. 89-4321 Filed 2-23-89; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-361 and 50-362]

Southern California Edison Co. et al.; Consideration of Issuance of Amendments to Facility Operating Licenses and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. NPF-10 and NPF-15 issued to Southern California Edison Company (SCE), San Diego Gas and Electric Company, the City of Riverside, California and the City of Anaheim, California (the licensees), for operation of San Onofre Nuclear Generating Station, Units 2 and 3 located in San Diego County, California. The request for amendments was submitted by letter dated November 7, 1888 and identified as Proposed Change PCN-256.

The proposed change would revise Technical Specification (TS) 3/4.3.1, "Reactor Protective Instrumentation," and TS 3/4.3.2, "Engineered Safety Features Actuation System Instrumentation." TS 3/4.3.1 defines the number of channels of instrumentation required to be operable for each reactor trip functional unit, periodic surveillance tests to verify operability, and action to be taken if the minimum operability requirements are not met. The testing required by TS 3/4.3.1 assures that the various functional units of the reactor protective instrumentation will detect abnormal conditions and initiate a reactor trip to mitigate the consequences of transients and accidents, consistent with the assumptions of the safety analyses. TS 3/4.3.2 defines the Engineered Safety Features Actuation System (ESFAS) instrumentation channels and bypasses required to be operable, periodic surveillance tests to verify operability, and action to be taken if the minimum operability requirements are not met. The operability of the reactor protective and ESFAS instrumentation and bypasses ensures that (1) associated ESFAS action and/or reactor trip will be initiated when the parameter monitored by each channel or combination thereof reaches its setpoint, (2) the specified coincidence logic is maintained, (3) sufficient redundancy is maintained to permit a channel to be out of service for testing or maintenance, and (4) sufficient system functional capability is available from diverse parameters.

One of the functional units covered by TS 3/4.3.1 is the Plant Protection System (PPS). The PPS provides automatic response to anticipated operational occurrences and postulated accidents by continuously monitoring various process parameters and initiating protective action if any parameter exceeds the setpoint values. All PPS monitored parameters are associated with the Reactor Protective System (RPS) and/or the ESFAS. The RPS protects the reactor core and Reactor Coolant System by initiating a reactor shutdown if measured parameters exceed the setpoint values. The ESFAS is designed for accident response. If an ESFAS parameter exceeds the allowable setpoint value, one of more ESFAS functions actuate responses intended to limit equipment damage and to mitigate the consequences of postulated accidents. Each parameter is monitored on four independent, isolated channels, designated "A" through "D." The same parameter must signal an unsafe condition on any two of these four channels before the PPS initiates protective action.

The PPS has bypass circuits that disable system trips for the purpose of start-up, shutdown, or testing and maintenance. Bypasses are catalogued as either PPS trip channel bypasses or operational bypasses. PPS trip channel bypass logic allows manual bypass of one (and only one) channel at any given time. Operational bypasses are either automatic, manual, or a combination of the two, and may involve bypass of the selected parameter(s) on more than one of the two channel. Two of the surveillance requirements, 4.3.1.2 (for RPS instrumentation) and 4.3.2.2 (for ESFAS instrumentation), require that the total bypass function be demonstrated operable at least once per 18 months during channel calibration testing of each channel affected by bypass operation. The proposed amendments would revise these surveillance intervals from at least once per 18 months to at least once per refueling interval.

Before issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By March 27, 1989 the licensees may file a request for a hearing with respect to issuance of the amendments to the subject facility operating licenses, 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 request for hearing and 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 Panel 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 pre-hearing conference schedule 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 pre-hearing 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 amendments 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.

A request for a hearing or a petition for leave to intervene shall 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, 2120 L 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 or representative for the petitioner promptly inform the Commission by a toll-free telephone call to Western Union at 1–(800) 325–6000 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to George W. Knighton: 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, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Mr. Charles R. Kocher, Esq., Southern California Edison Company, 2244 Walnut Grove Avenue, P.O. Box 800, Rosemead, California 91770 and Orrick, Herrington and Sutcliffe, Attention: David R. Pigott, Esq., 600 Montgomery Street, San Francisco, California 94111, attorneys for the licensees.

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 the factors specified in the 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

If a request for hearing is received, the Commission's staff may issued the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendments which is available for public inspection at the Commission's public Document Room, 2120 L Street NW., Washington, DC, and at the General Library, University of California at Irvine, Irvine, California 92713.

Dated at Rockville, Maryland, this 16th day of February, 1989.

For the Nuclear Regulatory Commission.

George W. Knighton,

Director, Project Directorate V, Division of Reactor Projects—III, IV, V and Special Projects.

[FR Doc. 89–4322 Filed 2–23–89; 8:45 am]

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[Docket Nos. 50–361 and 50–362]

Southern California Edison Co. et al.; Consideration of Issuance of Amendments to Facility Operating Licenses and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. NPF–10 and NPF–15 issued to Southern California Edison Company (SCE), San Diego Gas and Electric Company, the City of Riverside, California and the City of Anaheim, California (the licensees), for operation of San Onofre Nuclear Generating Station, Units 2 and 3 located in San Diego County, California. The request for amendments was submitted by letter dated April 26, 1988 and identified as Proposed Change PCN–248.

The proposed change would revise Technical Specification 3/4.3.1, "Reactor Protective Instrumentation." This Technical Specification defines (1) the number of channels of instrumentation required to be operable for each reactor trip functional unit, (2) periodic surveillance tests to verify operability, and (3) action to be taken if the minimum operability requirements are not met. It also ensures that the various functional units of the reactor protective instrumentation will detect abnormal conditions and initiate a reactor trip to mitigate the consequences of transients and accidents, consistent with the assumptions of the safety analyses. The proposed change would revise the frequency of the surveillance tests of the Control Element Assembly (CEA) isolation amplifiers and the CEA Calculator optical isolators from 18 months to at least once per refueling interval.

Before issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By March 27, 1989 the licensees may file a request for a hearing with respect to issuance of the amendments to the subject facility operating licenses, 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 request for hearing and 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 Panel 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 pre-hearing conference schedule 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 pre-hearing 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 amendments 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.

A request for a hearing or a petition for leave to intervene shall 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, 2120 L 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 or representative for the petitioner promptly inform the Commission by a toll-free telephone call to Western Union at 1-(800) 325-6000 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to George W. Knighton: 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, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Mr. Charles R. Kocher, Esq., Southern California Edison Company, 2244 Walnut Grove Avenue, P.O. Box 800, Rosemead, California 91770 and Orrick, Herrington and Sutcliffe, Attention: David R. Pigott, Esq., 600 Montgomery Street, San Francisco, California 94111, attorneys for the licensees.

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 the factors specified in the 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

If a request for hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendments which is available for public inspection at the Commission's public Document Room, 2120 L Street NW., Washington, DC, and at the General Library, University of California at Irvine, Irvine, California 92713.

Dated at Rockville, Maryland, this 16th day of February, 1989.

For the Nuclear Regulatory Commission.

George W. Knighton,

Director, Project Directorate V, Division of Reactor Projects—III, IV, V and Special Projects.

[FR Doc. 89-4323 Filed 2-23-89; 8:45 am]

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[Docket Nos. 50-361 and 50-362]

Southern California Edison Co. et al.; Consideration of Issuance of Amendments to Facility Operating Licenses and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. NPF-10 and NPF-15 issued to Southern California Edison Company (SCE), San Diego Gas and Electric Company, the City of Riverside, California and the City of Anaheim, California (the licensees), for operation of San Onofre Nuclear Generating Station, Units 2 and 3 located in San Diego County, California. The request for amendments was submitted by letter dated April 26, 1988 and identified as Proposed Change PCN-251.

The proposed change would revise Technical Specification (TS) 3/4.3.1, "Reactor Protective Instrumentation," and Technical Specification 3/4.3.2, "Engineered Safety Features Actuation System Instrumentation." TS 3/4.3.1 requires operability of the reactor protective instrumentation channels and bypasses with specified response times. Similarly, TS 3/4.3.2 requires operability of the Engineered Safety Features Actuation System (ESFAS) instrumentation channels and bypasses with trip setpoints consistent with the values specified in the TS. The operability of the reactor protective and ESFAS instrumentation and bypasses ensure that (1) the associated ESFAS action and/or reactor trip will be initiated when the parameter monitored by each channel or combination thereof reaches its setpoint, (2) the specified coincidence logic is maintained, (3) sufficient redundancy is maintained to permit a channel to be out of service for testing or maintenance, and (4) sufficient system functional capability is available from diverse parameters. The operability of these systems is required to provide the overall reliability, redundancy and diversity assumed available in the facility design for the protection and mitigation of accident and transient conditions; and so that the integrated operation of these systems is consistent with the assumptions used in the accident analyses.

Technical Specifications 4.3.1.3 and 4.3.2.3 require that the response times of one of the four channels of instrumentation in the Reactor Protection System (RPS) and ESFAS, respectively, be measured every 18 months and that the results meet specified values. The proposed change would revise the interval for these surveillances from the current 18 months to an interval of at least once per refueling.

Before issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By March 27, 1989 the licensees may file a request for a hearing with respect to issuance of the amendments to the subject facility operating licenses, 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 request for hearing and 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 Panel 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 pre-hearing 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 pre-hearing 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 amendments 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.

A request for a hearing or a petition for leave to intervene shall 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, 2120 L 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 or representative for the petitioner promptly inform the Commission by a toll-free telephone call to Western Union at 1-(800)325-6000 (in Missouri 1-(800)342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to George W. Knighton: 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, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Mr. Charles R. Kocher, Esq., Southern California Edison Company, 2244 Walnut Grove Avenue, P.O. Box 800, Rosemead, California 91770 and Orrick, Herrington and Sutcliffe, Attention: David R. Pigott, Esq., 600 Montgomery Street, San Francisco, California 94111, attorneys for the licensees.

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 the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

If a request for hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendments which is available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC, and at the General Library, University of California at Irvine, Irvine, California 92713.

Dated at Rockville, Maryland, this 16th day of February 1989.

For the Nuclear Regulatory Commission.

George W. Knighton,

Director, Project Directorate V, Division of Reactor Projects—III, IV, V and Special Projects.

[FR Doc. 89-4324 Filed 2-23-89; 8:45 am]

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[Docket Nos. 50-361 and 50-362]

Southern California Edison Co. et al.; Consideration of Issuance of Amendments to Facility Operating Licenses and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. NPF-10 and NPF-15 issued to Southern California Edison Company (SCE), San Diego Gas and Electric Company, the City of Riverside, California and the City of Anaheim, California (the licensees), for operation of San Onofre Nuclear Generating Station, Units 2 and 3 located in San Diego County, California. The request for amendments was submitted by letter dated December 19, 1988 and identified as Proposed Change PCN-267.

The proposed change would revise Technical Specification 3/4.3.3.1, "Radiation Monitoring Instrumentation." This specification provides alarm/trip setpoints for certain radiation monitoring instrumentation channels. The operability of these radiation monitoring alarm channels ensures that (1) the radiation levels are continuously measured in the areas served by the individual channels, (2) the alarm or automatic action is initiated when the radiation level trip setpoint is exceeded, and (3) sufficient information is available on selected plant parameters to monitor and assess these variables following an accident. Radiation monitoring instruments provide two trains of high range continuous monitoring, recording, and indication of containment area radiation levels. The systems also provide for alarm annunciation whenever technical specification limits for area radiation are approached or exceeded. During accident conditions the high range containment monitors would provide for long-term post-accident monitoring of radiation conditions inside containment.

Surveillance Requirement 4.3.3.1, states that each containment high range channel shall be demonstrated operable by the performance of a Channel Calibration at least once per 18 months. The proposed change would revise this interval to at least once per refueling.

Before issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By March 27, 1989 the licensees may file a request for a hearing with respect to issuance of the amendments to the

subject facility operating licenses, 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 request for hearing and 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 Panel 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 pre-hearing conference schedule 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 pre-hearing 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 amendments 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.

A request for a hearing or a petition for leave to intervene shall 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, 2120 L 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 or representative for the petitioner promptly inform the Commission by a toll-free telephone call to Western Union at 1–(800) 325–6000 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to George W. Knighton: 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, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Mr. Charles R. Kocher, Esq., Southern California Edison Company, 2244 Walnut Grove Avenue, P.O. Box 800, Rosemead, California 91770 and Orrick, Herrington and Sutcliffe, Attention: David R. Pigott, Esq., 600 Montgomery Street, San Francisco, California 94111, attorneys for the licensees.

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 the factors specified in the 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

If a request for hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendments which is available for public inspection at the Commission's public Document Room, 2120 L Street NW., Washington, DC, and at the General Library, University of California at Irvine, Irvene, California 92713.

Dated at Rockville, Maryland, this 16th day of February, 1989.

For the Nuclear Regulatory Commission.

George W. Knighton,

Director, Project Directorate V, Division of Reactor Projects—III, IV, V and Special Projects.

[FR Doc. 89–4325 Filed 2–23–89; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–361 and 50–362]

Southern California Edison Co. et al; Consideration of Issuance of Amendments to Facility Operating Licenses and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. NPF–10 and NPF–15 issued to Southern California Edison Company (SCE), San Diego Gas and Electric Company, the City of Riverside, California and the City of Anaheim, California (the licensees), for operation of San Onofre Nuclear Generating Station, Units 2 and 3 located in San Diego County, California. The request for amendments was submitted by letter dated November 7, 1988 as revised by letter dated December 29, 1988, and identified as Proposed Change Number PCN–278.

The proposed change would revise Technical Specifications 3/4.4.8.1, "Reactor Coolant System, Pressure/Temperature Limits;" 3.4.1.4.1, "Cold Shutdown—Loops Filled;" 3.4.1.3, "Hot Shutdown;" 3.4.8.3.1, "Overpressure Protection System, RCS Temperature <235°F;" and 3.4.8.3.2, "Overpressure Protection System, RCS Temperature >235°F." The change would revise the Reactor Coolant System Pressure/Temperature limit curves, LTOP temperatures, and associated bases to be effective up to 8 EFPY of operation. The maximum allowable reactor Coolant System pressure at any temperature is based upon the stress limitations for brittle fracture considerations. Technical Specification 3/4.4.8.1, "Reactor Coolant System, Pressure/Temperature Limits," provides operational constraints in all modes of reactor operation to ensure that the most stress limiting location in the reactor pressure vessel is not

susceptible to brittle failure as a consequence of reactor operations. The neutron-induced embrittlement of the reactor vessel wall also affects the temperature below which low temperature overpressure protection (LTOP) is required. LTOP is provided by the Shutdown Cooling System (SDCS) relief valves (SDCSRVs) which must be aligned below the specified temperature to provide assurance that the reactor vessel will be operated in the ductile region in accordance with 10 CFR Part 50, Appendix G, during both normal operation and overpressurization events due to equipment malfunction or operator error. Technical Specifications require alignment of the SDCS relief valves at temperatures below the temperature corresponding to the PT curve pressurizer relief valve set point of 2500 psia. The current Unit 2 RCS PT limit curves in the Technical Specification 3/4.4.8, Figures 3.4–2 and 3.4–3, are valid for 4 effective full power years (EFPY) and are based on the adjusted RT_{NDT} of 63.3°F. The current LTOP temperature is 235°F and provides RCS pressure relief at temperatures below the intersection of the pressurizer relief valve setpoint, 2500 psia, and the 100°F/hr cooldown curve.

The proposed change would revise the pressure/temperature limits for heatup and cooldown shown in Figures 3.4–2 and 3.4–3, respectively, and the LTOP temperature, based on the fluence at 8 EFPY. The minimum boltup temperature would increase to 86°F as stated in the proposed Technical Specification 3.4.8.1.d. An analysis was conducted by the licensees in accordance with 10 CFR 50, Appendix G; Standard Review Plan Sections 5.2.2 and 5.3.2, ASME B&PV Code, Section III, Division 1; Appendix G; and Regulatory Guide 1.99, Revision 2, May 1988. Using values listed in the FSAR Table 5.2–5, "San Onofre 2 Beltline Material," an adjusted RT_{NDT} of 120°F was calculated by the licensees based on the fluence at 8 EFPY. Separate heatup and cooldown LTOP temperatures, 312°F and 287°F, respectively, were calculated. The LTOP heatup and cooldown temperatures were determined from the intersections of the pressurizer relief valve setpoint and the 60°F/hr heatup curve and 100°F/hr cooldown curve, respectively, at which the LTOP functions must be transferred between the SDCSRVs and the pressurizer relief valve during heatup and cooldown. The licensees state that the pressure/temperature limits for the closure flange is independent of fluence, and the effect on the heatup and cooldown curves due to the flange has largely disappeared for this operating period. The material correlations were based on the copper and nickel content of the reactor vessel in accordance with new Regulatory Guide 1.99, Revision 2.

The proposed LTOP controlling pressure of 446 psia corresponds to the calculated maximum RCS pressure which could be reached during a postulated overpressurization event in the temperature region where the LTOP system is aligned. Moreover, the licensees state that LTOP controlling pressure is more limiting than the PT limit curves, providing added margin that the PT limit is not exceeded. The licensees believe that the intersections of the LTOP controlling pressure and 60°F/hr heatup curve and 100°F/hr cooldown curve provide the temperature at which the heatup rate can be increased and the cooldown rate must be reduced, and have proposed temperatures of 163°F and 145°F for heatup and cooldown, respectively. Further reduction in heatup and cooldown rates to 10°F/hr would occur due to more limiting controlling LTOP pressure, at 112°F and 103°F, respectively.

Before issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By March 27, 1989 the licensees may file a request for a hearing with respect to issuance of the amendments to the subject facility operating licenses, 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 request for hearing and 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 Panel 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 pre-hearing 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 pre-hearing 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 basis for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendments 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.

A request for a hearing or a petition for leave to intervene shall 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, 2120 L 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 or representative for the petitioner promptly inform the Commission by a toll-free telephone call to Western Union at 1–(800)325–6000 (in Missouri 1–(800)342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to George

W. Knighton: 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, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Mr. Charles R. Kocher, Esq., Southern California Edison Company, 2244 Walnut Grove Avenue, P.O. Box 800, Rosemead, California 91770 and Orrick, Herrington and Sutcliffe, Attention: David R. Pigott, Esq., 600 Montgomery Street, San Francisco, California, 94111, attorneys for the licensees.

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 the factors specified in the 10 CFR 2.714(a)(1) (i)-(v) and 2.714(d).

If a request for hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendments which is available for public inspection at the Commission's public Document Room, 2120 L Street NW., Washington, DC, and at the General Library, University of California at Irvine, Irvine, California 92713.

Dated at Rockville, Maryland, this 16th day of February, 1989.

For the Nuclear Regulatory Commission.

George W. Knighton,

Director, Project Directorate V, Division of Reactor Projects—III, IV, V and Special Projects.

[FR Doc. 89-4326 Filed 2-23-89; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-397]

Washington Public Power Supply System, Nuclear Project No. 2; Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards; Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF-21 issued to Washington Public Power Supply System (the licensee), for operation of Nuclear Project No. 2, located in Benton County, Washington. The request for amendment was submitted by letter dated December 2, 1988 and supplemented by letter dated February 1, 1989.

The proposed amendment would change Technical Specification Surveillance Requirement 4.8.1.1.2.e.7. which is part of the demonstration of operability of the emergency diesel generators. The surveillance requirement currently prescribes that upon loss of voltage on the emergency bus concurrent with an emergency core cooling system (ECCS) actuation signal, all division 3 automatic diesel generator trips will be bypassed except engine overspeed, generator differential current, and emergency manual stop.

The proposed amendment would show that the bypass occurs on the ECCS actuation signal. It would also include the incomplete start sequence trip in the set of trips not bypassed.

In its application for the amendment, the licensee declared that the changes to the surveillance requirement are necessary to make the requirement consistent with the actual installed design of the automatic bypass function of the diesel generator trips. The licensee contends that these changes were an oversight in the preparation of the WNP-2 technical specifications as the Final Safety Analysis Report (FSAR) descriptions were filed with NRC before issuance of the technical specifications.

On February 2, 1989 the Commission issued a temporary waiver of compliance to the above technical specification in order to avoid shutdown of the reactor while the amendment application is undergoing review.

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves 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 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 proposed changes do not involve an increase in the probability or consequences of an accident previously reviewed because the objectives for bypassing diesel generator trips during an accident are met. The accident which the system is designed to protect against is the loss of coolant accident (LOCA). Exceptions to the requirement that trips be bypassed have been allowed if coincident logic is used to avoid spurious trips. In their February 1, 1989 submittal, the licensee described redundant instrumentation features which disable the incomplete starting sequence trip during normal operation of the diesel, precluding spurious trips. Therefore no increase in the probability or consequence of this accident will occur.

The proposed changes will not create the possibility of a new or different kind of accident because there is no change to emergency diesel generator system design or function.

The proposed change does not involve a significant reduction in a margin of safety. The licensee has argued that the purpose of the incomplete start sequence trip is to preserve air if a starting sequence is unsuccessful. The circuitry associated with the incomplete starting sequence notifies the control room operator of a failure to start the diesel engine automatically and thus allows operator intervention.

On the basis of the above arguments, the Commission proposes to determine that these changes do not involve a significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received whithin 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Comments should be addressed to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, 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 P-216, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland, from 7:30 a.m. to 4:15 p.m. Copies of written comments may be examined at the NRC Public Document Room, 2120 L Street NW., Washington, DC 20555. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By March 27, 1989, 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 request for hearing and a 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 must 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 aspects(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 may 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 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. 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 shall 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, 2120 L Street NW., Washington, DC 20555, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner or representative for the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 325-6000 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to George W. Knighton: 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 Nicholas S. Reynolds, Esq., Bishop, Cook, Purcell and Reynolds, 1400 L Street NW., Washington, DC 20005-3502, and Mr. G.E. Doupe, Esq., Washington Public Power Supply System, P.O. Box 968, 3000 George Washington Way, Richland, Washington 99352, attorneys 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 the factors specified in 10 CFR 2.714(a)(1) (i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC 20555, and at the Richland City Library, Swift and Northgate Streets, Richland, Washington 99352.

Dated at Rockville, Maryland, this 16th day of February, 1989.

For the Nuclear Regulatory Commission

George W. Knighton,

Project Director, Project Directorate V, Division of Reactor Projects—III, IV, V and Special Projects.

[FR Doc. 89-4327 Filed 2-23-89; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

National Advisory Committee on Semiconductors (NACS); Meeting

The purpose of the National Advisory Committee on Semiconductors is to devise and promulgate a national semiconductor strategy, including research and development. The implementation of this strategy will assure the continued leadership of the United States in semiconductor technology. The Committee will meet on March 8, 1989 in Room 5104, New

Executive Office Building, Washington, DC, at 9:30 a.m. The proposed agenda is:

(1) Briefing of the Committee on its organization and administration.

(2) Briefing of the Committee by OSTP personnel and personnel of other agencies on proposed, ongoing, and completed studies regarding semiconductors.

(3) Discussion of composition of panels to conduct studies.

A portion of the March 8 session will be closed to the public.

The briefing on some of the current activities of OSTP necessarily will involve discussion of material that is formally classified in the interest of national defense or for foreign policy reasons. This is also true for a portion of the briefing on panel studies. As well, as portion of both of these briefings will require discussion of internal personnel procedures of the Executive Office of the President and information which, if prematurely disclosed, would significantly frustrate the implementation of decisions made requiring agency action. These portions of the meeting will be closed to the public pursuant to 5 U.S.C. 552b(c) (1), (2), and (9)(B).

A portion of the discussion of panel composition will necessitate the disclosure of information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. Accordingly, this portion of the meeting will also be closed to the public, pursuant to 5 U.S.C. 552b(c)(6).

Because of the security in the New Executive Office Building, persons wishing to attend the open portion of the meeting should contact Barbara J. Diering, at (202) 456–7740, prior to 3:00 p.m. on March 7, 1989. Mrs. Diering is also available to provide specific information regarding time, place and agenda for the open session.

Barbara J. Diering,

Special Assistant, Office of Science and Technology Policy.

December 23, 1988.

[FR Doc. 89–4329 Filed 2–21–89; 4:58 pm]

BILLING CODE 3170-01-M

SECURITIES AND EXCHANGE COMMISSION

Self-Regulatory Organizations; Application for Unlisted Trading Privileges and of Opportunity for Hearing; Midwest Stock Exchange, Inc.

February 17, 1989.

The above named national securities exchange has filed an application with the Securities and Exchange Commission pursuant to section 12(f)(1)(C) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder, for unlisted trading privileges in the following security:

Cominco, Ltd., Common Stock, No Par Value (File No. 7–4226).

This security is registered on one or more other national securities exchange and is reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before March 13, 1989, 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, 450 Fifth Street NW., 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 extension of unlisted trading privileges pursuant to such application is 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. 89–4363 Filed 2–23–89; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF STATE

[Public Notice CM8–1262]

Advisory Committee on International Communications and Information Policy; Meeting

The Department of State announces that the Subcommittee on Industrialized Country Policy Issues of the Advisory Committee on International Communications and Information Policy will meet on Monday, March 6, 1989 in the Loy Henderson Conference Room of the Department of State from 10:00 a.m. until 12:00 p.m.

The Committee serves the Department of State in an advisory capacity concerning major economic, social and legal issues and problems in international communications and information policy, especially as these issues and problems involve users of information and communications services, providers of such services, technology research and development, foreign industrial and regulatory policy and the activities of international organizations with regard to communications and information, and developing country interests.

The Subcommittee will provide advice to the Department on policy issues of concern to industrialized countries, and will include advice on communications and information policy issues being addressed in the Organization for Economic Cooperation and Development (OECD) and, more particularly, the OECD's Committee on Information, Computers and Communications Policy (ICCP).

The March 6 meeting will consider the following matters:

(1) The current work of the ICCP with regard to trade in telecommunications network-based services, including preparation for a March 17 meeting between the ICCP Committee and the OECD's Trade Committee;

(2) The new work between the ICCP Committee and the Committee on Capital Movements and Invisible Transactions (CMIT) on developing an inventory of barriers to trade in computer services, computerized information services and value-added network services;

(3) The on-going work of the ICCP Committee on issues in structural change in the telecommunications sector; and

(4) Proposals for the 1990 ICCP program of work.

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 the office of Mrs. Lucy H. Richards, Department of State, Washington, DC, telephone (202) 647–5230. Attendees should use the C Street entrance to the Department of State, and plan to reach C Street with sufficient time to be processed into the building, as access to the State Department building is controlled.

Date: February 15, 1989.

Lucy H. Richards,

Director, Office of Industrialized Country Policy, Executive Secretary, Advisory Committee on International Communications and Information Policy.

[FR Doc. 89–4280 Filed 2–23–89; 8:45 am]

BILLING CODE 4710-07-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE-89-6]

Petition for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before March 16, 1989.

ADDRESS: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-10), Petition Docket No. _____, 800 Independence Avenue SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-10), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3132.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on February 16, 1989.

Jean Neely,

Acting Manager, Program Management Staff, Office of the Chief Counsel.

Petitions for Exemption

Docket No.: 11144.
Petitioner: American Airlines.
Regulations Affected: 14 CFR 121.99 and 121.351(a).
Description of Relief Sought: To extend Exemption No. 1332, as amended, that allows petitioner to operate its airplanes between Wilmington, NC, and St. Thomas and St. Croix, Virgin Islands, via Nassau, without maintaining two-way radio communications between the airplanes and the dispatch office subject to certain conditions. Exemption No. 1332, as amended, will expire on June 30, 1989.

Docket No.: 24446.
Petitioner: Air Transport Association of America.
Sections of the FAR Affected: 14 CFR 121.485.
Description of Relief Sought: To extend Exemption No. 4317, as amended, that allows petitioner's members to conduct flights of less than 12 hours duration with an airplane having an additional crew of three or more pilots and an additional flight crewmember without requiring the rest period to be twice the hours flown since the last at home base rest period. Exemption No. 4317, as amended, will expire on April 30, 1989.

Docket No.: 24715.
Petitioner: American Cyanamid Company.
Sections of the FAR Affected: 14 CFR 91.191(a)(4), 135.165(a), and 135.165(b)(6)(7).
Description of Relief Sought: To extend Exemption No. 4807 that allows petitioner to operate its Grumman Aircraft Corporation Gulfstream (G-1159A), registration number N750AC, and Gates Learjet Corporation Model 55 (Learjet 55), registration numbers N740AC and N760AC, with one long-range navigation system and one high-frequency communication system subject to certain conditions and limitations. Exemption No. 4807 will expire on June 30, 1989.

Docket No.: 25763.
Petitioner: Southern Natural Gas Company Aviation Department.
Sections of the FAR Affected: 14 CFR 91.191(a)(4).
Description of Relief Sought: To allow petitioner to operate over water more than 30 minutes flying time or 100 nautical miles from the nearest shoreline with one, instead of two, independent receivers for navigation.

Docket No.: 25791
Petitioner: Braniff, Inc.
Regulations Affected: 14 CFR 121.411(a) (1), (2), (3), and (6) and 121.413 (b) and (c).
Description of Relief Sought/ Disposition: To allow petitioner to utilize certain highly qualified pilot and simulator instructors from Aeroformation for the purpose of training petitioner's initial cadre of pilots in the Airbus Industrie A320 type airplane in Toulouse, France, without holding appropriate U.S. certificates and ratings and without meeting all of the applicable training requirements of Subpart N of Part 121. *GRANT, February 1, 1989, Exemption No. 5015.*

[FR Doc. 89-4239 Filed 2-23-89; 8:45 am]
BILLING CODE 4910-13-M

Radio Technical Commission for Aeronautics (RTCA) Special Committee 159—Minimum Aviation System Performance Standard for GPS; Meeting; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting—Special Committee 159—Minimum Aviation System Performance Standard for GPS: correction, location.

SUMMARY: FAA is correcting an error on the location lines. In FR Doc. 89-3502, published Wednesday, February 15, 1989, on page 6984, in first paragraph please change RTCA Conference Room, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, DC 20005, to Department of Transportation, NASSIF Building, 400 7th Street, SW., Room 4234, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Geoffrey R. McIntyre, Special Assistant, ADM-4, (202) 267-7383 or FTS 267-7383.

Geoffrey R. McIntyre,

Acting Designated Officer.

[FR Doc. 89-4238 Filed 2-23-89; 8:45 am]
BILLING CODE 4910-13-M

Federal Highway Administration

Environmental Impact Statement; Ferry Street Bridge Corridor, City of Eugene, OR

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed bridge and highway project in the Ferry Street Bridge Corridor in the City of Eugene, Oregon.

FOR FURTHER INFORMATION CONTACT: Elton Chang, Environmental Coordinator and Safety Programs Engineer, Federal Highway Administration, Equitable Center, Suite 100, 530 Center NE., Salem,

Oregon 97301. Telephone: (503) 399–5749.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Oregon Department of Transportation, will prepare an environmental impact statement (EIS) on a proposal to improve the capacity and safety associated with the Ferry Street Bridge corridor over the Willamette River.

Improvements to the corridor is considered necessary to provide existing and projected traffic demands; provide for better separation of vehicular, pedestrian, and bicycle traffic; and to resolve safety problems and lane merging conflicts on the approaches north and south of the bridge.

Alternatives under consideration include:

1. A no-build alternative, which assumes that no significant improvements would be made to alleviate congestion or safety problems associated with the existing structure and approaches.

2. An alternative in which capacity/safety improvements are made separate from the bridge corridor. This alternative recognizes that improvements outside of the existing bridge corridor can relieve a portion of the capacity (and to a lesser degree, safety) problems of the present structure. This alternative involves two subalternatives:

a. Construction of an I–5 southbound ramp to Franklin Boulevard and a return ramp from Franklin Boulevard to northbound I–5; and

b. Construction of a new bridge near the Valley River Center or general vicinity.

3. An alternative involving construction at or near the existing Ferry Street Bridge corridor. This alternative will include three subalternatives:

a. Traffic improvements to Ferry Street Bridge approaches;

b. Construction of a twin structure parallel to the existing facility, thereby retaining the existing bridge for the remainder of its useful life;

c. Demolition of the existing bridge and replacement with a new structure.

4. An alternative crossing of Willamette River in the riverfront area. This alternative would involve a totally new transportation corridor from Franklin Boulevard north across the Willamette River to improve access to the university area and downtown. It will also reduce demand for use of the Ferry Street Bridge by providing alternative user routes. Connections at Centennial Boulevard and I–105 will be investigated.

Environmental issues are expected to include potential impacts to traffic, noise, air quality, land and shoreline use, vegetation, socioeconomics, historic and cultural resources, public services and utilities, and construction impacts (traffic detours, noise, dust). Some alternatives may involve property acquisition.

Letters describing the proposed action and soliciting comments for the EIS will be sent to appropriate Federal, State and local agencies, Indian Tribes, and to private organizations and citizens who have previously expressed or are known to have interest in the proposal. A public scoping meeting, to further explain the proposal and solicit comments will be held at 7:30 P.M. on March 8, 1989 in Eugene, Oregon. Comments on the scope of the EIS will be received until March 17, 1989. Written comments and comments from the scoping meeting will be considered in determining the scope of the EIS.

During project development there will be other public meetings held and after the draft EIS has been prepared there will be a public hearing. Public notice will be given of the time and place of the meetings and hearing. The draft EIS will be available for public and agency review and comment prior to the public hearing.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The provisions of Executive Order 12372, "Intergovernmental Review of Federal Programs" apply to this program.)

Issued on February 17, 1989.

Elton H. Chang,

Environment Coordinator/Safety Program Engineer, Oregon Division, Salem, Oregon.

[FR Doc. 89–4361 Filed 2–23–89; 8:45 am]

BILLING CODE 4910–22–M

Environmental Impact Statement; Tulare County, CA

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement will be prepared for a proposed highway freeway gap project in and adjacent to Visalia, in Tulare County, California.

FOR FURTHER INFORMATION CONTACT: Michael A. Cook, Acting District Engineer, Federal Highway Administration, P.O. Box 1915, Sacramento, California 95809. Telephone: (916) 551–1307.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the California Department of Transportation, will prepare an Environmental Impact Statement (EIS) on a proposal to convert existing Route 198 from a four-lane conventional highway to an initial four-lane freeway, ultimately to a six-lane freeway, from one mile east of Route 99 to Route 63, in the City of Visalia. This proposal will eliminate a freeway gap, reduce traffic congestion and accidents, and provide adequate capacity for the anticipated growth of the City of Visalia.

Alternatives include conversion to a four-lane freeway on present or new alignment, with differing grades, types of interchanges, and frontage road systems; conversion to a six-lane expressway; safety improvements; or no improvements at all.

The scoping process for this proposed action will include coordination and consultation with appropriate agencies, groups and individuals. Public information meetings have been conducted since 1984. Bi-weekly meetings with a citizen's advisory committee were held this last Fall. Additional public meetings will be held this year. The draft EIS will be circulated and a public hearing conducted.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address previously provided.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. the Regulations implementing Executive Order 12371 regarding intergovernmental consultation on Federal Programs and activities apply to this program.)

Issued on February 17, 1989.

Michael A. Cook,

Acting District Engineer, Sacramento, California.

[FR Doc. 89–4281 Filed 2–24–89; 8:45 am]

BILLING CODE 4910–22–M

National Highway Traffic Safety Administration

Discretionary Cooperative Agreements to Support National Occupant Protection Programs

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Announcement of discretionary cooperative agreements to support national occupant protection programs.

SUMMARY: The National Highway Traffic Safety Administration (NHTSA) announces the availability of FY 1989 discretionary cooperative agreements to support the national occupant protection education and outreach program in the areas of child passenger safety, outreach to rural and economically disadvantaged populations, and occupational health professionals. This notice solicits applications from national, non-profit organizations and institutions of higher education that are interested in developing and implementing projects under this program.

DATE: Applications must be received at the office designated below on or before April 26, 1989.

ADDRESS: Applications must be submitted to the National Highway Traffic Safety Administration, Office of Contracts and Procurement (NAD-30), 400 7th Street, SW., Room 5301, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Questions relating to this cooperative agreement program should be directed to Chief of National Organizations Division, NHTSA, Room 5118 (NTS-11), 400 7th Street, SW., Washington, DC 20590 (202/366-2683); or Dr. Chris Hughes, Direcctor of Occupant Protection, NTS-10, (202/366-2682).

SUPPLEMENTARY INFORMATION:

Background

Worldwide experience has demonstrated that safety belts reduce deaths and serious injuries by 40 to 55 percent. As recently as 1982, only 11 percent of U.S. motorists used safety belts, although in many foregin countries, belt use was over 70 percent. Since then, NHTSA and other groups have taken an unprecedented continuous program to increase occupant protection. The Secretary of Transportation's 1984 rulemaking on automatic occupant protection provided a phase-in schedule for automatic crash protection (such as air bags and automatic belts) and encouraged passage of State laws to require safety belt use. In 1988, belt use was 46 percent, 31 States had belt laws (plus DC) and millions of air bags and automatic belts were in the marketplace.

NHTSA's program objectives are to further reduce motor vehicle injuries and fatalities by:

- Increasing the number of belt users as high as possible;
- Developing special efforts to reach groups that have a higher than average risk of crash involvement;
- Increasing public awareness of the importance of occupant protection, especially the benefits of new automatic protection systems such as air bags and automatic belts;
- Measuring program effectiveness and sharing success stories to encourage even more public acceptance and use.

NHTSA provides leadership and support to State governments who manage funds allocated to them by Congress, and works with other private and public groups. NHTSA administers funds for State and community programs and research and demonstration projects in order to assist key groups with highway safety programs and analysis of results. The Agency has 10 Regional Offices that approve State highway safety plans, and a central staff that administers the research and demonstration projects. As a result of joint efforts with the States and other groups, safety belt and child safety seat use is the highest in history and public awareness of automatic crash protection has increased dramatically. Hundreds of community occupant protection programs get support and leadership from mayors' offices, health/medical professionals, police departments, civic and service organizations, and others.

Since 1981, NHTSA has worked with opinion leaders, such as physicians, nurses, law enforcement officers, public officials, educators, employers, and civic groups, who can motivate people through interpersonal contacts. One of the most effective means for educating the public about the lifesaving benefits of occupant protection has been through groups that have strong national, State, and local affiliates (e.g., the American Academy of Pediatrics, the American Red Cross, and the National PTA). Implementation of statewide programs, including education about the importance of occupant protection in crash survival and support for enforcement of safety belt and child safety seat belt use laws, relies heavily on the outreach efforts of organizations like these. The process of sharing information and cooperating in educational activities and resources has aided the establishment of relationships at the national, State, and local levels. Appendix A contains a listing of the national organizations that have been involved at various levels in the occupant protection program.

The area of child passenger safety has some unique considerations. Research has demonstrated that child safety seats, when correctly used, can reduce fatalities among children less than 5 years of age by 71 percent. This makes child safety seats one of the single most effective automotive safety innovations ever developed. As a result of improvements in the convenience of the seats, state child passenger protection laws and public education, the use of child safety seats has increased dramatically over the past ten years. A survey of 19 U.S. cities has shown the use rate rising from only 22 percent in 1982 to 84 percent in 1988.

However, correct use of child safety seats is still the subject of major educational initiatives. Despite the apparent high rate of child safety seat use, many of these seats are being misused. In part because of this incorrect use, child safety seats are not currently saving as many lives as they could potentially save.

NHTSA's program objectives are to gain further child injury/fatality reductions by increasing overall use of child passenger protection systems, by increasing correct use of child safety seats and by enhancing enforcement of child passenger safety laws.

The results of the NHTSA Occupant Protection Program can be summarized as follows:

- Overall safety belt use has risen from 11 to 47 percent; children observed in child safety seats has risen from 22 percent in 1982 to 84 percent in 1988.
- As of December 1988, 31 States and the District of Columbia have safety belt use laws.
- Belt use in States with laws averages 51 percent and in States without laws averages 33 percent.
- From 1983 through 1988, an estimated projection of 15,238 lives were saved by safety belts—9,700 due to belt laws.
- All States and D.C. have child passenger safety laws.
- By 1990, over one million air bag cars will have been produced, with millions more on the way.

Current issues and co..cerns for the national program can be summarized as follows:

- Approximately 50 percent of U.S. motorists still do not wear belts regularly. Several major national groups have set a goal of at least 70 percent belt use by 1990.

• New belt users may need reinforcement to keep wearing their belts.

• An estimated 30 percent of child safety seats are not used in a manner that provides maximum protection.

• Some belt users may overestimate the protection provided by air bags and stop using their safety belts.

• Nineteen (19) States do not have belt use laws.

• Crash statistics reveal that those individuals who are most likely to be involved in serious crashes are those least likely to use safety belts or child safety seats.

• Potential for the greatest reduction in death and injury lies with the current non-users (i.e. people living in rural areas, economically disadvantaged people, young people, etc.) because they are more likely to be in crashes.

FY 1989 Program

In support of NHTSA's mandate to save lives and reduce injuries from motor vehicle crashes, the National Occupant Protection Program works to foster a variety of partnerships with the private sector that will further the reach of occupant protection activities and programs. To this end, NHTSA intends to establish cooperative agreements in FY 1989 with nonprofit national organizations and universities that have mechanisms to reach constituencies that can address the following priority areas:

Rural Populations

To achieve the agency's goal of educating all American consumers about the benefits of using safety belts, child safety seats and automatic crash protection systems, additional emphasis is being placed on reaching individuals who have been identified as being at higher than average risk of suffering the effects of non-belt use. Death rates of motor vehicle occupants are greatest in counties with the lowest population density and lowest per capita income. Differences in road characteristics, travel speeds, types of vehicles, safety belt use, and availability of emergency care are major contributors to this difference.

The goal for this program area is to identify and develop innovative education and outreach programs in organizations reaching rural populations and through organizations that have primary rural members. This would include identifying how the occupant protection issue can be made to fit into the organization's overall mission and within existing delivery mechanisms. In addition, the Agency will be using a media placement service to increase awareness in rural communities through newspapers and radio stations.

Economically Disadvantaged Populations

Another segment of the population that has been identified by research as being at higher than average risk of suffering the effects of non-belt use is the economically disadvantaged. Income, education and other variables are combined to form profiles called socio-economic status (SES). Surveys on belt use show that individuals who fall into lower SES profiles are less likely to buckle up than people with higher SES. Therefore, the agency is seeking program delivery mechanisms to reach economically disadvantaged populations.

Organizations must be able to develop programs and materials sensitive to the various target groups within economically disadvantaged populations. Proposals should address delivery systems such as job training and literacy programs, child care center outreach programs, and public health service clinics, and others.

Child Passenger Safety

Child passenger safety is important for the protection of children and to form good habits for life. The child safety use rate has increased substantially over the past several years. The Agency is concerned about reaching the remaining non-users. The potential effect of child safety seat use is diminished when the child safety seats and safety belts are not used correctly. Estimates show that less than half of the lives which could potentially be saved by child restraints are actually being saved, due to misuse and lack of use. The correct use of child safety seats, especially now with the availability of automatic safety belts and air bags, presents additional educational challenges. The transition of toddlers and young children from safety seats into safety belts also presents complex public information and education challenges.

There are many different types and brands of child safety seats. Also, there are a variety of safety restraint options for children as they outgrow safety seats. State and local program officials and health/medical professionals depend on the Agency to provide support for access to technical information and updates on current issues. The purpose of this program area is to work with a national non-profit organization or university to further increase the correct use of child safety seats through: public education, technical support to health/medical professionals and highway safety program officials, and promotion of enforcement of child passenger safety laws.

Occupational Health

According to the Bureau of Labor Statistics, motor vehicle crashes are the largest single cause of lost work time and on-the-job fatalities for U.S. businesses. It is estimated that motor vehicle crashes cost U.S. businesses about $42 billion in 1987. Today, progressive companies have made promotion of health and wellness in the work place a priority for reducing costs and improving worker productivity. Many companies educate employers about imparied driving and NHTSA wants to assist more companies to develop programs for their employees on occupant protection and impaired driving.

In recent years, there have been several training programs sponsored at the national level and by States for worksite safety officials promoting the benefits of corporate/employer anti-drunk driving programs, safety belt programs, including education for employees, use requirements, and incentive programs for employees who buckle up. NHTSA's program is currently working with the Worker's Institute for Safety and Health, a non-member labor organization, to reach labor organizations and their members with information about occupant protection programs.

The new work to be accomplished in this program area is to develop a cooperative agreement with a national organization representing occupational health professionals in order to increase belt use among its members and the employees they serve and to reduce the occurrence of impaired driving. Organizations must be able to stimulate employers' interest in promoting effective occupant protection programs that include correct use of safety belts, child safety seats, and automatic crash protection systems, and in promoting anti-drunk driving programs as a health and wellness issue at worksites.

Please note that this priority area includes an emphasis on impaired-drunk driving awareness programs in addition to occupant protection.

Objectives

In FY 1989, NHTSA intends to award cooperative agreements in each of the above described program areas. An applicant could be awarded cooperative agreements in two program areas, if qualified in both. More than one

agreement could be awarded in an area if additional funding becomes available.

Under the cooperative agreement program, participating organizations should advance the concepts of safety belt use, child safety seat use and understanding the benefits of automatic crash protection. In addition, organizations should work to stimulate the adoption of occupant protection use among their members and/or constituents. Specific objectives for the cooperative agreement program are as follows:

1. To stimulate the development of occupant protection programs and the support for safety belt and child safety seats use laws by: providing support for nationally coordinated efforts to develop and implement occupant protection programs; motivating the members of national organizations and the individuals they serve to adopt traffic safety behaviors as components of healthy lifestyles; and enhancing organizations' support for State safety belt use laws and child passenger safety laws and the enforcement of those laws.

2. To expand the outreach of occupant protection education activity and to improve knowledge of the effectiveness of such programs by: Stimulating the development of programs and activities for target populations most at risk of crash injury; stimulating the development of programs designed to meet the special needs of an organization's members; increasing the number, improving the quality, and expanding the scope of occupant protection programs conducted by national organizations; and conducting an assessment of the project's outcomes during the period of support.

Anticipated outcomes of the Cooperative Agreement Program are an increase in the number, kind, and quality of occupant protection programs initiated and supported by national organizations and universities especially for those populations most at risk of crash injury.

Eligibility Requirements

In order to be eligible to participate in this cooperative agreement, an organization must meet the following requirements:

- Be a private nonprofit organization.
- Be a university with experience in highway traffic safety programming.
- Be a university with experience in programs for the identified target groups.

If the applicant is a national, private nonprofit organization, it must have a national membership, State/local chapters, and/or affiliates; demonstrate an understanding of the current and potential role of the membership in occupant protection efforts at the local or community level; have in place a variety of communication mechanisms that are appropriate for motivating members and other constituents to become involved in occupant protection at the State and local levels; and demonstrate top level support within the organization for the project and, where appropriate, demonstrate similar support from the membership.

Activities undertaken by each organization will depend on the goals of the organization, its programming and communication mechanisms, and the potential its membership has for promoting health and wellness.

The National Highway Traffic Safety Administration (NHTSA) Office of Occupant Protection (OOP) will be involved in all activities undertaken as part of the cooperative agreement program and will:

- Provide a project officer to participate in the planning and management of the cooperative agreement and to coordinate activities between the organization and OOP;
- Make available information and technical assistance from government sources, within resources available and as determined appropriate by the project officer;
- Provide liaison with other government and private agencies as appropriate; and
- Stimulate the exchange of ideas and information among cooperative agreement recipients through periodic meetings.

Innovative Approaches

Applicants are encouraged to develop *innovative* approaches in their proposals within the specified priority areas that are appropriate for their constituencies. Some examples of activities follow that have been conducted in the past by national organizations and others involved in the occupant protection program are only provided to stimulate thinking and should not be viewed as required activities: identify members of the organization (and their family memers) that qualify for "Saved By The Belt Club" recognition and publicize these survivor stories in organization publications; identify and develop materials needed to conduct program (this could include handbooks, manuals, brochures, posters, audio-visuals, etc.); write and have articles placed in the organization's newsletter, magazine, and/or journal; encourage and assist organizations in adopting a national policy resolution for safety belt and child safety seat use.

Evaluation Criteria and Review Process

Proposals must demonstrate that the applicant meets all eligibility requirements listed. Proposals will be evaluated based upon the following factors which are listed in descending order of importance:

1. What the organization proposes to accomplish and the potential of the proposed project to make a significant contribution to national efforts to achieve increased safety belt use, child safety seat use, and awareness of automatic crash protection systems. Innovative approaches to accomplish the project are encouraged.

2. The extent to which the project addresses the need of target populations, the priority issues, and the appropriateness of the project for the identified constituency.

3. The overall track record, capability, and commitment of the university or national organization to work with *other* national organizations that have related missions and that could serve as adjunct program delivery channels with assistance from the cooperative agreement recipient.

4. The soundness and feasibility of the proposed approach or workplan, including the evaluation plan to assess program outcomes.

5. How the organization will provide the administrative capability and staff expertise required to successfully complete the proposed project.

6. The proposed coordination with and use of other available organizational resources, including other sources of financial support. The "cost/benefit" potential of the proposed project will be considered.

Upon receipt of applications by the Agency, they will be screened to assure that all eligibility requirements have been met. Applications will be reviewed by NHTSA staff using the criteria outlined above. The results of this review will be recommendations to Agency management for 1989 cooperative agreement awards. The Agency intends to make awards by June 1989.

Support, Terms, and Conditions

Contingent on the availability of funds, satisfactory performance, and continued demonstrated need, cooperative agreements may be awarded for project periods of up to three (3) years. The application for the initial funding period (12 months) should address what is proposed and can be accomplished during that initial period. To obtain funding after the initial 12-month period, a continuation application

and approval will be required for any subsequent year. Continuation applications will not be subjected to competitive review, but must demonstrate that the continuation effort will effectively and efficiently fulfill program objectives.

Anticipated funding levels for FY 1989 will be from $60K to $80K per year for each of the 4 priority program categories. Subsequent years may be funded pending the availability funds, demonstrated program need and satisfactory performance. It is possible for one application to include more than one program category, but the same evaluation criteria will be applied to each category applied for.

Federal funds should be viewed as seed money to assist organizations in the development of traffic safety initiatives. Monies allocated for cooperative agreements are not intended to cover all of the costs that will be incurred in the process of completing the projects. Applicants should demonstrate a commitment of financial or in-kind resources to the support of proposed projects.

Organizations participating in the cooperative agreement program may use awarded funds to support salaries of individuals assigned to the project, the development or purchase of direct program materials, direct program-related activities, or for travel related to the cooperative agreement.

All award recipients will be required to submit quarterly progress reports in a format and on a schedule to be determined after the award. In addition, recipients will be required to submit a detailed final summary report describing the project and its outcomes no later than 90 days after termination of the period of support.

Application Procedure

1. All applications must be covered by a signed copy of OMB Standard Form 424 (revised 4–88, including 424A and 424B) "Application for Federal Assistance" with the required information filled in and the certified assurances included.

2. Applications shall include a program narrative statement which addresses the following:

(a) Demonstrates the need for the assistance and states the principal and subordinate objectives of the project. Supporting documentation from concerned interests other than the applicant can be used. Any relevant data based on planning studies should be included or footnoted.

(b) Identifies the results and benefits to be derived.

(c) Approach:

(i) Outlines a plan of action pertaining to the scope and detail on how the proposed work will be accomplished. Include the reasons for taking this approach as opposed to other approaches.

(ii) Describes any unusual features, such as design or technological innovations, reductions in cost or time, or extraordinary social/community involvement.

(iii) Provides quantitative projections of the accomplishments to be achieved, if possible, or lists the activities in chronological order to show the schedule of accomplishments and their target dates.

(iv) Identifies the kinds of data to be collected and maintained, and discusses the criteria to be used to evaluate the results. Explains the methodology that will be used to determine if the needs identified and discused are being met and if the results and benefits identified are being achieved.

(v) Lists each organization, corporation, consultant or other key individuals who will work on the project along with a short description of the nature of their effort or contribution.

3. Applications must be typed on one side of the page only. The original and two copies of each application must be submitted. An applicant may submit an additional four copies to help facilitate the review process, but there is no requirement or obligation to do so.

Administration of the Cooperative Agreement

During the effective period of the cooperative agreements awarded as a result of this notice, the agreements shall be subject to the general administrative requirements of OMB Circular A–110 (or the "common rule", if effected prior to award), the cost principles of OMB Circular A–21 or A–122, as applicable to the recipient, and the provisions of 49 CFR Part 29, Governmentwide Debarment and Suspension (nonprocurement).

George L. Reagle,

Associate Administrator, Traffic Safety Programs.

Appendix A—National Organizations Involved in Occupant Protection 1981–1988

American Academy of Family Physicians
American Academy of Osteopathic Surgeons
American Academy of Pediatrics
American Association of School Administrators
American Association of Retired Persons
American Coalition for Traffic Safety, Inc.
American College of Emergency Physicians
American College of Obstetricians & Gynecologists
American College of Orthopedic Surgeons
American College of Preventive Medicine
American College of Surgeons
American Driver and Traffic Safety Education Association
American Hospital Association
American Medical Association
American Nurses Association
American Osteopathic Association
American Public Health Association
American Red Cross
American Spinal Injury Association
American Trauma Society
Association of State and Territorial Health Officials
Association for the Advancement of Health Education
Auxiliary to the American Dental Association
Auxiliary to the American Optometric Association
Boy Scouts of America
Future Farmers of America
General Federation of Women's Clubs
Girl Scouts of the U.S.A.
International Association of Chiefs of Police
National Association for the Education of Young Children
National Association for Elementary School Principals
National Association of Governor's Highway Safety Representatives
National Association of Motor Fleet Administrators
National Association of State Directors of Law Enforcement Training
National Association of Women Highway Safety Leaders
National Child Passenger Safety Association
National Council of Negro Women
National Council of State Emergency Medical Services Training Coordinators
National Extension Home Economists
National Extension Homemakers Council
National Head Injury Foundation
National League of Cities
National PTA
National Safety Council
National Sheriffs Association
National Student Safety Program
Students Against Driving Drunk
Traffic Safety Now, Inc.
U.S. Conference of Mayors
Women's Institute for Safety & Health

[FR Doc. 89–4388 Filed 2–23–89; 8:45 am]

BILLING CODE 4910–59–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: February 17, 1989.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this

information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue NW., Washington, DC 20220.

Alcohol, Tobacco and Firearms

OMB Number: 1512–0033
Form Number: ATF Form 1534–A (5000.19)
Type of Review: Extension
Title: Tax Authorization Information
Description: ATF Form 1534–A (5000.19) is required by ATF to be filed when a respondent's representative, not having a power of attorney, wishes to obtain confidential information regarding the respondent. After proper completion of the form, information can be released to the representative.
Respondents: Individuals or households, Businesses or other for-profit, Small businesses or organizations
Estimated Number of Respondents: 50
Estimated Burden Hours Per Response: 1 hour
Frequency of Response: On occasion
Estimated Total Reporting Burden: 50 hours

OMB Number: 1512–0035
Form Number: ATF Form 5000.21
Type of Review: Extension
Title: Referral of Information
Description: ATF asks the Federal agency or State or local regulatory compliance agency to respond as to whether any action will be taken and, if so, the action planned on referrals of potential violations of Federal, State or local law discovered by ATF personnel during investigations, also used to evaluate whether referrals are useful to State and local governments
Respondents: State or local governments, Federal agencies or employees
Estimated Number of Respondents: 500
Estimated Burden Hours Per Response: 1 hour
Frequency of Response: On occasion
Estimated Total Reporting Burden: 500 hours

Clearance Officer: Robert Masarsky, (202) 566–7077, Bureau of Alcohol, Tobacco and Firearms, Room 7011, 1200 Pennsylvania Avenue NW., Washington, DC 20226.

OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 89–4284 Filed 2–23–89; 8:45 am]

BILLING CODE 4810–25–M

Public Information Collection Requirements Submitted to OMB for Review

Date: February 17, 1989.

The Department of Treasury has made revisions and resubmitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–0064
Form Number: IRS Form 4029
Type of Review: Resubmission
Title: Application for Exemption from Tax on Self-Employment Income and Waiver of Benefits
Description: Form 4029 is used by members of qualified religious groups to claim exemption under IRC section 1402(h) from tax on self-employment income. Data is used to approve or deny exemption from self-employment tax.
Respondents: Individuals or households
Estimated Number of Respondents: 8,216
Estimated Burden Hours Per Response: Recordkeeping 7 minutes; Learning about the law or the form 12 minutes; Preparing the form 11 minutes; Copying, assembling, and sending the form to IRS 35 minutes
Frequency of Response: Other (filed only once)
Estimated Total Reporting Burden: 8,873 hours

OMB Number: 1545–1031
Form Number: IRS Form 8697
Type of Review: Resubmission
Title: Interest Computation Under the Lock-Back Method for Completed Long-Term Contracts
Description: Taxpayers required to account for all or parts of any long-term contract entered into after February 28, 1986, under the percentage of completion method must use Form 8697 to compute and report interest due or to be refunded under Internal Revenue Code section 460(b)(3). IRS uses Form 8697 to determine if the interest has been figured correctly.
Respondents: Individuals or households, Businesses or other for-profit, Small businesses or organizations
Estimated Number of Respondents: 5,000
Estimated Burden Hours Per Response: Recordkeeping 8 hours, 37 minutes; Learning about the law or the form 1 hour, 58 minutes; Preparing the form 3 hours, 7 minutes; Copying, assembling, and sending the form to IRS 16 minutes
Frequency of Response: Annually
Estimated Total Reporting Burden: 69,750 hours

Clearance Officer: Garrick Shear, (202) 535–4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 89–4285 Filed 2–23–89; 8:45 am]

BILLING CODE 4810–25–M

Internal Revenue Service

Art Advisory Panel of the Commissioner of Internal Revenue; Availability of Report of Closed Meetings

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of availability of report on closed meetings of the Art Advisory Panel.

SUMMARY: The report is now available.

Pursuant to 5 U.S.C. app. I section 10(d), of the Federal Advisory Committee Act; and 5 U.S.C. 552b, the Government in the Sunshine Act; and Treasury Directive 21–03 section 8 (1–29–87): A report summarizing the closed meeting activities of the Art Advisory Panel during 1988, has been prepared. A copy of this report has been filed with the Assistant Secretary of the Treasury for Management and is now available for public inspection at: Internal Revenue Service, Freedom of Information Reading Room, Room 1565, 1111 Constitution Avenue, NW., Washington, DC 20224.

Requests for copies should be addressed to: Director, Disclosure Operations Division, Attn: FOI Reading Room, Box 388, Benjamin Franklin Station, Washington, DC 20044, Telephone (202) 566–3770, (Not a toll free telephone number).

The Commissioner of Internal Revenue has determined that this document is not a major rule as defined in Executive Order 12291 and that a regulatory impact analysis therefore is

not required. Neither does this document constitute a rule subject to the Regulatory Flexibility Act (5 U.S.C. Chapter 6).

FOR FURTHER INFORMATION CONTACT: Karen Carolan, CC:AP:V:4, 1111 Constitution Avenue, NW., Room 2575, Washington, DC 20224, Telephone (202) 566–9259 (Not a toll free telephone number).

Lawrence B. Gibbs,

Commissioner.

[FR Doc. 89–4335 Filed 2–23–89; 8:45 am]

BILLING CODE 4830–01–M

Sunshine Act Meetings

Federal Register
Vol. 54, No. 36
Friday, February 24, 1989

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 RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 10:00 a.m., Wednesday, March 1, 1989.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: February 21, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-4387 Filed 2-21-89; 5:05 pm]

BILLING CODE 6210-01-M

Corrections

Federal Register
Vol. 54, No. 36
Friday, February 24, 1989

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 COMMERCE

Patent and Trademark Office

37 CFR Parts 1 and 2

[Docket No. 81024-9018]

Revision of Patent and Trademark Fees

Correction

In rule document 89-3486 beginning on page 6893 in the issue of Wednesday, February 15, 1989, make the following corrections:

1. On page 6899, in the 1st column, in the 1st "*Response*", in the 11th line, "§ 1.71(i)" should read "§ 1.17(i)".

§ 1.20 [Corrected]

2. On page 6902, in § 1.20(i), in the second column, in the fifth line, "$995.00" should read "$990.00".

3. On the same page, in the same column, in § 1.20(j), in the ninth line, "$1,480.000" should read "$1,480.00".

§ 1.21 [Corrected]

4. On the same page, in the third column, in § 1.21(b), in item (d), ".00" should read "$50.00".

5. On the same page, in the same column, in § 1.21(b), in item (g), "$15.00" should read "$0.15".

BILLING CODE 1505-01-D

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP89-727-000, et al.]

Trunkline Gas Co., et al.; Natural Gas Certificate Filings

Correction

In notice document 89-3527 beginning on page 6945 in the issue of Wednesday, February 15, 1989, make the following correction:

On page 6947, in the third column, under **10. Northern Natural Gas Company:** insert "[Docket No. CP89-722-000]".

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

[OPP-180802; FRL-3514-8]

Oregon Department of Agriculture 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

Correction

In notice document 89-2655 appearing on page 5674 in the issue of Monday, February 6, 1989, make the following corrections:

1. In the first column, in the subject heading, in the third line, the plus sign should be a plus/minus sign.

2. In the same column, in the subject heading, in the fifth line, the "H" should be underscored.

3. In the same column, under **SUMMARY**, in the fifth line, the plus sign should be a plus/minus sign.

4. In the second column, under **SUPPLEMENTARY INFORMATION**, in the second paragraph, in the fourth line, the plus sign should be a plus/minus sign.

5. In the same column, under **SUPPLEMENTARY INFORMATION**, in the third paragraph, in the first line, "dinoseb" was misspelled.

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 5

Delegations of Authority and Organization; Commissioner of Food and Drugs, et al.

Correction

In rule document 88-15481 beginning on page 26048 in the issue of Monday, July 11, 1988, make the following correction:

On page 26049, in the second column, in the authority citation for Part 5, in the seventh line, "1396y" should read "1395y".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID-020-09-4212-13]

Intent to Amend the Twin Falls Management Framework Plan; Idaho

Correction

In notice document 88-26750, appearing on page 46700, in the issue of Friday, November 16, 1988, make the following correction:

In the second column, under **SUMMARY**, in the public land description, the third line should read "Section 24: E½,E½W½".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA-940-09-4214-10; CACA-18152]

Order Providing for Opening of Land; California

Correction

In notice document 89-2759, appearing on page 6036, in the issue of Tuesday, February 7, 1989, make the following corrections:

1. In the second column, in designated paragraph 1, in the sixth line, "projected" should read "projects".

2. In the same column, in the second paragraph, in the penultimate line, after "Federal" insert "Power".

3. In the same column, in designated paragraph 2, in the 9th through 11th lines, remove the phrase "lands described in this order under the general mining laws prior to".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 88-ANE-32; Amdt. 39-6092]

Airworthiness Directives; Allison Gas Turbine Division, General Motors Corp., Allison Model 250-B17; -C20, -C20R, and -C30 Series Engines

Correction

In rule document 89-1995 beginning on page 4262 in the issue of Monday, January 30, 1989, make the following correction:

On page 4263, in the third column, in the Appendix, in the last line, "881300250" should read "88130250".

BILLING CODE 1505-01-D

federal register

Friday
February 24, 1989

Part II

Department of the Interior

Bureau of Land Management

43 CFR Part 3160

Onshore Oil and Gas Operations; Federal and Indian Oil and Gas Leases; Onshore Oil and Gas Order No. 3, Site Security; Final Rulemaking

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 3160

[AA-630-87-4111-02; Circular No. 2616]

Onshore Oil and Gas Operations; Federal and Indian Oil and Gas Leases; Onshore Oil and Gas Order No. 3, Site Security

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rulemaking.

SUMMARY: This final rulemaking provides for the issuance of Onshore Oil and Gas Order No. 3, Site Security, which implements and supplements the provisions of 43 CFR 3162.7–5, Site Security on Federal and Indian (except Osage) oil and gas leases, previously cited as § 3162.7–4 and redesignated as § 3162.7–5 on January 15, 1988 (53 FR 1218) and corrected on June 30, 1988 (53 FR 24688). The Order addresses the seal requirements when sales are based on measurement by tank gauging, lease automatic custody transfer units, or combinations thereof. The Order also covers site security plans, facility diagrams, transporters' documentation, unauthorized removal or mishandling of production, and the recordkeeping and reporting requirements related thereto. In addition, the Order details enforcement actions and allows for variances from specific standards. This final rulemaking also amends 43 CFR 3164.1, Onshore Oil and Gas Orders, paragraph (b). This Order supersedes Notice to Lessees and Operators No. 7.

EFFECTIVE DATE: March 27, 1989.

ADDRESS: Inquiries or suggestions should be sent to: Director (500), Bureau of Land Management, Room 5647, Main Interior Building, 1800 C Street NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Sie Ling Chiang, (202) 653–2133 or John Duletsky, (202) 653–2286.

SUPPLEMENTARY INFORMATION: A proposed rulemaking for issuing Onshore Oil and Gas Order No. 3, Site Security, was published on August 13, 1987 (52 FR 30282) with a 60-day comment period. Comments were received from 18 sources: 3 industry associations, 9 industry entities, 1 Indian tribe, and 5 government entities. Three of the industry entities supported the comments submitted by 1 of the associations and also submitted their own comments.

Several changes and additions were made in the definition section for clarification in response to the comments. Changes were made in the requirements section both to correspond to the definition changes published May 16, 1988 (53 FR 17362), and in response to comments.

Those comments relating directly to the proposed rulemaking have been grouped by subject matter and will be discussed as a group rather than individually. Those comments not directly related to the proposed rulemaking will be referred to the appropriate Bureau office for review and any action deemed necessary.

Appendix

It has been determined that it is not necessary to include sections from 43 CFR Subparts 3163 and 3165 in the copies of Order No. 3 to be printed for distribution to the public. References to those sections in the table of contents and Part II of the Appendix have therefore been removed in the final rulemaking.

I.B. Purpose

One comment expressed concern that the Order did not amend §§ 3162.7–1 and 3162.7–5 but merely supplemented them. The intent of the Orders, of which this is the third, as stated in § 3164.1, Onshore Oil and Gas Orders, is to implement and supplement the regulations contained in 43 CFR Part 3160. Because technical requirements are more appropriately addressed in an Onshore Oil and Gas Order than in general regulations, many of the provisions of §§ 3162.7–1 and 3162.7–5 have been transferred to this Order. The Bureau intends to amend § 3162.7–5 after the effective date of this Order to remove any duplication between the Order and the regulations. Because of this upcoming change, all references to the definitions contained in § 3162.7–5 have been removed in the final rulemaking. However, references to definitions contained elsewhere in 43 CFR Part 3000 have been retained for ease of reference.

The second sentence of the second paragraph of section I.B. has been amended to clarify the purpose of the Order in regard to extension of abatement times and review of contested enforcement actions.

I.C. Scope

Two comments were submitted. One comment suggested modification of this section to reflect the language contained in 43 CFR 3161.1, Jurisdiction. The modification has been adopted, and the language has been changed to be consistent with the regulation. The other comment expressed concern as to jurisdiction over units that are not approved by the Federal Government and that contain Federal and Indian interests that are a small fraction of the unit. The language contained in this Order is consistent with the regulations. As was stated in the final rulemaking amending the regulations at 43 CFR Part 3160, 52 FR 5384 (February 20, 1987):

> The fact that Federal or Indian lands are committed to agreements for the purpose of drilling and development of those lands in the most beneficial manner is all that is needed to establish the responsibility of the Bureau of Land Management to ensure that the intent of the Federal Oil and Gas Royalty Management Act and other mineral leasing laws as to royalty accountability is carried out on those lands.

This policy was recently upheld by the District Court of Montana in *Norfolk Energy, Inc., Formerly Known as Tricentral United States, Inc. v. Hodel*, Civ. No. 87–188 (D. Mont., September 28, 1988), appeal filed (9th Cir., November 23, 1988).

II. Definitions

Access. This definition has been modified for clarification and consistency with the existing regulations in 43 CFR Part 3160 and the contents of this Order to include components in measurement systems, because components can also affect the determination of the quality and quantity of the liquid being measured. As proposed, the definition would have erroneously applied only to valves.

Authorized officer. A few comments suggested the need for a definition for "authorized officer." This term is defined at 43 CFR 3000.0–5(e), but has been included in this Order for convenient reference.

Authorized representative. One comment suggested amendment of this definition to require the authorized representative to provide certification to the lessee of proper authorization from the Secretary. All certified inspectors are required to carry identification cards with such certification. Because this is already provided for in the certification program, it is not necessary to include this requirement in the Order, and the suggestion is not adopted.

Business day. Two comments suggested that the term "working day" be clearly defined. The Bureau agrees that "working day" can be ambiguous, with weekends and holidays being working days in some circumstances. The term "working day" has been removed and replaced by "business day", which should eliminate misunderstanding.

Condensate. Several comments suggested that condensate be included

in the definition of "oil". There is an exclusion from the seal requirements (III. 1. e. iv.) when a gas well produces small amounts of condensate and only one tank is available for production, storage, and sales purposes. The exception applies only to gas well condensate, not oil, production. The suggestion is not adopted and a definition for condensate is being added to make it clear that oil is treated differently from gas well condensate.

Effectively sealed. The definition has been amended to cover components in LACT units, for the same reasons contained in the discussion of the definition of "access", above.

Facility. A few comments suggested that a definition for "facility" be added and the word "site" be removed from the Order and replaced with the word "facility." All suggested definitions contained the word "site". The suggestion to remove "site" from the Order is not adopted, because the terms are synonymous. However, one of the suggested definitions for "facility" has been included as part of the Order as compatible with the purpose and intent of the rulemaking.

Gas. Two comments questioned the use of the word "ordinary" in this definition as vague. The definition in the Order is consistent with the regulations in 43 CFR Part 3160, and it would be inappropriate to change it in the Order. For clarification, however, in general circumstances "ordinary" has historically been interpreted to mean "atmospheric," and for purposes of this Order this continues to be true.

Lease. One comment suggested that the phrase "on or from Federal or Indian lands" be added. The definition for this term is contained in 43 CFR 3160.0–5(f). The suggested changes are unnecessary because the definition already refers to enterprises controlled in some way by the United States under a mineral leasing law, and therefore can apply only to Federal and Indian lands.

Lessee. The definition of lessee has been amended for consistency with the final rulemaking published on May 16, 1988 (53 FR 17362).

Major violation. Two comments were made. One comment approved of the definition and the other suggested removal of the language relating to public health, safety and environment. The suggested change is not adopted. The definition in the regulations for major violation, which may be found at 43 CFR 3160.0–5(j), is used in this Order to conform to the regulations.

Minor violation. One comment suggested amending the definition to restate specifically the components of a major violation that a minor violation does not include. The comment is not adopted, because mere restatement of these components would be redundant, and the current definition of minor violation is sufficiently clear.

Moderate violation. One comment argued that the definition for "moderate violation" contained in earlier versions of the regulations should be retained. The term "moderate violation" was removed from the regulations governing these Orders when the regulations were amended on February 20, 1987 (52 FR 5384). The definition is not included in the final rulemaking in order to conform to the regulations.

Mishandling. Several comments requested clarification of the meaning of mishandling. A definition has been added to this Order.

Oil. Three comments suggested modifying the definition to include after the word substances "at atmospheric temperature and pressure." The definition is statutory and may be found at 43 CFR 3000.0–5. Condensate is excluded, but only for the purposes stated in III.1.e.iv. of this Order.

Bad oil, etc. Two comments suggested that the terms "bad oil," "clean oil/pipeline oil," "slop oil," and "waste oil" be considered subsets of the definition of oil and be organized as such in alphabetical order. The suggestion has been adopted as a practical and sensible approach and the change made.

Waste oil. A few comments suggested that tank bottoms should be added to the definition. It has been the policy of the Bureau that when an operator presents data substantiating that leasehold oil can neither be treated with existing or portable equipment nor disposed of to a reclaimer, it is considered waste oil, whether tank bottoms or oil residue in pits. The suggested changes are not adopted.

Operator. One comment suggested a modification of this definition by inserting the word "responsible" between "the" and "party" in the first sentence. The definition for operator as published on May 16, 1988 (53 FR 17362), has been included in this Order.

Seal. One comment suggested amending the definition to include the phrase "designated not to be reused". This suggestion has not been adopted because seals are manufactured so that once used they actually cannot be used again. However, the definition has been modified to complement the definition in this Order of "effectively sealed" and the requirements for sealing LACT components affecting quality and/or quantity.

III. Requirements

A.1.a. One comment suggested rewriting the paragraph because in the opinion of the writer seals do not provide a means for documenting the removal of production. If seals are properly used, and the use thereof properly and accurately documented, it will provide a means of documenting the removal of production from a facility. The suggestion is therefore not adopted.

A.1.b. Several comments were made relating to the specific valves that required sealing, and the necessity for the sealing device to be at the site. Other comments asserted that each ineffectively sealed valve, or appropriate valve not sealed, should not be a separate violation. The paragraph has been modified as to the valves requiring sealing and the location of the sealing devices. However, each ineffective seal or missing seal continues to constitute a separate violation, as this is considered necessary to ensure adequate compliance with the requirement, but valve seal violations other than violations affecting the sales valve have been changed to minor violations in the final Order. Oil is not readily accessible from the other valves as it is from the sales valve, and failure to seal these other valves effectively is not likely to lead to nonrecoupable loss of the resource.

A.1.e.i. Four comments requested clarification of this exclusion as it pertains to production vessels. The provision has been reworded to specify that valves on production vessels are excluded, as well as valves on tanks used as production vessels. The wording has also been amended to make it clear that the listed vessels are intended to be examples of vessel types rather than the only acceptable vessels.

A.1.e.ii. This exclusion from the seal requirements has been modified to identify those piping systems through which access to production could occur.

A.1.e.iv. Four comments suggested removal of the term "condensate" and the substitution of the word "oil." As stated previously in II. Definitions, the exclusion from the requirement that fill lines be effectively sealed applies only to condensate production, and was not intended for oil production. The suggestion is not adopted.

A.1.e.viii. Four comments requested that vent lines be included in the exclusions for clarity. The request has been adopted and vent lines have been added. In practice, vent lines have always been excluded from the general requirement that valves be sealed.

A.1.g. This paragraph has been modified to reflect the change in A.1.b., as was suggested in comments.

A.2.a. Several comments suggested various changes in this paragraph relating to proper position of a valve, the severity of violation for each ineffectively sealed or unsealed valve, the abatement period, and sealing requirements during various production activities. Consistent with the changes made in paragraphs A.1.b. and A.1.g., the violation has been changed from major to minor for all valves except the sales valve. The abatement periods have also been modified.

A.2.b. A few comments suggested modification of this paragraph relating to the location of the devices used for sealing purposes to allow them to be stored at a centralized field location rather than at each site, and questions were raised regarding the severity of the violation. Paragraph A.1.b. was amended to allow sealing devices to be stored with the operator's representative or in a centralized field administrative location. This change has been included in this paragraph as well as in paragraph A.1.b. Whether sealable valves and seals or devices and seals are used is not material. The degree of the violation and the abatement period would be the same. The changes have been made.

B.1. Several comments suggested that each ineffective or missing seal not be a separate violation. As previously stated in the response to comments on paragraph A.1.b., the Bureau considers each seal violation as a separate violation. A comment suggested that the abatement period for sealing components be extended. Given the potential loss of mineral revenue, a 24-hour abatement period is considered to be adequate. The term "working day" has been changed to 24 hours for clarity, because "business day" excludes weekends and Federal holidays. Another comment stated that the purchaser should be responsible for maintaining seals on LACT units. The operator is considered the party responsible for compliance with the lease terms, regulations, and Orders. Therefore, no change is being made as to responsibility.

C.1.a. Several comments suggested various changes to this paragraph as it relates to the identification requirements involving the lease, communitization, or unit agreement number, the location of the facility, and posting the time of the transaction. The time requirement has been removed because time of removal is immaterial to production accountability. Other requirements were retained because the required identification should be readily available from the sign required pursuant to 43 CFR 3162.6, Well and facility identification. Without the proper identification on a run ticket there would always be a question as to the point of origin of the oil being transported. The suggestion that the violation be downgraded to minor is not adopted. The source of the oil is information vital to production and royalty accountability. The abatement period has been increased to 3 business days and the requirement for the time has been removed. This allows the operator greater flexibility and will not adversely affect production accountability.

C.1.b. Several comments suggested changes. One suggested removing the entire paragraph, two questioned the need for the recording time, and one questioned the need for the signature of the operator's representative. The time requirement has been removed as unnecessary. The term "working day" was removed and "business day" was used for all the abatement periods. The signature of the operator's representative is required since it is considered to signify acceptance of the documentation of the sale or removal of oil from the facility.

C.1.c. Several comments were received relating to a completed run ticket, possession of such a run ticket by the driver of the truck which completes the sale or removal of production from the facility, the sealing of all other valves except the sales line valve, deletion of the operator-purchaser responsibility, and the unloading of the truck when proper documentation is not available. Changes in this paragraph have been made to specify that the information required in run tickets is that specified in G.1. a. and b. Changes have also been made to make it clear that all valves on lines entering or leaving sales tanks be required to be sealed between truckloads except the sales and vent line valves in light of the provision that only the final truck of a group of trucks needs to carry the sales documentation. The requirement to unload the trucks has been removed because all trucks do not have pumping equipment. Provision has been added to specify that the operator may apply for a variance from run ticket requirements if individual circumstances require.

E.1.a. Numerous comments were received relating to failure to report the incident of theft or mishandling, the volume of oil or condensate involved, the abatement period, and the requirement that the incident report state whether a theft was reported to company security. The proposed rulemaking provided no standards by which to determine when a failure to report a theft would be considered knowing or willful conduct. Therefore, this portion of the paragraph relating to failure to report has been removed from the final rulemaking, leaving the Bureau to determine on a case-by-case basis whether such failures are knowing or willful conduct within the meaning of the regulations in 43 CFR Subpart 3163. A provision has been substituted that provides for oral reporting with a written followup. The word "estimated" has been inserted before volume in the fourth item as a practical amendment. The abatement periods have all been changed to 10 business days. However, the requirement that the incident report identify to whom the theft or mishandling has been reported has been retained. Depending on the nature of a particular theft, the Bureau may wish to confer with company security or local law enforcement personnel investigating the incident. The suggestion that thefts be reported directly to Indian tribes was not adopted. The reporting of thefts to tribes can be accomplished through internal governmental agreements.

F.1.a. Several comments made suggestions concerning this paragraph. Most of them questioned the need for self-inspection for the minimum site security requirements, opposed the monitoring of any such program by the Bureau, and stated that self-inspection should be at the option of the operator. The Federal Oil and Gas Royalty Management Act required the Secretary to establish minimum standards for site security plans which would be developed by operators. Self-inspection was determined to be a way in which operators would be able to protect oil and gas produced or stored on a lease site. The suggestious are not adopted and self-inspection with Bureau of Land Management monitoring remains as part of the Order.

G.1. Numerous comments recommended removing the requirement for showing the time the activity took place; expressed confusion as to the severity of the violation in the event of noncompliance, and confusion as to the meaning of the corrective action to be taken and the abatement period: Or suggested removal of the entire paragraph. The requirement for showing the time has been removed as unnecessary, because the time of removal is immaterial to production accountability. The Order has been amended to provide for only one level of violation, major, because of the effect of noncompliance on production accountability. Recordkeeping for self-

inspection activities under this paragraph has been removed as unnecessary: As a practical matter, there can be no self-inspection without recordkeeping. The wording for corrective action has been changed to "commence and maintain documentation", because the proposed requirement that records be produced would be impossible to comply with if there is no system of recordkeeping. Since the corrective action language has been changed, the abatement time is considered to be reasonable. "Working day" has been replaced by "business day." The suggestion that this section be removed has not been adopted because its provisions are required by the Federal Oil and Gas Royalty Management Act and by regulations.

H.1. Several comments were received on this section. One comment suggested removal of this provision. Others suggested removing the word "lessee" from the text because the lessee is not the responsible party unless he is also the operator, and excluding dry gas production facilities from this requirement because they do not include storage facilities. "Lessee" has been removed from the text. Although a site facility diagram is not required for dry gas production facilities, there still is a need to monitor to assure that the measuring equipment meets the minimum requirements and that no by-passes around the meter exist or are installed. The suggestion that dry gas production facilities be excluded from the site security plan requirements is not adopted.

I.1. Numerous comments were submitted on this provision. These comments suggested removal of the word "condensate", change of the word "actual" to "relative", removal of the word "lessee", and clarification of what completion of a facility means. Some comments also expressed concern about changes or modifications of the storage and sales facilities. It was also suggested that dry gas production facilities be excluded from this requirement. Two comments recommended that a provision be added that existing site security diagrams already submitted are considered approved and acceptable, but that when new facilities are added or old ones modified after the effective date of this Order, they shall comply with the requirements of this section as to diagrams. Language has been added to exclude dry gas production facilities, because such facilities have no storage elements, and the word "actual" has been replaced with "relative" because the diagrams are not required to be drawn to scale, the words "of construction" have been added immediately after "completion", and "working" has been replaced by "business" in the abatement period, all for clarity or for purposes of practicality. The term "condensate" has not been removed as suggested for the reasons previously discussed in the preamble. Site security diagrams cannot be approved until they are inspected, but new diagrams will be required only if the existing ones are found inadequate. The comment recommending automatic acceptance and approval of diagrams previously submitted is rejected.

IV. Federal Seals

A new section has been added to include information about the current practice of the Bureau of Land Management calling for the placement of Federal seals on any appropriate valve, sealing device, or LACT component not in compliance with the minimum standards for sealing requirements. This section advises that Federal seals are placed on appropriate valves only when (1) the operator is not present at the site to correct the noncompliance upon its discovery by the authorized officer, or (2) the operator refuses or is unable to make the necessary correction. Immediately upon attachment of the Federal seal, the authorized officer notifies the operator or lessee by telephone and letter that it is in place and of the corrective measures that need to be taken before it may be removed and replaced. Placement of the Federal seal does not constitute abatement of the violation for failure to have a seal in place. Finally, the section notes that a card is attached to the Federal seal, which advises that tampering with a Federal seal shall result in an assessment of $250. No monetary penalty is associated with the Federal seal itself other than this penalty for tampering with it.

V. Variances from Minimum Standards

One comment suggested that a provision be included to provide for oral approval of variances with written confirmation to be provided not later than the fifth business day following oral approval, as is provided for in Onshore Order No. 2 drilling operations. There are good reasons to allow such oral approvals for variance in drilling operations, because certain conditions may create a situation demanding immediate change or variance to the approved drilling plan, but those reasons are not applicable to the site security requirements. The suggestion is not adopted.

Attachments

Two comments suggested that the attachments relating to site security diagrams and sealing of valves be clearly identified as being examples. Attachment I has been identified as being provided solely as an example, and, as stated earlier, Attachment II has been removed.

Editorial and grammatical corrections and changes have been made as necessary.

The principal authors of this proposed rulemaking are John Duletsky of the Washington Office, Raymond Thompson of the New Mexico State Office, Ray Brubaker of the Montana State Office, Ron Fellows of the Farmington Resource Area, New Mexico, David Little of the Vernal District Office, Utah, Gary Bauer of the Rock Springs District Office, Wyoming, and Allen Schweighart of the Worland District Office, Wyoming, assisted by the Orders Task Group, the staff of the Division of Legislation and Regulatory Management, all of the Bureau of Land Management, and the Office of the Solicitor, Department of the Interior.

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

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

The information collection requirement(s) contained in this rulemaking have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1004–0134.

List of Subjects in 43 CFR Part 3160

Government contracts, Mineral royalties, Oil and gas exploration, Public lands—mineral resources, Indian lands—mineral resources, Reporting and recordkeeping requirements.

Under the authorities stated below, Part 3160, Group 3100, Subchapter C, Chapter II of Title 43 of the Code of Federal Regulations is amended as set forth below:

January 3, 1989.

James E. Casen,

Acting Assistant Secretary of the Interior.

PART 3160—[AMENDED]

1. The authority citation for Part 3160 continues to read:

Authority: The Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 et seq.), the Mineral Leasing Act for Acquired Lands of 1947, as amended (30 U.S.C. 351–359), the Act of May 31, 1930 (U.S.C. 301–306), the Act of March 3, 1909, as amended (25 U.S.C. 396), the Act of May 11, 1938, as amended (25 U.S.C. 396a–396q), the Act of February 28, 1891, as amended (25 U.S.C. 397), the Act of May 29, 1924, (25 U.S.C. 398), the Act of March 3, 1927 (25 U.S.C. 398a–398e), the Act of June 30, 1919, as amended (25 U.S.C. 399), R.S. 441 (43 U.S.C. 1457), See also Attorney General's Opinion of April 2, 1941 (40 Op. Atty. Gen. 41), the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 471 et seq.), the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 et seq.), the Act of December 12, 1980 (42 U.S.C. 6508), the Combined Hydrocarbon Leasing Act of 1981 (Pub. L. 97–78), the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1701 et seq.) and the Indian Mineral Development Act of 1982 (25 U.S.C. 2102 et seq.).

2. Section 3164.1 is amended by revising the table which is part of paragraph (b):

§ 3164.1 Onshore oil and gas orders.

* * * * *

(b) * * *

Order No.	Subject	Effective date	Federal Register reference	Supersedes
1	Approval of operations.	Nov. 21, 1983	48 FR 48916 and 48 FR 56226.	NTL-6
2	Drilling operations.	Mar. 27, 1989	54 FR	None
3	Site security.	Mar. 27, 1989	54 FR	NTL-7

Note: Numbers will be assigned by the Washington Office, Bureau of Land Management, to additional Orders as they are prepared for publication and added to this table.

Appendix—Text of Oil and Gas Order No. 3.

Note: This appendix is published for information only and will not appear in the Code of Federal Regulations.

Onshore Oil and Gas Order No. 3

Site Security

I. Introduction.
A. Authority.
B. Purpose.
C. Scope.
II. Definitions.
III. Requirements.
A. Storage and Sales Facilities—Seals.
B. Lease Automatic Custody Transfer (LACT) Systems—Seals.
C. Removal of Crude Oil from Storage Facilities by Means Other than through a LACT Unit.
D. By-Pass Around Meters.
E. Theft or Mishandling of Oil.
F. Self Inspection.
G. Recordkeeping.
H. Site Security Plan.
I. Site Facility Diagram.
IV. Variances from Minimum Standards.
Attachments.
I. Diagrams.

Onshore Oil and Gas Order No. 3

Site Security

I. Introduction

A. Authority

This Order is established pursuant to the authority granted to the Secretary of the Interior pursuant to various Federal and Indian mineral leasing statutes and the Federal Oil and Gas Royalty Management Act of 1982. This authority has been delegated to the Bureau of Land Management and is implemented by the onshore oil and gas operating regulations contained in 43 CFR Part 3160. Section 3164.1 thereof specifically authorizes the Director, Bureau of Land Management, to issue Onshore Oil and Gas Orders when necessary to implement and supplement the operating regulations and provides that all such Orders shall be binding on the operators of Federal and restricted Indian oil and gas leases which have been, or may hereafter be, issued.

Specific authority for the provisions contained in this Order is found at:

§ 3162.4–1, *Well records and reports;*

§ 3162.7–1, *Disposition of Production;*

§ 3162.7–5, *Site Security on Federal and Indian (except Osage) Oil and Gas Leases;* and Subpart 3163 Noncompliance and Assessments.

B. Purpose

The purpose of this Order is to implement and supplement the regulations in 43 CFR 3162.7–1 and 3162.7–5. This Order establishes the minimum standards for site security by providing a system for production accountability and covers the use of seals, by-passes around meters, self-inspection, transporters' documentation, reporting of incidents of unauthorized removal or mishandling of oil and condensate, facility diagrams, recordkeeping, and site security plans.

The Order identifies certain specific acts of noncompliance, rates them as to severity, establishes abatement periods for corrective action for such acts of noncompliance, and provides for variances. This Order serves as notice to any party cited for noncompliance that it may request from the authorized officer an extension of the abatement period for any violation, provided the request for extension is applied for and granted prior to the expiration of the abatement period previously allowed. Additionally, this Order serves as notice to any party aggrieved by an enforcement action taken pursuant to this Order, of that party's rights, pursuant to 43 CFR 3165.3, to administrative review, hearing on the record, and judicial review.

C. Scope

This Order is applicable to all Federal and Indian (except Osage) oil and gas leases. In addition, this Order is applicable to all wells and facilities on State or privately-owned mineral lands committed to a unit or communitization agreement that affects Federal or Indian interests, notwithstanding any provision of a unit or communitization agreement to the contrary.

II. Definitions

The following definitions apply for the purposes of this Order.

A. Access means the ability to enter into any tankage or piping system through a valve, valves or combination of valves and/or tankage which would permit the removal of oil; or to enter any component in a measuring system affecting the quality and/or quantity of the liquid being measured, without documentation as provided by this Order.

B. Appropriate Valves means those valves in a particular piping system that could provide unauthorized or undocumented access to stored or produced oil, i.e., fill lines, equalizer or overflow lines, sales lines, circulating lines, and drain lines, that shall be sealed during a given operation.

C. Authorized Officer means any employee of the Bureau of Land Management authorized to perform the duties in Groups 3000 and 3100 of this title (43 CFR 3000.0–5(e).

D. Authorized Representative means any entity or individual authorized by the Secretary to perform duties by cooperative agreement, delegation, or contract (See 43 CFR 3160.0–5).

E. Business Day means any day Monday through Friday excluding Federal holidays.

F. By-pass means any piping arrangement connected upstream and downstream of a meter which allows oil or gas to continue on the sales line without passing through the meter. Equipment which permits the changing

of the orifice plate without bleeding the pressure off the gas meter run shall not be considered a by-pass.

G. Condensate means those natural gas liquids recovered in lease separators, dehydrators, or other production equipment and remaining in a liquid state at atmospheric pressure and temperature, consisting primarily of pentanes and heavier hydrocarbons.

H. Effectively Sealed means the placement of a seal in such a manner that the position of the sealed valve may not be altered, or a component in a measuring system affecting quality or quantity be accessed, without the seal being destroyed.

I. Facility means a site used to handle production and store oil and/or condensate produced from or allocated to Federal and Indian lands.

J. Gas is defined at 43 CFR 3000.0–5(a) to mean any fluid, either combustible or noncombustible, which is produced in a natural state from the earth and which maintains a gaseous or rarefied state at ordinary temperatures and pressure conditions.

K. Lease means any contract, profit-share arrangement, joint venture, or other agreement issued or approved by the United States under a mineral leasing law that authorizes exploration for, extraction of, or removal of oil or gas (See 43 CFR 3160.0–5)

L. Lessee means a person or entity holding record title in a lease issued by the United States (43 CFR 3100.0–5 and 3160.0–5).

M. Major Violation means noncompliance which causes or threatens immediate, substantial, and adverse impacts on public health and safety, the environment, production accountability, or royalty income.

N. Minor Violation means noncompliance which does not rise to the level of a "major violation."

O. Mishandling means unmeasured or unaccounted-for removal of production from a facility other than through theft.

P. Oil means all nongaseous hydrocarbon substances, other than those substances leasable as coal, oil shale or "gilsonite" (including all veintype solid hydrocarbons). However, condensate is excluded for the purposes of III.1.e.iv. of this Order. (See 43 CFR 3000.0–5.)

P.1. Bad Oil means crude oil that is not marketable to normal purchasers but that can be treated economically to be marketable by use of heat, chemicals, or other methods or combination of methods with existing or modified lease facilities or portable equipment.

P.2. Clean Oil/Pipeline Oil means crude oil or condensate that is of such quality that it is acceptable to normal purchasers.

P.3. Slop Oil means crude oil that is of such quality that it is not acceptable to normal purchasers and which requires special treatment other than that which can economically be provided with existing or modified facilities or portable equipment and is usually sold to oil reclaimers.

P.4. Waste Oil means lease crude oil that has been determined by the authorized officer to be of such quality that it cannot be treated economically and put in a marketable condition with existing or modified lease facilities or portable equipment and cannot be sold to reclaimers and also has been determined by the authorized officer to have no economic value.

Q. Operator means any person or entity, incuding but not limited to the lessee or operating rights owner, who has stated in writing to the authorized officer that it is responsible under the terms and conditions of the lease for the operations conducted on the leased lands or a portion thereof (See 43 CFR 3160.0–5).

R. Piping means all tubular goods made of any material (e.g., metallic, plastic, fiberglass, and/or rubber).

S. Production Phase means that period of time or mode of operating during which crude oil is delivered directly to or through production vessels to the storage facilities and includes all operations at the facility other than those defined by the sales phase.

T. Sales Phase means that period of time or mode of operation during which crude oil is removed from the strorage facilities for sale, transportation, or other purposes.

U. Seal means a device, uniquely numbered, which completely secures either a valve or those components of a measuring system that affect the quality and/or quantity of the liquid being measured.

III. Requirements

A. Storage and Sales Facilities—Seals

1. Minimum Standards.

a. The primary purpose for use of seals is to provide a means of documenting the removal of production for royalty purposes. Additionally, seals provide a means of detecting unauthorized entry to, and removal of, production. The seal requirements are based on American Petroleum Institute (API) recommended practice No. 12 R1, 3rd Edition, dated May 31, 1986, entitled "API Recommended Practice for Setting, Connecting, Maintenance and Operation of Lease Tanks."

b. All lines entering or leaving all oil storage tanks shall have valves capable of being effectively sealed during the production and sales operations unless otherwise provided under the provisions of this Order. During the production phase, all valves that provide access to producton shall be effectively sealed in the closed position. During the sales phase, and prior to taking the top gauge, all valves that would allow unmeasured production to enter or leave the sales tank shall be effectively sealed in the closed position. Any equipment needed for effective sealing, excluding the seals, shall be located at the site. If the sealing equipment is in the possession of the operator's representative or at a centralized field location, it shall be considered to be at the site. (See Attachment I). Each ineffectively sealed valve or appropriate valve not sealed shall be considered a separate violation.

c. Additionally, valves or combinations of valves and tankage that provide access to the production prior to measurement for sales or lease use purposes are considered appropriate valves and are subject to the seal requirements of this Order (See Attachment I).

d. Valves on any tank which contains oil or is connected to the production equipment are considered appropriate valves and are subject to the seal requirements contained in this Order, except those valves on tanks which contain oil that has been determined by the authorized officer to be waste oil or valves on tanks used for the primary treatment of lease production (See Attachment I).

e. Exclusions to seal requirements contained in this Order shall be limited to the following:

i. Valves on production vessels and tanks used as production vessels (e.g., gunbarrels, wash tanks, etc.);

ii. Valves on water tanks, provided the possibility of access does not exist through a common circulating, drain, or equalizer system to production in the sales and storage tanks;

iii. Sample cock valves utilizing piping of 1 inch of less in diameter;

iv. When a single tank is used for collecting small volumes of condensate produced from a gas well, the requirement is waived for requiring the fill line valve to be sealed during shipment; but all other seal requirements of this Order shall apply;

v. Gas line valves of 1 inch or less used as tank bottom "roll" lines need not be sealed; provided there is no access to the contents of the storage tank and said lines cannot be used as equalizer lines;

vi. Tank heating systems which use a source of fluid other than the contents of the storage tank, i.e., steam, water, glycol;

vii. Valves, connected directly to the pump body, used on pump bleed off lines of 1 inch or less in diameter; and

viii. Tank vent line valves.

f. For systems where production may only be removed through the lease automatic custody transfer (LACT) system, no sales or equalizer lines need to be sealed. However, any valves which allow access for the removal of oil prior to its measurement through the LACT shall be effectively sealed (See Attachment I).

g. For oil measured and sold by tank gauging, all appropriate valves shall be sealed during the production phase, and all valves that provide access to production shall be effectively sealed in the closed position. During the sales phase, and prior to taking the top gauge, all valves that would allow unmeasured production to enter or leave the sales tank shall be effectively sealed in the closed position. Circulating lines having valves which may allow access for the removal from storage and sales facilities to any other source except through the treating equipment back to storage facilities shall be effectively sealed as near the storage facility as possible (See Attachment I).

2. Enforcement Provisions.

a. The following appropriate valves shall be effectively sealed during the production and sales phases or combination of production and sales phases:

—Sales valves*
—Circulating valves
—Drain valves
—Fill valve
—Equalizer valve

Violation: Minor (unless marked by an asterisk or otherwise meeting the criteria of a major violation)
Corrective Action: Seal as required.
Normal Abatement Period: 2 business days.
*Violation: Major
Corrective Action: Seal as required.
Normal Abatement period: 24 hours.

b. Devices used in conjunction with seals for effective sealing, excluding the seals, shall be located at the site. If the sealing equipment is in the possession of the operator's representative or at a centralized administrative location, it shall be considered to be at the site.

The absence of each required sealing device shall be considered a separate violation.

The classification of degree of violation, corrective action, and normal abatement period shall be the same as contained in a., above.

B. Lease Automatic Custody Transfer (LACT) Systems—Seals

This portion of the Order is predicated on the minimum requirements for the components to be used in a LACT system contained in Onshore Oil and Gas Order No. 4, LACT Components and General Operating Requirements; API Manual of Petroleum Measurement Standards, Chapter 6.1, 1st Edition, 1981, or the latest revised standard; and API Spec 11N, 2nd Edition, March 1979, entitled "Lease Automatic Custody Transfer (LACT) equipment."

1. Minimum Standards.

Each LACT unit shall employ meters that have non-resettable totalizers and there shall be no by-pass around the LACT unit. The seal requirements apply to the components used for volume or quality determination of the oil being shipped. Each missing or ineffective seal shall be considered a separate violation. During normal operations the following components shall be effectively sealed:

—Sample probe
—Sampler volume control
—All valves on lines entering or leaving the sample container excluding the safety pop-off valve (if so equipped). Each valve shall be sealed in the open or closed position, as appropriate
—Meter assembly, including the counter head, meter head and, if so equipped, automatic temperature compensator (ATC) automatic temperature and gravity selection device (ATG)
—Temperature recorder (if so equipped)
—Back pressure valve downstream of the meter
—Any drain valves in the system
—Manual sampling valves (if so equipped).

Violation: Major.
Corrective Action: Seal as required.
Normal Abatement Period: 24 hours.
—Absence of non-resettable totalizer.
Violation: Major.
Corrective Action: Install a meter head that utilizes a non-resettable totalizer.
Normal Abatement Period: Install prior to sales or removal of production through the meter.

C. Removal of Crude Oil From Storage Facilities by Means Other Than Through a LACT Unit

The determination of the volume and quality of crude oil removed and sold from a storage facility shall be made by the operator in accordance with the accepted procedures for the measurement of oil (See Onshore Oil and Gas Order No. 4, Part III. B., Oil Measurement by Tank Gauging).

1. Minimum Standards.

a. The operator shall require the transporter/purchaser to record on a run ticket prior to sales or removal of any crude oil from the lease, as a minimum, the following:

—Name of the seller
—Federal or Indian lease number(s), or as appropriate, the communitization agreement number or the unit agreement name and number and participating area identification*
—The location of the tank by quarter, quarter section, section, township and range (public land surveys) or by the legal land description
—A unique number, the date, and the tank number and capacity
—Opening gauge and temperature*
—Name of gauger and operator representative, if present at time of sale
—Number of the seal removed*.

Violation: Minor (all items unless marked by asterisk).
Corrective Action: Complete missing information.
Normal Abatement Period: Upon request or within 3 business days of notice.
*Violation: Major.
Corrective Action: Submit completed run ticket.
Normal Abatement Period: Upon request or 3 business days.

b. The operator shall require that the run ticket be completed upon the completion of the sales or removal of oil from the lease to show the following:

—Closing gauge (second gauge) and temperature*
—Observed gravity* and sediment and water (S&W) content*
—Number of the seal installed*
—Signature of the gauger
—Signature of the operator representative (within 2 business days after the sales or removal).

Violation: Minor (all items unless marked by asterisk).
Corrective Action: Complete missing information.
Normal Abatement Period: Upon request or within 3 business days of notice.
Violation: Major.
Corrective Action: Submit completed run ticket.
Normal Abatement Period: Upon request or 3 business days.

c. When a single truck load constitutes a completed sale, the driver shall have in his/her possession documentation containing the information required in a. and b., above, during the period of shipment. When multiple truckloads are involved in a sale and the purchase is predicated on the difference between the opening and closing gauges (implying that the purchaser has purchased the entire

tank), only the driver of the last truck is required to have the documentation containing the information required in a. and b., above, and all of the other drivers shall have in their possession appropriate documentation in the form of a trip log or manifest. All valves on lines entering or leaving the sales tank(s) shall be effectively sealed, except the sales and vent line valves, between truck loads, but the sales valve shall be sealed at the time the sale is completed. In the event documentation of a sale arrangement having all the information required, the operator may apply for a variance in accordance with Part V. "Variances from minimum standards". Once the seals have been broken, the purchaser shall be responsible for the entire contents of the tank until resealed.

Violation: Major.
Corrective Action: Discontinue trucking operation until documentation is provided.
Normal Abatement Period: Prior to leaving the facility.

D. By-Pass Around Meters

1. Minimum Standard.

There shall be no by-pass around gas meters or LACT unit meters.

Violation: Major.
Corrective Action: Remove by-pass.
Normal Abatement Action: Immediate correction required.

E. Theft or Mishandling of Oil

1. Minimum Standard.

a. The operator shall, not later than the next business day after discovery of an incident of apparent theft or mishandling of crude oil and/or condensate, report such incident to the authorized officer. All oral reports shall be followed up with a written report within 10 business days. The incident report shall supply the following:

—Company name and name of individual reporting the incident(s)
—Lease number, communitization agreement number, or unit agreement name and number and participating area, as appropriate
—Location of facility where the incident occurred by quarter, quarter section, section, township, and range or legal land description
—The estimated volume of oil or condensate removed
—The way access was obtained to the production or how the mishandling occurred
—The individual who discovered the incident
—Date and time of the discovery of the incident
—Whether the incident was or was not reported to local law enforcement agencies and company security.

Violation: Minor (failure to file a complete report).
Corrective Action: Submit complete report of incident.
Normal Abatement Period: Oral report upon request and complete written report within 10 business days after notice of failure to file a complete report.

*Violation: Major (failure to report incident).
Corrective Action: Submit report of incident.
Normal Abatement Period: Oral report upon request and written report within 10 business days after notice of failure to report incident.

F. Self Inspection

1. Minimum Standard.

Operators-Lessees shall establish an inspection program for all leases for the purpose of periodically measuring production volumes and assuring that there is compliance with the minimum site security requirements. The program shall include a record of such inspections showing the findings of the inspection and a record of the volume measurements.

Violation: Minor.
Corrective Action: Institute an inspection program that includes a record of such inspections and establishes a measurement schedule.
Normal Abatement Period: 20 days after notice.

G. Recordkeeping

1. Minimum Standard.

The operator shall establish and maintain for a minimum of 6 years a recordkeeping system which shall be readily available to the authorized officer or authorized representative upon request and which includes all of the following as a minimum:

—Documentation of the number of each seal and the valve on which the seal is used, the date of installation or removal of the seal(s) for each storage tank, including the reason for the removal or installation of each such seal
—Documentation of each seal used on the LACT unit showing the component sealed and the date the seal was installed and removed including the reasons(s) for such removal

Violation: Major
Corrective Action: Commence and maintain documentation.
Normal Abatement Period: 1 business day after notice.

H. Site Security Plan

1. Minimum Standard.

The operator shall establish a site security plan for all facilities. The plan need not be submitted to the authorized officer, but the authorized officer shall be notified of the location where the plan is maintained and the normal working hours of said location. The plan shall be available to the authorized officer upon request. The plan shall include, but is not limited to, the following:

—A self inspection program that monitors production volumes and ensures compliance with all seal requirements at each storage and sale facility and each LACT unit, if applicable (See Section III F hereof)
—A system to ensure the maintenance of accurate seal records and the completion of accurate run tickets (See Section III A, B and C hereof)
—A system to ensure the reporting of incidents of apparent theft or mishandling of oil (See Section III E hereof)
—A system to ensure that there are no by-pass of meters (See Section III D hereof)
—A listing of the leases, communitization agreements, unit agreements, and specific facilities that are subject to each plan
—Documentation that the authorized officer has been notified of the completion of a plan and site facility diagram(s) and the leases, communication agreements, unit agreements, and specific facilities that are subject to each plan and diagram(s)
—Documentation that the authorized officer was notified within 60 days of completion of construction of a new facility or of commencement of first production or of inclusion of the production from a committed non-Federal well into a federally supervised unit or communitization agreement, whichever occurs first, whether that facility is covered by a specific existing plan or a new plan has been prepared.

Violation: Minor.
Corrective Action: Comply with requirements.
Normal Abatement Period: 20 days after notice.

1. Site Facility Diagram

1. Minimum Standard.

A facility diagram is required for all facilities, including those facilities not located on Federal or Indian lands but which are subject to Federal supervision through commitment to a federally

approved unit agreement or communitization agreement. This requirement is not applicable to dry gas production facilities where no liquids are produced or stored. No format is prescribed for facility diagrams. However, the facility diagram should be prepared on 8½ x 11 paper, if possible, and should be legible and comprehensible to an individual with an ordinary working knowledge of oil field operations (See Attachment I). The facility diagram shall:

—Accurately reflect the relative position of the production equipment, piping, and metering systems in relationship to each other, but need not be to scale
—Commencing with the header, identify the vessels, piping, and metering systems located on the site and shall include the appropriate valves and any other equipment used in the handling, conditioning, and disposal of oil, gas, and water produced, including any water disposal pits or emergency pits. In those instances where pits are co-located, such pits may be shown in parentheses on the facility diagram
—Indicate which valve(s) shall be sealed and in what position during the production and sales phases and during the conduct of other production activities, i.e., circulating tanks, drawing off water, which may be shown by an attachment, if necessary
—Require as an addition, when describing co-located facilities operated by 2 different operators, a skeleton diagram of the co-located facility, showing only equipment. For co-located common storage facilities operated by 1 operator, one facility diagram shall be sufficient
—Be filed within 60 days of completion of construction of a new facility or when existing facilities are modified or when a non-Federal facility is included in a Federally supervised unit agreement or communitization agreement
—Clearly identify the lease to which it applies and the location of the facility covered by quarter quarter section, section, township, and range or by a legal land description, with co-located facilities being identified by each lease and its facilities
—Clearly identify the site security plan covering the facility.
—Violation: Minor.
—Corrective Action: Prepare and/or furnish a complete and accurate facility diagram.
—Normal Abatement Period: 10 business days after notice.

IV. Federal Seals

Federal seals are placed on any appropriate valve, sealing device, or LACT component not in compliance with the minimum standards contained in Part III, Requirements, sections A and B, whenever the operator is not present at the site to abate the noncompliance upon its discovery by the authorized officer, or refuses or is unable to abate the noncompliance. The position of the valve or component is not changed. The placement of a Federal seal on any valve, sealing device, or component does not constitute compliance with the minimum standards. The operator is required to take the action specified in the Notice of Incident of Noncompliance or written order of the authorized officer within the time allowed for abatement in order to meet the compliance requirement. The Notice of Incident of Noncompliance or written order includes a notice of the placement of the Federal seal. A card is attached to each Federal seal installed, identifying the Federal seal as such and advising that removal or violation of the seal without approval by the authorized officer shall result in an immediate assessment of $250. The name and telephone number of the authorized officer are shown on the card.

V. Variances from Minimum Standards

An operator may request the authorized officer to approve a variance from any of the minimum standards prescribed in section III hereof. All such requests shall be submitted in writing to the appropriate authorized officer and provide information as to the circumstances which warrant approval of the variance(s) requested and the proposed alternative methods by which the related minimum standard(s) are to be satisfied. The authorized officer, after considering all relevant factors, if appropriate, may approve the requested variance(s) if it is determined that the proposed alternative(s) meet or exceed the objectives of the applicable minimum standard(s).

ATTACHMENTS

I. Diagrams

Site Facility Diagrams and Sealing of Valves

Introduction—1 & 2
Equipment and Valve Symbols—3
Line Symbols and Valve Identification—4

Diagrams	Identification	Sales Mode	
I-A	Lease Number NM—1234.	Tank Gauge	5 & 6
I-B	Lease Number NM—1234.	LACT	7 & 8
I-C	Able Shallow Unit	Tank Gauge	9 & 10
I-D	Able Shallow Unit	LACT	11 & 12
I-E	Lease Numbers W-2345 & W-6789.	Tank Gauge	13–15
I-F	Lease Number C-1357.	LACT & Tank Gauge.	16 & 17
I-G	Lease Number M-2468.	LACT	18 & 19
I-H	Able Sand Unit	Tank Gauge & Gauge Transfer.	20 & 21
I-I	Able Sand Unit	LACT & LACT Transfer.	22 & 23

Site Facility Diagrams and Sealing of Valves

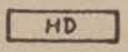
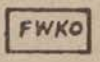
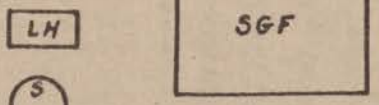
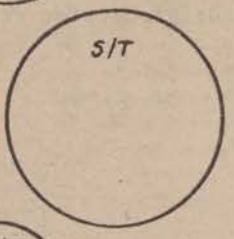
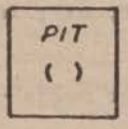
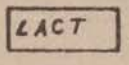
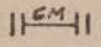
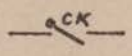
Introduction

Attachment I is provided not as a requirement but solely as an example, both to aid operators in determining what valves are considered to be "appropriate valves" subject to the seal requirements, and to aid in the preparation of facility diagrams. In making the determination of what is an "appropriate valve," the entire facility must be considered as a whole, including the size of the facility, the type of equipment, and the on-going activities at the facility. It is impossible to cover every type of situation that exists or could exist in conducting production activities. The following diagrams are intended to be representative of the sealing requirements contained in this Order.

BILLING CODE 4310-84-M

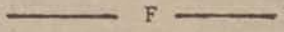
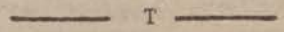
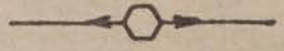
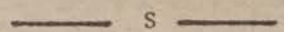
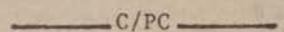
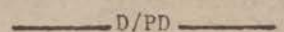
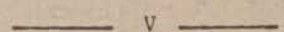
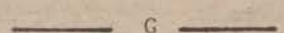
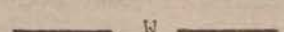
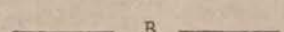
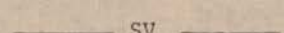
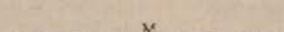
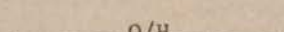
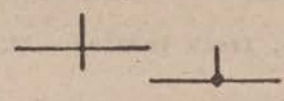
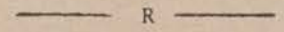
Attachment 1 - 3

Equipment and Valve Symbols

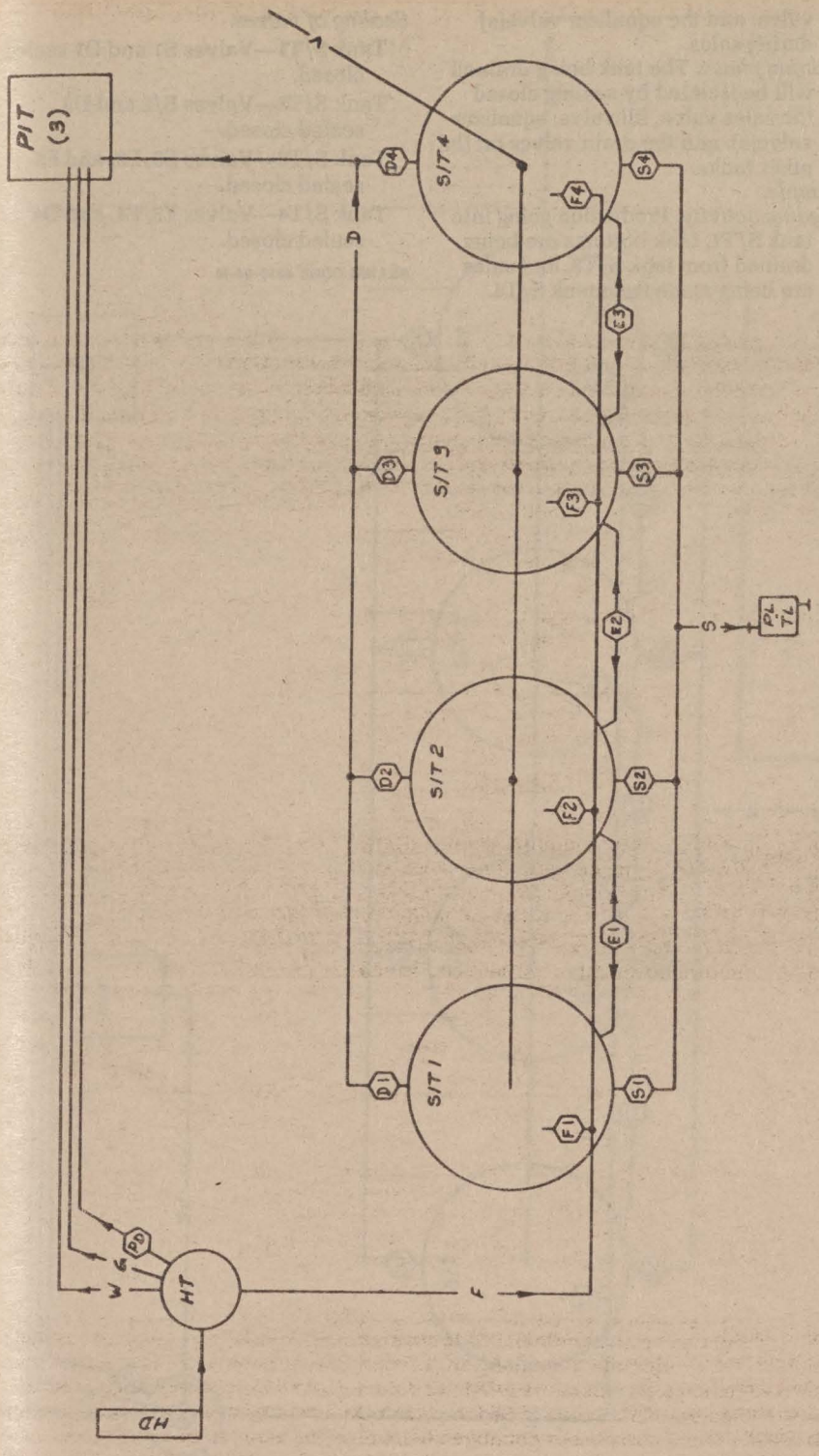
Item	
Header - HD	
Free water knockout - FWKO	
Line heater - LH; Steam generation facility - SGF	
Separator - S	
Heater treater - HT	
Gun barrel or wash tank - GB	
Storage tank - S/T	
Tank: Water - W/T; Slop oil - SO/T; Surge - ST/T	
Tanks: Fuel oil - FO/T; power oil - PO/T	
Pit: Number of pits - ()	
Valve	
Automatic custody transfer unit - LACT	
Gas meter run - GM	
Connection: Pipeline - PL; Truck loading - TL	
Pump: Circulating - CP: Transfer - TP	
Check valve - CK	

Attachment 1 - 4

Line Symbols and Valve Identification

Item	Line Symbol	Valve ID
Direction of flow		
Fill line		F
Test line		T
Equalizer/overflow line		E
Sales line		S
Circulating lines: tank - C; pit - PC		C
Drain line: tank - D; production vessel - PD		D,PD
Tank vent line		V
Gas line		G
Water line		W
Bad oil line (LACT)		B
Safety valve vent line		SV
Miscellaneous access line: royalty oil; lease use		M
Heating lines: contents - O; other media - H		O,H
Fuel line - U; power oil line - PO		U,P
Water disposal line		WD
Lines: not connected connected		
Portable well tester outlets		PT
Gas roll line		R

Attachment 1 - 5



This lease is subject to the site security plan for Northwest New Mexico Operations. The plan is located at: Able Oil Company
212 Federal Blvd.
Farmington, NM

Able Oil Company
Lease: Federal - NM1234
Location: NE/4 NW/4 Sec. 4, T. 28 N., R. 13 W.

Diagram 1-A

BILLING CODE 4310-84-C

Attachment 1—6

Attachment to the Site Facility Diagram—Lease NM 1234

General sealing of valves, sales by tank gauging.

Production phase. All drain valves, D1 thru D4, and all sales valves, S1 thru S4, sealed closed.

Sales phase. The tank from which sales are being made will be isolated by sealing closed the drain valve, fill valve, and the equalizer valve(s) during sales.

Draining phase. The tank being drained will be isolated by sealing closed the sales valve, fill valve, equalizer valve(s), and the drain valves on the other tanks.

Example:

On going activity. Production going into tank S/T1, tank bottoms are being drained from tank S/T3, and sales are being made from tank S/T4.

Sealing of valves.

Tank S/T1—Valves S1 and D1 sealed closed.

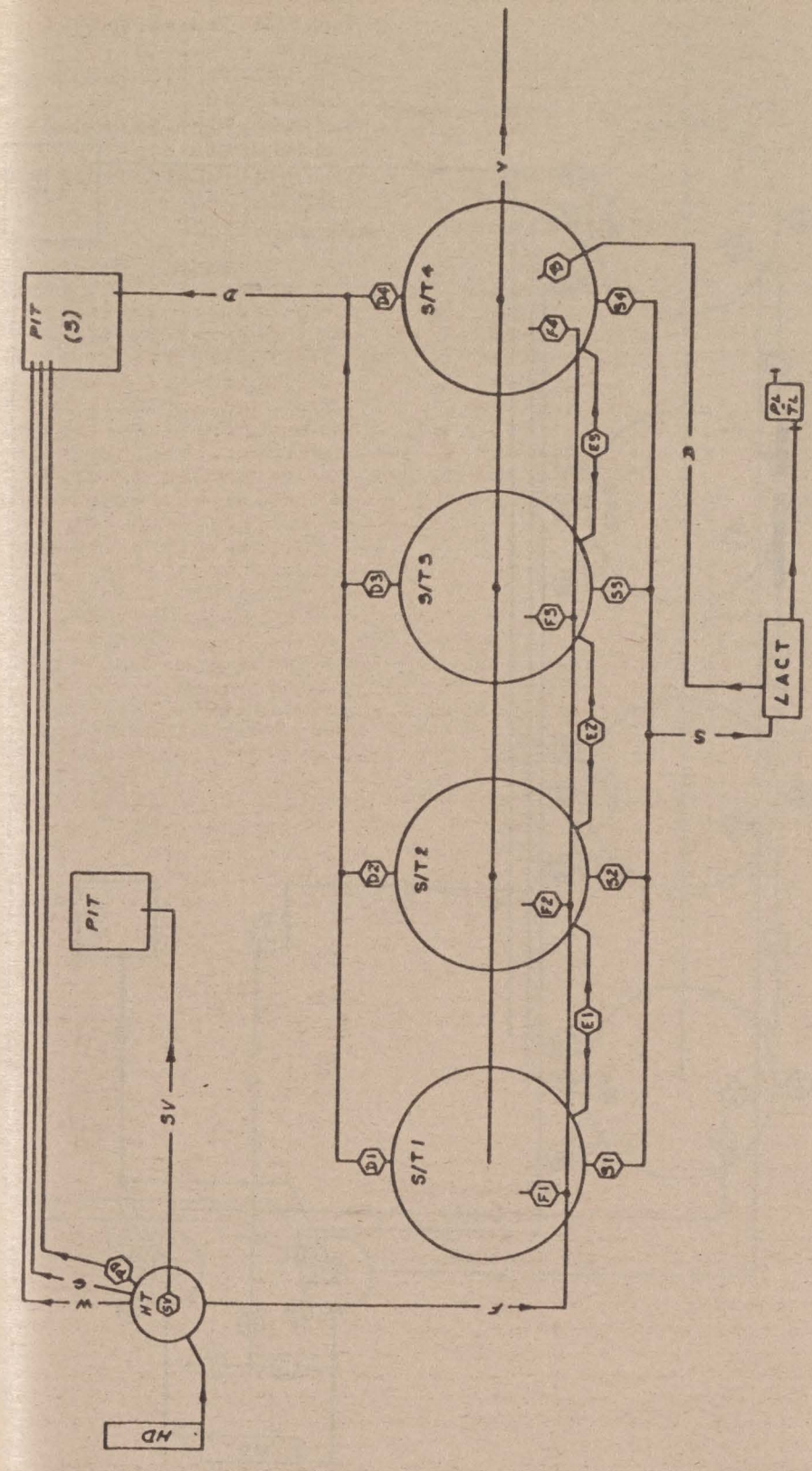
Tank S/T2—Valves S/2 and D2 sealed closed.

Tank S/T3—Valves S3, E2, and F3 sealed closed.

Tank S/T4—Valves E3, F4, and D4 sealed closed.

BILLING CODE 4310-84-M

Attachment 1 - 7



This lease is subject to the site security plan for Northwest New Mexico Operations. The plan is located at: Able Oil Company
212 Federal Blvd.
Farmington, NM

Able Oil Company
Lease: Federal - NM 1234
Location: NE/4 NW/4 Sec. 4,
T. 28 N., R. 13 W.

Diagram I-B

BILLING CODE 4310-84-C

Attachment 1–8

Attachment to the Site Facility Diagram—Lease NM 1234

General sealing of valves, sales by LACT.

Production phase. All drain valves D1 thru D4 sealed closed.

Sales phase. All drain valves D1 thru D4 sealed closed.

Draining activity. The tank being drained will be isolated by sealing closed the sales, fill and equalizer line valves, and the drain valves on the other three tanks.

Examples:

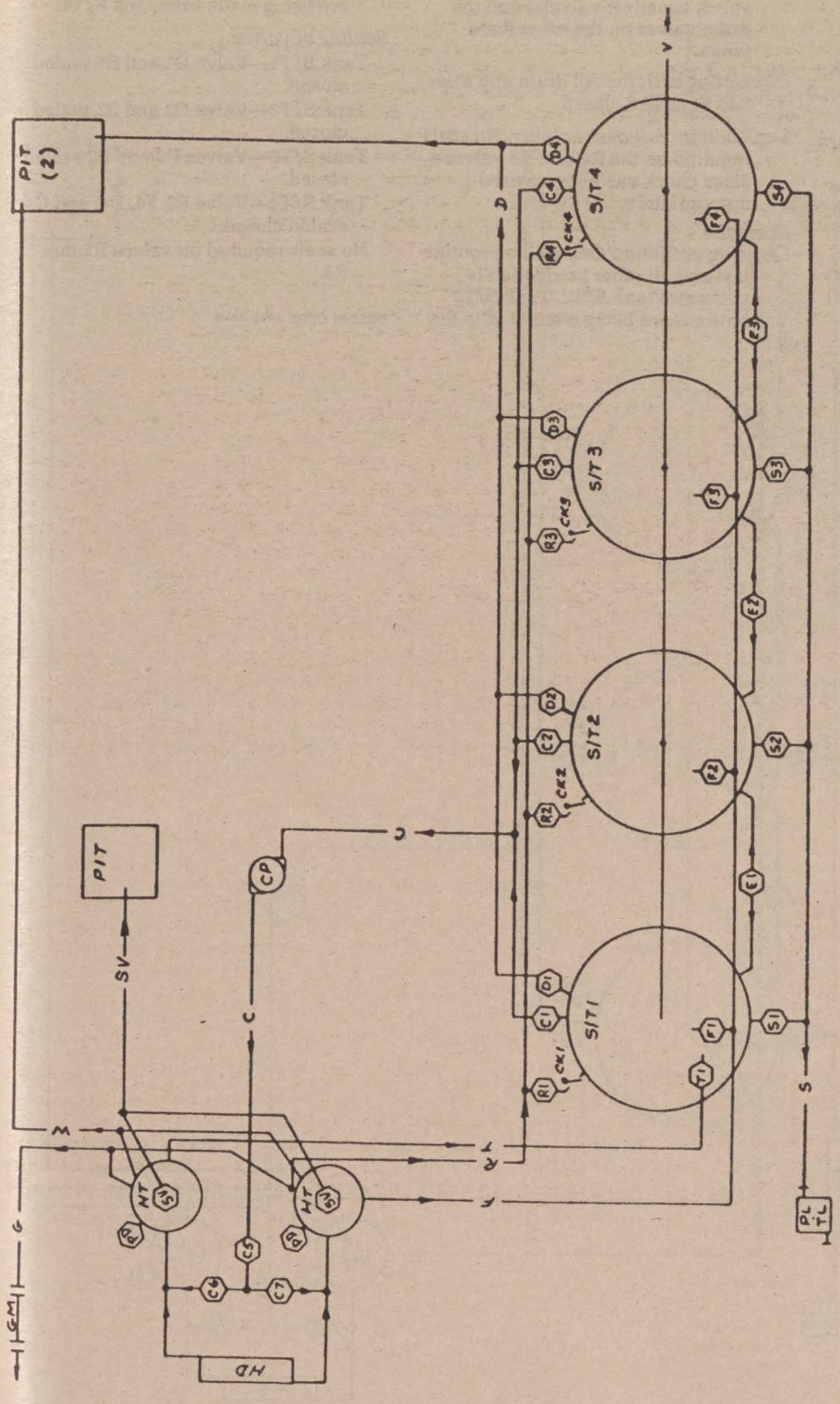
On going activity. Production is going to tank S/T1, tank bottoms are being drained from tank S/T3, and sales are being made from tank S/T4.

Sealing of valves.

Tank S/T1—Valve D1 sealed closed.
Tank S/T2—Valve D2 sealed closed.
Tank S/T3—Valves E2, E3, S3, and F3 sealed closed.
Tank S/T4—Valve D4 sealed closed.

BILLING CODE 4310-84-M

Attachment 1 - 9



This unit is subject to the site security plan for Northwest New Mexico Operations. The plan is located at: Able Oil Company 212 Federal Blvd. Farmington, NM

Able Oil Company
Lease: Able Shallow Unit
Location: NW/4 SE/4 Sec. 25, T. 28N., R. 13W.

Diagram 1-C

BILLING CODE 4310-84-C

Attachment 1–10

Attachment to the Site Facility Diagram—Able Shallow Unit

General sealing of valves, sales by tank gauging.

Production phase. All drain valves, D1 thru D4, and all sales valves, S1 thru S4, sealed closed.

Sales phase. The tank from which sales are being made will be isolated by sealing closed the drain valve, circulating valve, fill valve(s), and equalizer valve(s) during sales.

Draining activity. The tank drained will be isolated by sealing closed the sales valve, fill valve(s), circulating valve, equalizer valve(s) and the drain valves on the other three tanks.

Circulating activity. All drain and sales valves sealed closed.

Tank bottom roll-over activity. No seals required on the R1 thru R4 valves since check valves were used appropriately.

Example:

On going activities. One well on routine test and all other production is going into tank S/T2. Tank S/T3 bottoms are being circulated to the production heater-treater and sales are being made from tank S/T4.

Sealing of valves.

Tank S/T1—Valve D1 and S1 sealed closed.

Tank S/T2—Valve D2 and S2 sealed closed.

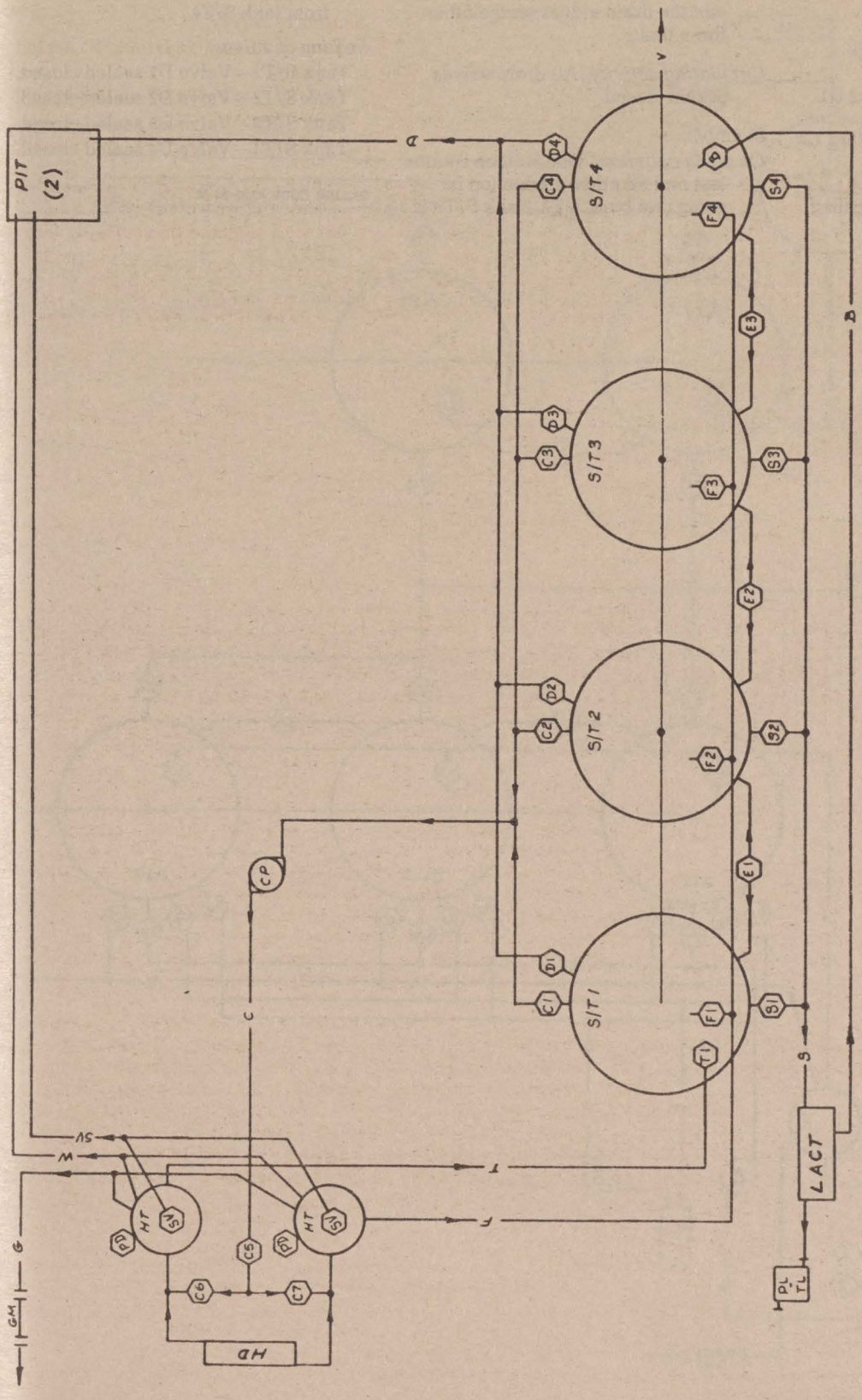
Tank S/T3—Valves D3 and S3 sealed closed.

Tank S/T4—Valve E3, F4, D4, and C4 sealed closed.

No seals required on valves R1 thru R4.

BILLING CODE 4310-84-M

Attachment 1 - 11



This Unit is subject to the site security plan for NORTHWEST NEW MEXICO Operations. The plan is located at: Able Oil Company 212 Federal Blvd. Farmington, NM

Able Oil Company
Lease: Able Shallow Unit
Location: NW/4 SE/4 Sec. 25, T. 28 N, R. 13 W.

Diagram I-D

BILLING CODE 4310-84-C

Attachment 1–12

Attachment to the Site Facility Diagram—Able Shallow Unit

General sealing of valves, sales by LACT.

Production phase. All drain valves D1 thru D4 sealed closed.

Sales phase. All drain valves D1 thru D4 sealed closed.

Draining activity. The tank being drained will be isolated by sealing closed the sales valve, fill valve(s), circulating valve, equalizer valve(s), and the drain valves on the other three tanks.

Circulating activity. All drain valves sealed closed.

Example:

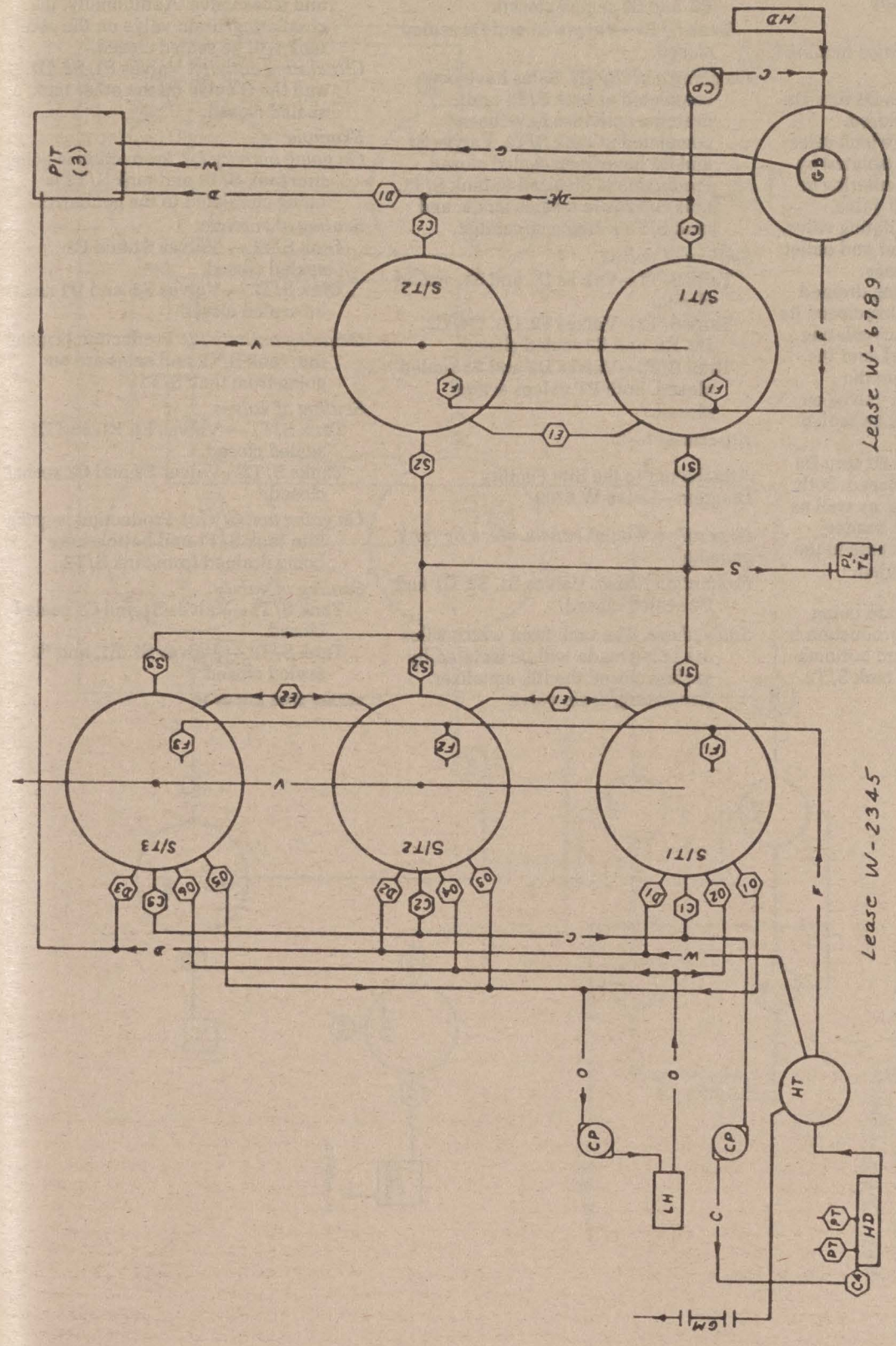
On going activities. One well on routine test and all other production is going into tank S/T2. Tank S/T3 is being circulated to the production treater and sales are being made from tank S/T4.

Sealing of valves.

Tank S/T1—Valve D1 sealed closed.
Tank S/T2—Valve D2 sealed closed.
Tank S/T3—Valve D3 sealed closed.
Tank S/T4—Valve D4 sealed closed.

BILLING CODE 4310-84-M

Attachment 1 - 13



Both leases are subject to the site security plan for Southwest Wyoming Operations. The plan is located at: Able Oil Company 25 Front Street La Barge, WY

Able Oil Company - Common storage facility.
Location: NW/4 SW/4 Sec. 20, T. 27N., R. 113W.

Diagram 1-E

BILLING CODE 4310-84-C

Attachment 1–14

Common Storage Facility

Attachment to the Site Facility Diagram—Lease W 2345

General sealing of valves, sales by tank gauging.

Production phase. All valves D1 thru D3 and S1 thru S3 sealed closed.

Sales phase. The tank from which sales are being made will be isolated by sealing closed all lines entering or leaving the tank, i.e., fill valve, equalizer valve(s), circulating valve, drain valve, and the inlet and outlet valves on the heating lines.

Drain activity. The tank being drained will be isolated by sealing closed its fill valves, sales valve, circulating valve, equalizer valve(s), and the inlet and outlet valves on the heating lines. The drain valves on the other two tanks will be sealed closed.

Circulating activity. Valves D1 thru D3 and S1 thru S3 sealed closed. Both PT valves sealed closed, as well as any other valves on the header which would provide access to the production being circulated.

Example:

On going activity (1). Sales are being made from tank S/T1, production is going into tank S/T3, and bottoms are being drained from tank S/T2.

Sealing of valves.

Tank S/T1—Valves F1, O1, O2, C1, E1, and D1 sealed closed.

Tank S/T2—Valves F2, O3, O4, C2, E2, and S2 sealed closed.

Tank S/T3—Valves S3 and D3 sealed closed.

On going activity (2). Sales have been completed at tank S/T1 and draining activities have been completed at tank S/T2. Valves S1 and D2 have been sealed closed. Production is diverted to tank S/T1, tank S/T2 is in a sales mode, and tank S/T3 is being circulated.

Sealing of valves.

Tank S/T1—Valves D1 and S1, sealed closed.

Tank S/T2—Valves F2, O3, O4, C2, D2, E1, and E2 sealed closed.

Tank S/T3—Valves D3 and S3 sealed closed. Both PT valves sealed closed.

Attachment 1—15

Attachment to the Site Facility Diagram—Lease W 6789

General sealing of valves, sales by tank gauging.

Production phase. Valves S1, S2, C1 and C2 sealed closed.

Sales phase. The tank from which sales are being made will be isolated by sealing closed the fill, equalizer, circulating/drain valve.

Draining activity. The tank being drained will be isolated by sealing closed its fill valve, equalizer valve, and sales valve. Additionally, the circulating/drain valve on the other tank will be sealed closed.

Circulating activity. Valves S1, S2, D1, and the C valve on the other tank sealed closed.

Example:

On going activity (1). Production is going into tank S/T1 and tank S/T2 is being circulated to the gunbarrel.

Sealing of valves.

Tank S/T1 — Valves S1 and C1 sealed closed.

Tank S/T2 — Valves S2, and D1 must be sealed closed.

On going activity (2). Production is going into tank S/T2 and sales are on going from tank S/T1.

Sealing of valves.

Tank S/T1 — Valves F1, E1, and C1 sealed closed.

Tanks S/T2—Valves S2 and C2 sealed closed.

On going activity (3). Production is going into tank S/T1 and bottoms are being drained from tank S/T2.

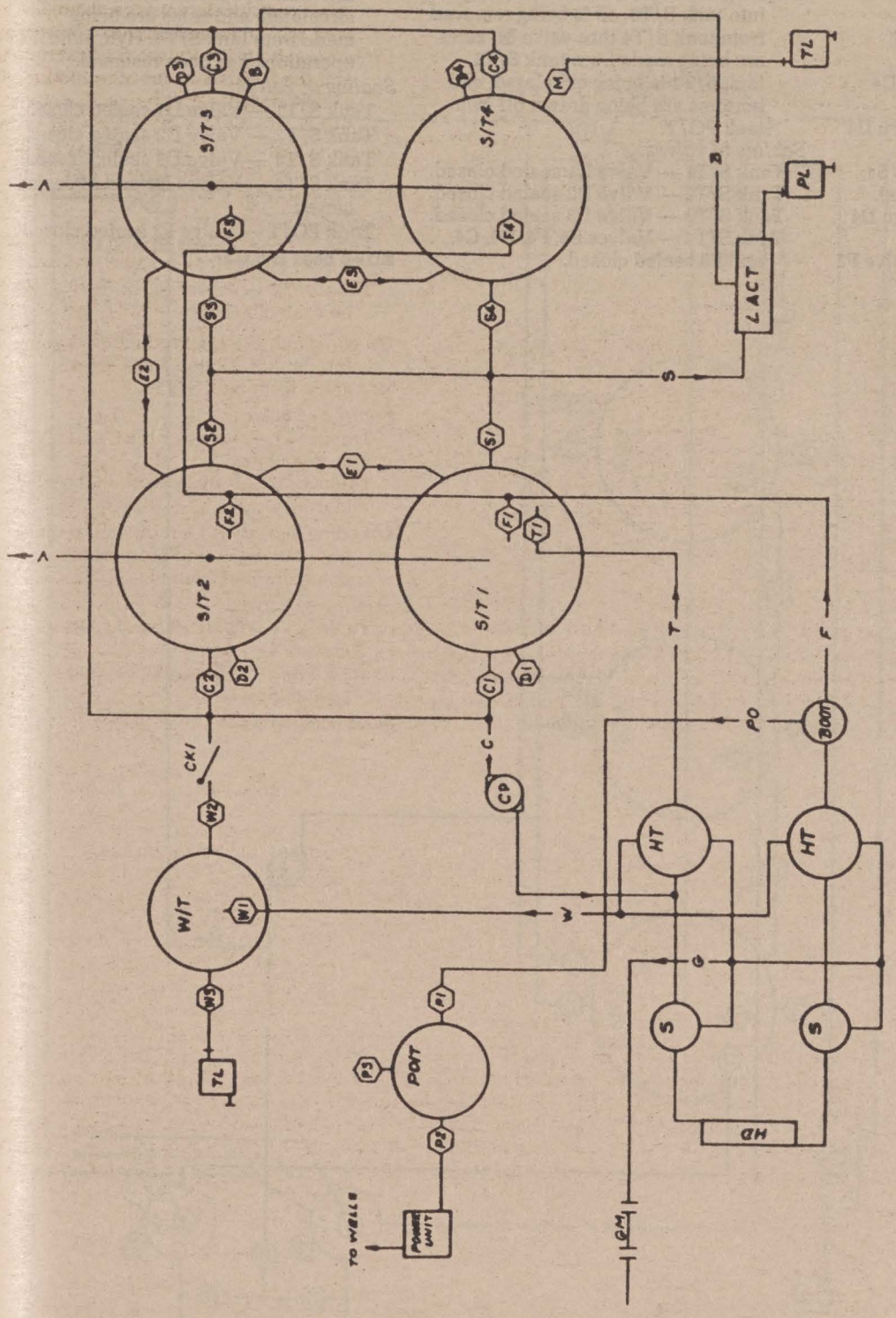
Sealing of valves.

Tank S/T1—Valves S1 and C1 sealed closed.

Tank S/T2 — Valves S2, E1, and F2 sealed closed.

BILLING CODE 4310-84-M

Attachment 1 - 16



This plan is subject to the site security plan for the Coal Oil field. The plan is located at: Able Oil Company
100 First Street
Durango, CO

Able Oil Company
Lease: Federal C-1357
Location: Center NE/4 Sec. 17, T. 32 N., R. 13 W.

Diagram I-F

BILLING CODE 4310-84-C

Attachment 1—17

Attachment to the Site Facility Diagram—Lease C 1357

General sealing of valves, sales by LACT and tank gauging.

Production phase. Valves D1 thru D4 and M sealed closed.

Sales phase (LACT). Valves D1 thru D4 and M sealed closed.

Withdrawal thru Valve M. Valves S4, F4, E3, D4 and C4 sealed closed.

Circulating activity. Valves D1 thru D4 and M sealed closed.

For all of the above activities valve P3 on tank PO/T will be sealed closed.

Example:

On going activity (1). Production is going into tank S/T3, oil is being removed from tank S/T4 thru valve M, sales are being made from tank S/T1, tank S/T2 is being circulated, and bottoms are being drawn off from tank PO/T.

Sealing of valves.

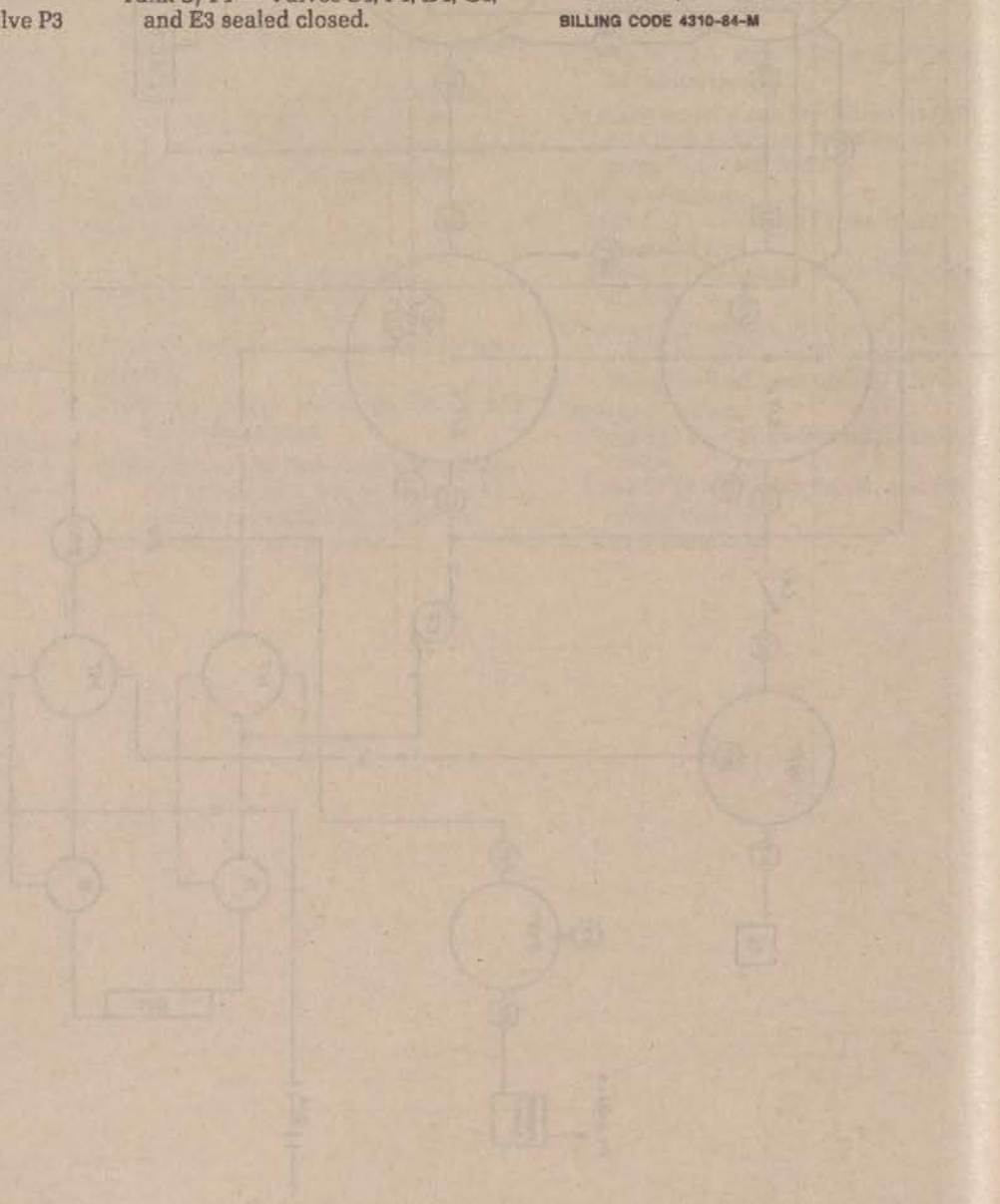
Tank S/T1 — Valve D1 sealed closed.
Tank S/T2 — Valve D2 sealed closed.
Tank S/T3 — Valve D3 sealed closed.
Tank S/T4 — Valves S4, F4, D4, C4, and E3 sealed closed.
Tank PO/T — Valve P1 sealed closed.

On going activity (2). Production is going into tank S/T2, tank S/T3 is being circulated, and sales are being made from tank S/T4. Hydraulic lift operations has been resumed.

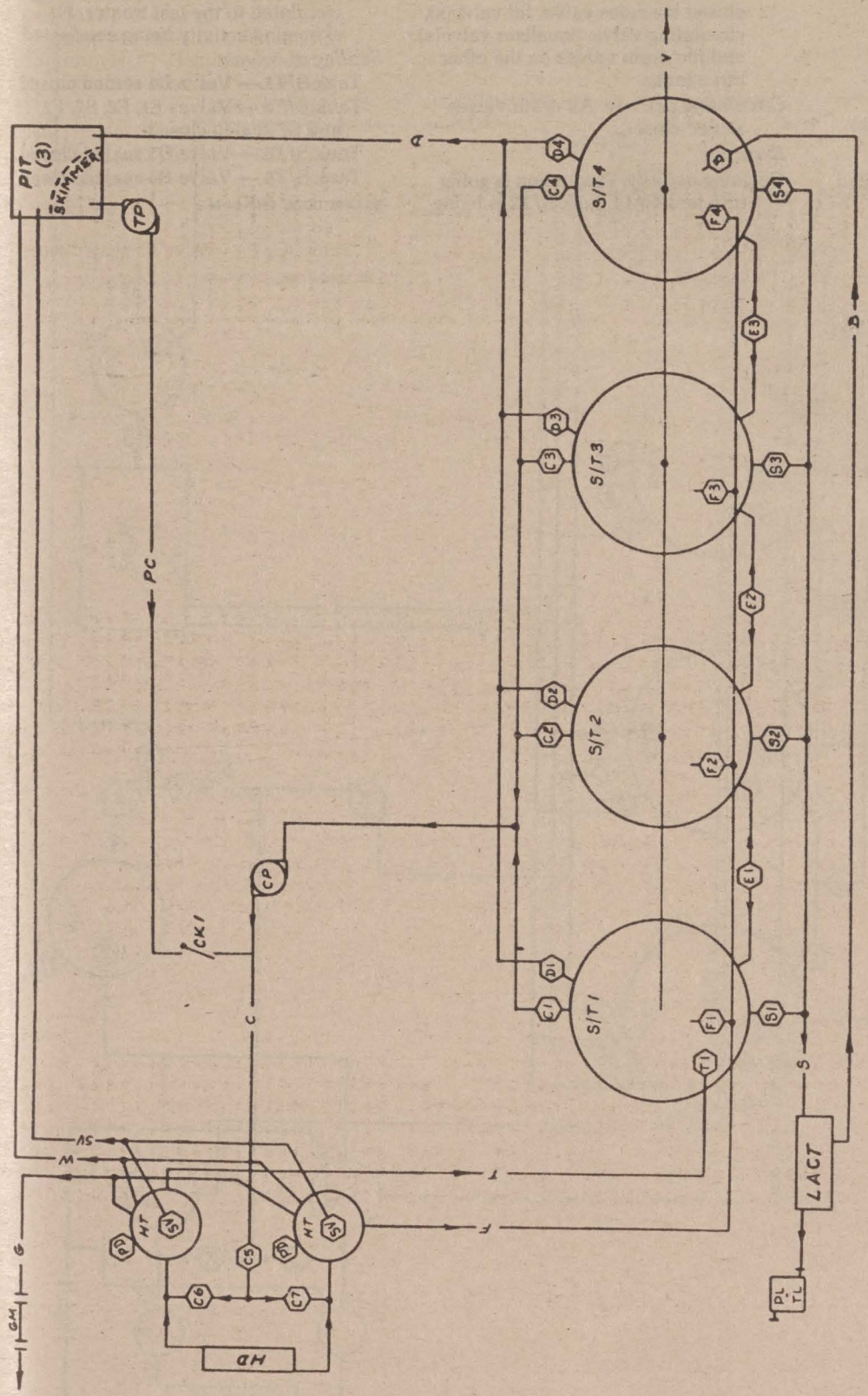
Sealing of valves.

Tank S/T1 — Valve D1 sealed closed.
Tank S/T2 — Valve D2 sealed closed.
Tank S/T3 — Valve D3 sealed closed.
Tank S/T4 — Valves D4 and M sealed closed.
Tank PO/T — Valve P3 sealed closed.

BILLING CODE 4310-84-M



Attachment 1 - 18



This lease is subject to the site security plan for the CS oil Field. The plan is located at: Able Oil Company 713 Center Street Cut bank, MT

Able Oil Company
Lease : Federal M-2468
Location: SE/4 SE/4 Sec. 7, T.35N., R.5W.

Diagram I-G

BILLING CODE 4310-84-C

Attachment 1—19

Attachment to the Site Facility Diagram—Lease M 2468

General sealing of valves, sales by LACT.

Production phase. Valves D1 thru D4 sealed closed.

Sales phase. Valves D1 thru D4 sealed closed.

Draining Activity. The tank being drained will be isolated by sealing closed the sales valve, fill valve(s), circulating valve, equalizer valve(s), and the drain valves on the other three tanks.

Circulating activity. All drain valves sealed closed.

Example:

On going activity. Production is going into tank S/T1, tank S/T2 is being drained, sales are being made from tank S/T3, and tank S/T4 is being circulated to the test treater. Pit skimming activity being conducted.

Sealing of valves.

Tank S/T1 — Valve D1 sealed closed.
Tank S/T2 — Valves E1, E2, S2, F2, and C2 sealed closed.
Tank S/T3 — Valve D3 sealed closed.
Tank S/T4 — Valve D4 sealed closed.

BILLING CODE 4310-84-M

Attachment 1 - 20

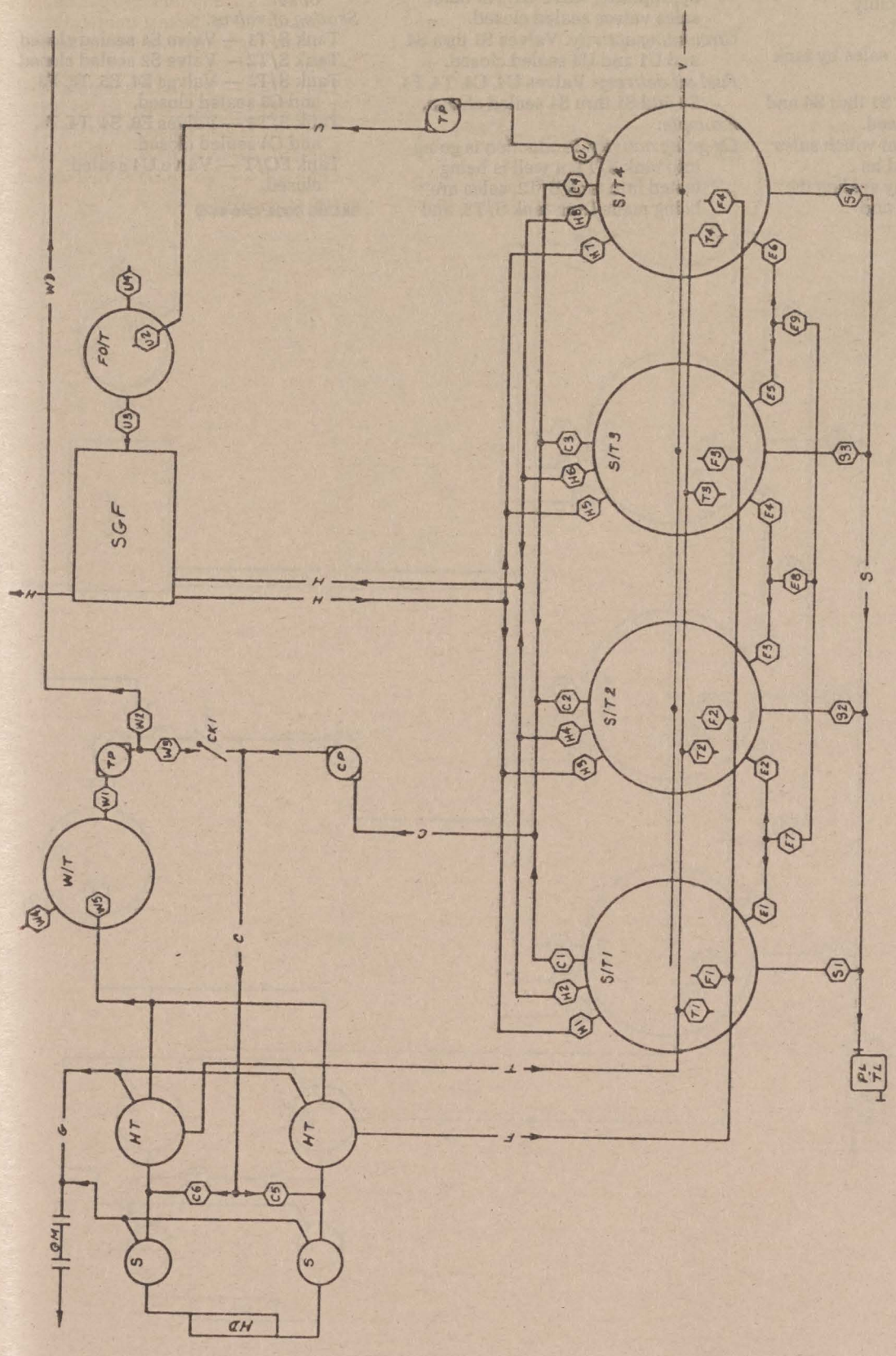


Diagram I-H

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Attachment 1—21

Attachment to the Site Facility Diagram—Able Sand Unit

General sealing of valves, sales by tank gauging.

Production phase. Valves S1 thru S4 and U1 and U4 sealed closed.

Sales phase. The tank from which sales would be made would be completely isolated by sealing the fill, test, equalizer(s), and circulating valves, and if appropriate, valve U1. All other sales valves sealed closed.

Circulating activity. Valves S1 thru S4 and U1 and U4 sealed closed.

Fuel oil delivery. Valves U4, C4, T4, F4, E6 and S1 thru S4 sealed closed.

Example:

On going activity. Production is going into tank S/T1, a well is being tested into tank S/T2, sales are being made from tank S/T3, and fuel oil is being delivered from tank S/T4.

Sealing of valves.

Tank S/T1 — Valve S1 sealed closed.
Tank S/T2 — Valve S2 sealed closed.
Tank S/T3 — Valves E4, E5, T3, F3 and C3 sealed closed.
Tank S/T4 — Valves E6, S4, T4, F4, and C4 sealed closed.
Tank FO/T — Valve U4 sealed closed.

BILLING CODE 4310-84-M

Attachment 1 - 22

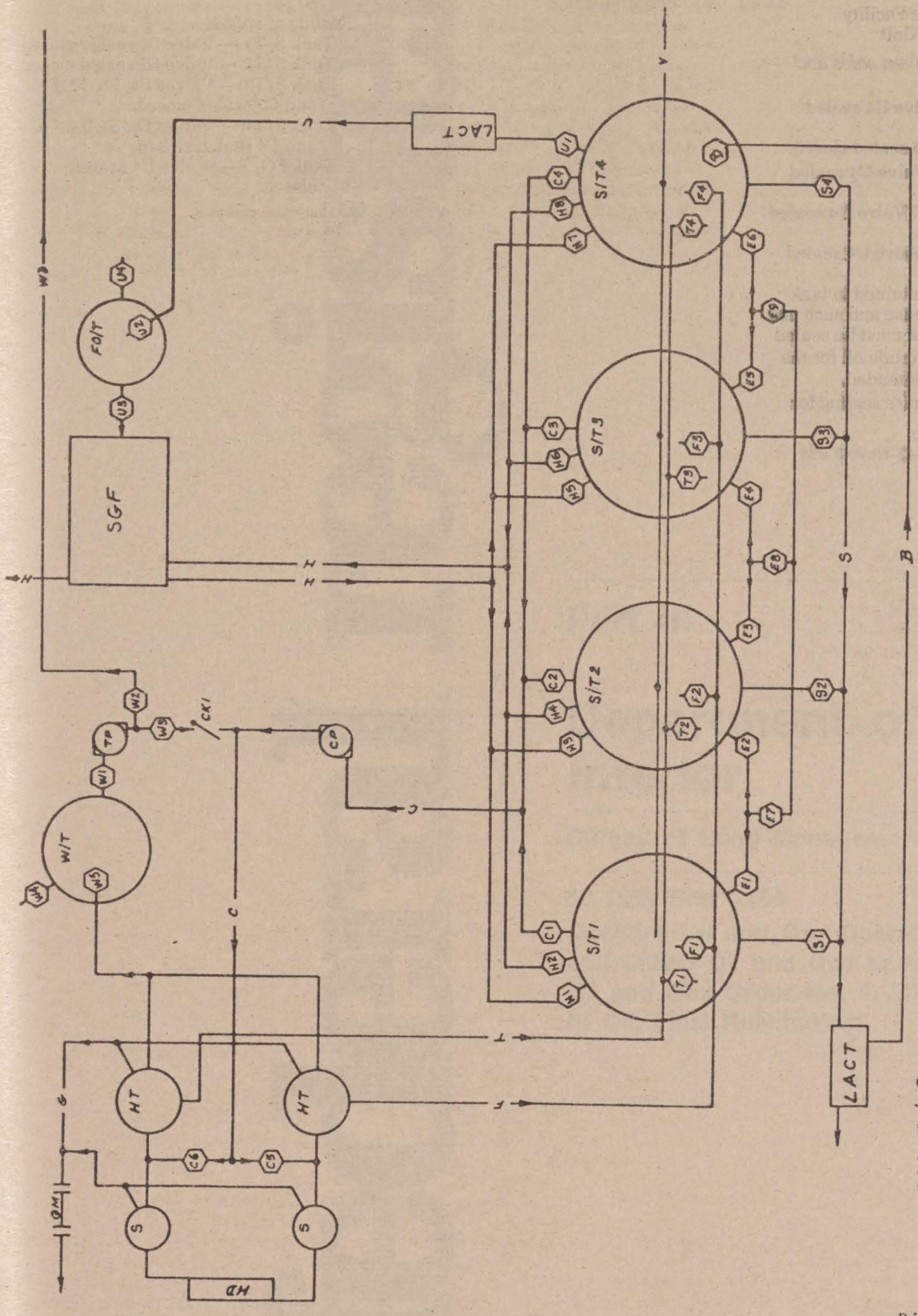


Diagram I-I

BILLING CODE 4310-84-C

Attachment 1—23

Attachment to the Site Facility Diagram—Able Sand Unit

General sealing of valves, sales and transfer by LACT.

Production phase. Valve U4 sealed closed.

Sales phase. Valve U4 sealed closed.

Circulating activity. Valve U4 sealed closed.

Fuel delivery to FO/T. Valve U4 sealed closed.

Circulate tank W/T. Valve U4 sealed closed.

Since the fuel oil contained in tank FO/T is used on the lease and such use is royalty free, the tank must be sealed to prevent removal of crude oil for the use other than it was intended.

No other valves require sealing for any phase or activity.

[FR Doc. 89-3884 Filed 2-23-89; 8:45 am]

BILLING CODE 4310-84-M

federal register

Friday
February 24, 1989

Part III

Department of the Interior

Bureau of Land Management

43 CFR Part 3160

Onshore Oil and Gas Operations, Federal and Indian Oil and Gas Leases; Onshore Oil and Gas Order No. 4, Measurement of Oil; Final Rulemaking

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 3160

[Circular No. 2617; AA-610-88-4111-02]

Onshore Oil and Gas Operations, Federal and Indian Oil and Gas Leases; Onshore Oil and Gas Order No. 4, Measurement of Oil

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rulemaking.

SUMMARY: This final rulemaking issues Onshore Oil and Gas Order No. 4 under 43 CFR 3164.1. This Order implements and supplements requirements found in 43 CFR Part 3160 relating to the measurement of oil produced under the terms of Federal and Indian (except Osage) oil and gas leases, as well as oil produced from State or privately owned lands when Federal and/or Indian leases receive a share of such production under the terms of an approved agreement. The Order addresses oil measurement by tank gauging, by positive displacement metering systems, and by other methods acceptable to the authorized officer of the Bureau of Land Management. The Bureau of Land Management's existing internal guidelines on oil measurement were never published as a Notice to Lessees and Operators. Thus, this Order has no direct predecessor.

EFFECTIVE DATE: August 23, 1989. Suggestions or inquiries may be submitted to: Director (610), Bureau of Land Management, Room 601, Premier Building, 1800 C Street NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Richard T. Hunter (303) 236-1750 or Sie Ling Chiang (202) 653-2127.

SUPPLEMENTARY INFORMATION: The Bureau of Land Management (BLM) published the rulemaking proposing Onshore Oil and Gas Order No. 4 in the **Federal Register** on February 3, 1988 (53 FR 3158), asking for comments on the proposed rulemaking by April 4, 1988. At the request of several respondents, BLM published a **Federal Register** Notice on April 6, 1988 (53 FR 11318), which extended the comment period through April 19, 1988.

During the comment period, 31 written comments were received: 23 from business entities, 3 from associations, 1 from a State agency, and 4 from offices of Federal agencies. The Bureau appreciates the time and effort spent by the respondents in reviewing the proposed rulemaking and the highly detailed responses offering constructive suggestions for improvement. Many of the comments, both technical and editorial, were adopted and are reflected in the final rulemaking.

Discussion of General Comments

A number of comments supported formalizing measurement requirements and stated that promulgating rules will facilitate a better understanding of the requirements. Several comments objected to the entire concept of the proposed rulemaking, arguing that it is unnecessary. One comment stated that the proposed rule in its present form was not authorized by the statutes. The necessary authority exists at 30 U.S.C. 1711 and 30 U.S.C. 189. The final rulemaking will be of overall benefit to both the oil and gas companies and the various Government agencies, by providing the minimum standards critical to accurate measurement and reporting of production nationwide.

Custody Transfer/Allocation Meters

Numerous comments argued that the Order should only apply to custody transfer measurements and not allocation measurements. They stated that the proposed rules are for application to single phase, homogeneous oil, gas, or condensate flows that have been cleaned up and stabilized for commercial pipeline transport. They argued further that allocation meters may involve the flow of vapor and liquids, two-phase flow, and therefore that the allocation meter should not be held to the same tolerances as the custody transfer or sales meter. A custody transfer or sales meter is one from whose measurements royalty is determined directly. An allocation meter is a meter whereby production is measured and credited to a lease(s) or well(s). BLM has the responsibility to designate or accept measurement points (meters) from whose measurements royalties will be determined. All such designated measurement points are required to meet the minimum standards of this Order. The designated or accepted measurement point may be a custody transfer meter, a sales meter or an allocation meter. In any case, the meters are required to be measuring single phase flow. BLM requires that all production removed or sold from the lease be placed into marketable condition using appropriately sized and maintained production equipment, and the oil, water, and gas separated prior to measurement, or that a variance be approved. To clarify that the proposed standards apply to allocation as well as sales meters, the phrase "and allocation" has been added to paragraph 2 of section III.B.

Responsibility for Proper Measurement

Numerous comments were received expressing concern because the proposed Order provided that the lessee/operator is responsible for the handling and proper measurement of lease production, when in some cases the sales meters are owned and operated by the purchaser/transporter. In such cases, the operator may not have control over the measurement equipment. Most comments urged that the responsibility for proper sales measurement should be placed on the owner of the sales meter and that only the responsibility for allocation measurement should be placed on the lessee/operator. BLM recognizes that the purchaser often owns and maintains the custody transfer or sales meter. However, requirements for proper measurement are normally included in the purchase contract. Existing regulations at 43 CFR 3162.1 hold the lessee/operator responsible for assuring that all oil and gas production operations on Federal or Indian leases, including proper measurement, comply with Department of the Interior regulations, whether conducted by the lessee or by parties having contractual agreements with the lessee. This Order does not change the responsibility of the lessee. First, the standards in this Order are generally API standards. Second, normal sales contracts require the purchaser to maintain the sales meter properly, and third, historically, holding the lessee/operator responsible for proper measurement has not created significant problems for the operators or purchasers. The operator is often unable physically to correct violations resulting from meter problems, and this has been taken into account in setting abatement periods. In addition, 43 CFR 3163.2(f)(1) provides civil penalties up to $25,000 for any person who knowingly or willfully prepares, maintains, or submits false, inaccurate or misleading reports. This regulation applies to the purchaser as well as the lessee/operator.

Phase-in Period

Specific comments were requested as to a phase-in period of time after which this Order will become effective. Ten comments were received recommending either no phase-in period or one ranging up to two years. The rationale for a phase-in period offered in the comments included time to install and upgrade equipment, resolve contractual issues, to train field and accounting personnel, and obtain variance approvals. The BLM agrees that a phase-in time period is appropriate for the installation of new

equipment or the modification of existing equipment, and the training of field personnel. The phase-in period will also allow those companies desiring to do so to obtain justifiable variances and be in full compliance on the effective date of this Order. Accordingly, all sales and allocation facilities are required to be in full compliance with the requirements of this Order within 6 months. Where the operator is in possession of a valid variance issued by the authorized officer, the variance will take precedence over the Order, and will be effective on the date of its approval. The phase-in period shall begin on the day this Order is published in the **Federal Register.**

During the phase-in period, until the effective date of this Order, the BLM will continue to inspect and enforce all standards that have been used in the past. The phase-in period is intended to allow time for the lessee/operator to bring all existing equipment and operations, including specified procedures and reporting practices, into full compliance by the effective date of this Order, and does not in any way relieve the lessee/operator from complying with the Orders of the authorized officer or being subject to the existing laws, regulations, and practices by which the BLM has carried out the inspection and enforcement policies in the past. The authorized officer may grant time extensions, on a case-by-case basis, where the operator can justify the need for additional time or where the shut-in of production would become necessary.

Abatement Periods

Specific comments were requested regarding the abatement period stated in the proposed rulemaking as "prior to sales or removal", asking whether it would be preferable to set a specific time period or firm deadline. One comment recommended that specific deadlines should not be set. Another comment stated that many of the abatement periods are entirely too short to provide adequate time to correct violations, and made specific recommendations for several standards recommending increases of 5 to 30 days for abatement. Specific deadlines were not added where the abatement period is "prior to sales or removal," and clarification of the phrase is added to section III.B.3. A number of abatement periods were lengthened as recommended in the comments for specific violations where increases could be justified. Whenever the abatement period is stated as prior to sales or removal, the potential for permanent loss of royalty exists and no oil or gas may pass the meter that has been designated as the measurement point.

Purpose

One comment supported BLM's stated intent to provide regulations pertaining to the rights of the operator to administrative and/or judicial review and appeal. The regulations pertaining to the rights to administrative review and hearing on the record, as well as the right to appeal, are contained in 43 CFR Subpart 3165, and language of assurance from that regulation, and a provision allowing extensions of abatement periods for any violations under certain conditions, have been added to the Order in this section. Another change to the Order included the addition of one phrase of clarification in the first paragraph following the words "measurement of oil", which reads "and to provide standard operating practices for lease oil storage and handling facilities."

Scope

One comment suggested that the description of the applicable lands subject to this Order, in addition to all Federal and Indian (except Osage) oil and gas leases, be changed to the wording contained in 43 CFR 3161.1—Jurisdiction. The suggestion was adopted and the wording in section I–C, Scope, was changed to correspond with § 3161.1. Another comment stated that the scope is too broad, and that it was arbitrary for the Order to be applicable to State or privately-owned lands, when Federal and/or Indian leases are entitled to share the revenues, no matter how small, from non-jurisdictional wells. The wording in 43 CFR 3161.1 as authorized by the Federal Oil and Gas Royalty Management Act of 1982 will be maintained.

Definitions

Several comments offered specific language for amending the definitions or suggested the addition of several more.

The term "authorized representative" was removed to clarify the intent and "authorized officer" was added as recommended in several comments.

A definition for "business day" was added and the term "working day" was changed to "business day" throughout the Order.

Several comments addressed the definition of "by-pass", offering varying language. All references to "by-pass" were removed from this Order. This term is adequately covered in Onshore Oil and Gas Order No. 3.

One comment observed that most of the major violations listed will not result in a substantial adverse impact on royalty income. All of the violations identified as "major" in the proposed Order were re-examined to determine their effect on royalty income, and several were changed to minor violations. Violations designated as major involve improperly designed and/or installed equipment incapable of correct measurement, or other circumstances that directly and adversely affect Federal or Indian royalty calculations.

One comment suggested the term "minor violation" needs clarification because it could be construed to ripen ultimately into a major violation. This Order contains the definitions of major and minor violations used in the regulations. They are viewed as separate offenses with separate penalties. However, a minor violation remaining uncorrected for as little as a few hours could indeed attain the status of a major violation and the INC be reissued as major. The civil penalties for failure to comply with written orders to correct major and minor violation are contained in 43 CFR 3163.2(g)(2).

One comment suggested the addition of definitions for "operator" and "operating rights owner". These definitions were added in order to explain the distinction between the terms. A few comments suggested revisions of the definition of "oil", and one comment recommended that "bad oil", "clean oil", "slop oil", and "waste oil" be made subheadings of the definition of "oil" and arranged alphabetically. The suggestion was adopted with the exception of the term "bad oil" which was removed. The definition of "oil" is considered adequate and is unchanged. The suggestion to add "allocation measurement", "facility", "purchasers", and "transporters" was not adopted.

Requirements

One comment suggested that the provision on recordkeeping in Order No. 5 be added to this Order. To maintain consistency with the gas measurement order, Onshore Order No. 5, in which the recordkeeping provision was removed from the minimum standards, and because recording and reporting are a procedural requirement of the Federal Oil and Gas Royalty Management Act rather than being an enforceable minimum standard, the requirement for recordkeeping was inserted as a notification under section III.A. To accommodate this insertion, section III.A. General was changed to III.B. General. Also, the words "and

allocation" were inserted in III.B.2. to clarify the intent of the Order.

Numerous comments asked questions as to the intent of the Order in general terms and as to how the Government would respond in certain situations, such as whether equipment failure would result in a violation citation for an operator. In response to such questions, section III.B. of the Order was greatly expanded to provide this information.

One comment suggested that, to maintain consistency with the gas measurement order, a paragraph clarifying the failure to comply with the minimum standards should be added to III.B.2. This suggestion was adopted. In addition, a statement was also added to section III.B.2. saying that meters installed in accordance with standards in effect at the time of construction need not automatically be retrofitted to meet revised API standards. The term "or latest revised standard" has been removed from the standards. New API standards will be reviewed before being adopted in rulemakings amending this Order. It would be improper to impose automatic tightening of standards without allowing the public an opportunity to comment during the rulemaking process. On the other hand, if API standards were relaxed, the Government should review them carefully to make sure the public interest in accurate measurement is not harmed before amending the Order.

Oil Measurement by Tank Gauging

A suggestion in several comments to revise many of the references from "ASTM" to "ANSI/ASTM" and insert "Reaffirmed 1987" was adopted throughout the Order.

One comment suggested a clarification that temperature measurements are required to be made in the tank and not from the samples. The proposed sentence was added to paragraph l, sentence 4. Another suggestion was made to add a reference to ANSI/ASTM D-1250 Tables 5A and 6A. The suggestion was adopted in the final rulemaking.

One comment suggested amendments to allow line sampling of the tank contents during delivery, measurement of API gravity and sediment and water content at laboratories offlease, and volume and gravity corrections after liquid level measurements have been completed. Line sampling and volume and gravity corrections may be appropriate in special cases but are generally not applicable to measurements onsite on the lease. Nothing in the Order precludes the determination of API gravity and sediment and water contents at laboratories off the lease so long as the determinations are made prior to sale or removal of the oil from the lease. One comment suggested that sampling of the oil be accomplished after gauging. This suggestion was not adopted because gauging prior to sampling could cause a contaminated sample, resulting in incorrect measurements of oil quality.

Standard No. 1—Sales Tank Equipment

Two comments were made recommending the removal of API RP-12 Rl from the Order because it is an API recommended practice. The recommended practice of the API in this case is the primary reference industry-wide for setting, connecting, maintaining, and operating lease tanks, and therefore it has been adopted as the only available and reasonable minimum standard. One comment stated that RP-12 Rl does not apply to large welded tanks used in some custody transfers. RP-12 Rl relates directly to lease production and is acceptable as a minimum standard.

Several comments suggested that, given the complexity of many API standards, the proposed Order is too detailed. They suggested that a simple reference to the API standards would be more appropriate rather than the inclusion of many specific and detailed standards. The complexity of the published standards is recognized, but inclusion of the standards in detail is appropriate because each carries a specific violation, corrective action, and abatement period. However, there were many revisions made to clarify the wording and a significant amount of consolidation of standards. The consolidation of separate standards into a single standard in some cases clarifies the intent and makes the Order easier to read.

A few comments recommended that the abatement period for installation of a proper pressure vacuum thief hatch and/or ventline valve be extended from 5 days to 30 days to allow a more reasonable time period to do the work. This recommendation was adopted. One comment stated that the standard has no direct bearing on the quality of measurement and should be removed or downgraded to a minor violation. This recommendation was not adopted. The absence of this equipment could adversely affect the quality of some grades of oil and could, therefore, adversely affect the royalty payments due the Federal Government. Where the quality of the oil could not be affected, as, for example, when the lighter constituents of the oil, which have lower vapor pressures, are absent, a variance could be requested.

As suggested by a comment, the standard (III.C.1.b.) regarding tank connections and sealable valves was removed from this Order. This subject is adequately covered in Onshore Order No. 3.

A number of comments addressed the requirement for a gauging reference point. Most stated that a reference point is not necessary unless "outage gauging" is being used. BLM agrees with the statements regarding outage gauging, but does not agree that the reference point is not necessary at all. The upper lip (seal point) of the thief hatch may be designated as the reference point. The operator/lessee is responsible for setting the reference point, and the owner of the tank, if not the operator/lessee, should agree on the reference point. BLM will not be involved except to inspect for accuracy. The designation of such a reference point is required to be stenciled on the tank near the hatch.

Standard No. 2—Sales Tank Calibrations

A number of comments addressed the requirement for tank calibrations, most of them suggesting reduction of the violation from major to minor and extension of the abatement period to 60 days for the calibration of sales tanks. With regard to the first recommendation, the reduction of the gravity of the violation to minor is reasonable because losses may be recouped through recalculation of the measurement after recalibration of the tank. As for the second recommendation, recalibration may require as much as 60 days. These recommendations have been adopted. One comment recommended a clarification for sales tank recalibration by replacing the word "removed" with the words "relocated or repaired". This recommendation was adopted because it more fully covers the circumstances that require recalibration. One additional reference, API RP 2556, was also inserted, based on comments.

Several comments objected to the automatic submission of all tank calibration tables to the authorized officer and recommended that they be submitted only on request of the authorized officer. This recommendation was adopted as a way of reducing unnecessary paperwork.

Standard No. 3—Oil Sampling

A number of comments were received on oil sampling. One comment recommended minor changes to the API reference title and the addition of

another reference concerned with automatic sampling. Both amendments further clarified the reference sources and were adopted. One comment suggested that sampling should be done after gauging and another recommended that the violation be changed from major to a minor. These recommendations were not adopted for reasons discussed above under Section C, Oil Measurement by Tank Gauging.

Standard No. 4—Sales Tank Gauging

A number of comments were received, some of which pertained to the type and accuracy of the working tapes and the methods of certifying the accuracy of the tapes with respect to National Bureau of Standards (NBS) standards. A few comments offered the rationale that when checking a working tape against a tape certified as accurate to NBS standards, NBS traceability is achieved. This rationale is acceptable and expresses fully the intent of the standard. Working tapes used in the field do not need to be individually certified, and proper measurement can be attained by using tapes which are traceable to a certified tape and are warranted by the manufacturer as accurate. One comment suggested the violation be changed to minor. Inaccuracies introduced by defective tapes may cause a loss of royalty to the government which cannot be recouped and the violation is therefore considered to be major.

Standard No. 5—Oil Gravity

Several comments were received, two concerning the API references. Changes and additions were adopted as recommended in order to incorporate a reference to a field thermohydrometer test. Two comments stated that API is incorporating ASTM D-287 into the Chapter 9 series of test procedures. BLM will evaluate the proposed thermohydrometer test when it is published, and if acceptable, may authorize its use. Some comments recommended that traceability of the field instrument be established for comparison of the instrument with an instrument certified to NBS standards. BLM agrees that working themohydrometers do not need to be individually certified and that proper measurement can be obtained by using a thermohydrometer which is checked against one certified to be accurate to NBS standards and warranted by the manufacturer as accurate. Several comments addressed the tolerances allowed in measuring the temperature and gravity. The recommendations were evaluated and adopted as more practical, based on field experience. The word "observed" was inserted, so that the phrase reads "the observed gravity", and the measurements were changed to read to the nearest 1° F for temperature and to the nearest 0.1° API gravity, principally because the gradations on the thermometers and other devices are marked in these intervals.

Standard No. 6—Tank Temperature

Numerous comments were received, four of which recommended that thermometer accuracy could be attained by using the method of traceability. The recommendations were adopted and applied in a manner similar to that applied to gauging tapes and thermohydrometers. Five comments suggested that the Order provide for the use of portable electronic thermometers for static temperature determinations. It is recognized that portable electronic thermometers may be in use. This method will be evaluated and may be approved on a case-by-case basis by the authorized officer. One comment stated that the API standard 2543 requires one temperature measurement for tanks of 5,000 bbls or less. Nevertheless, for the sake of accuracy, BLM will continue to require that a temperature reading be taken on both opening and closing gauges. One comment suggested that the violation be made minor rather than major. The suggestion was not adopted because of potential adverse effects on the measurement.

Standard No. 7—Sediment and Water

Several comments addressed the API reference, the complexities of the determinations, and stated that the standard was being revised. Some comments suggested that the entire section be removed from the Order. Following a review of the Order and API references, it was decided to maintain the standards with only minor revisions, because they were substantially correct as written. One comment suggested that the Order be changed to allow the use of 100 percent centrifuge tubes. The Order does not prohibit or restrict the use of 100 percent centrifuge tubes. A discussion on this tube was not included because the amount of sediment and water can be read directly from the graduations on the tube.

As suggested in a comment, the temperature for heating samples prior to centrifuging was changed to 140° F. to reflect the new API standard developed following publication of the proposed Order.

D. Oil Measurement by Positive Displacement Metering System

Several comments suggested changes in the wording of and additions to the API references. Most were adopted to clarify the objective of the standards. The term "shut-in LACT" was removed throughout this section because it may not be necessary in all cases and the authorized officer may approve other courses of action.

Standard No. D1—LACT Unit Components

Several comments addressed additional components and recommended that they be added to the Order. The components, automatic temperature/gravity compensator, and sediment and water monitor, were added, along with appropriate descriptions. The term "shut-off valve" was included in addition to "diverter valve" because either may be used. Descriptions of the required operation of the charging pump and motor, air eliminator, and diverter valve or shut-off valve were added, because they were inadvertently left out of the proposed Order.

Two comments addressed by-pass piping. After a review of the standard, it was decided to remove it entirely from the measurement orders because it is adequately covered in Order No. 3.

Some comments stated that accessibility of the LACT for inspection needs further clarification. In response, the word "reasonable" was inserted before the word "inspection". Inspections will be accomplished during normal working hours except in cases of unusual circumstances, which would require notification.

Several comments were made regarding LACT failure and consequent notification to the authorized officer. The wording of this standard was changed to require notification of the authorized officer that an alternate method of measurement was used. The gravity of the violation was changed from major to minor because no nonrecoupable loss would be likely to occur in case of a violation. A suggestion to change the abatement period to 30 days was not adopted because 5 business days is sufficient and prompt notification is needed for proper production accountability.

Standard No. D2—Operating Requirements for LACT Unit Components

Sampler

Several comments were made regarding the positioning of the sample probe. The standard was taken from API Chapter 8.2 and is believed to be adequate without change.

One comment suggested that the standard be modified to permit the use

of densitometers and pycnometers for the measurement of gravity. BLM believes the standards in the Order are sufficient as minimums.

Composite Sample Container

The standard and corrective action were changed in response to comments to specify emptying the container after each sample withdrawal. One comment recommended additional requirements for the sample container, such as a back pressure regulator and a vacuum breaker. These design features are desirable, but not necessary for a minimum standard.

Mixing System—Strainer

A few comments were received suggesting minor rewording of this standard. The word "noncorrosive" was changed to "corrosion resistant" as recommended because it is recognized that no material is truly non-corrosive. The suggestion to change the word "testing" to "measurement" regarding the properties of the sample was not adopted. "Testing" seems more appropriate for this standard.

Positive Displacement Meter

Two comments recommended changing the corrective action for a meter without a nonresettable totalizer. An appropriate change was made to allow replacement of either the meter or the totalizer. One comment reiterated that it is in the interest of the operator that the meter perform correctly and, therefore, the violation should be changed to minor. The supposition that self-interest of the operator assures proper performance of the meter may not always be the case. Many times the operator has only limited control of the measurement device. Unrecorded oil sales or transfers have the potential for nonrecoupable losses of royalties, and the recommendation was not adopted.

Meter Proving Connections

Several comments were submitted. One comment recommended that a clarification be made to the prover connection allowing for multiple valves. Other comments requested clarification of the positioning of the back pressure valve and check valve. By combining and rewording the standards, the needed clarification was made and the standard is now adequate and sufficient.

Standard No. D.3—Sales Meter Proving Requirements

One comment argued that the corrective action for proving a meter with an unacceptable prover does not require a shut-in of the LACT because volume adjustments can be made to the previously measured volumes. The provision has been amended as suggested. The violation was changed to minor and the abatement period to 30 days, because no nonrecoupable loss of royalty would be caused by a violation.

Three comments requested clarification on the notification of the authorized officer when positive displacement meters are proved. The submission of the schedule of meter provings is required to permit the authorized officer to be present for the proving.

Several comments were submitted stating that only the prover should be responsible for the on-site possession of evidence that the meter prover has been calibrated, and that if a master meter prover is utilized, evidence be available on the site that said meter has been calibrated to the stated tolerances. The standard was amended to place the responsibility for the required documentaton on the prover, who has custody of the equipment. However, the abatement period remains "prior to proving".

It is assumed that any irregularities in calibration or proving of the LACT meter will be corrected during the calibration or proving of the meter as prescribed in the Order. Irregularities (failure properly to calibrate or prove the LACT meter) discovered after the proving shall be treated as a violation. An incidence of noncompliance will be issued stating the appropriate corrective action and abatement period. Accordingly, the abatement periods in this section of the Order are prior to completion of the calibration or proving.

Two comments were made objecting to the required frequency to prove meters upon initial installation or following repair and at least monthly thereafter for the first three months. It is agreed that this requirement may be excessive. The standard has been modified appropriately and the abatement period changed to 10 business days.

A few comments recommended changes to the requirement for bi-weekly LACT meter provings whenever the throughput exceeds 100,000 bbl per month and recommended that the provings be made monthly. Following a review of the standard and its historical application in the field, it is agreed that the frequency should be monthly and the abatement period has been changed to 10th business day.

Establishing the Operating Meter Factor

Several comments objected to the tolerance 0.0005 in establishing a meter factor and the level of major for violation of the standard. After due consideration, the standard is considered to be correct and the violation is appropriately classified as major. The rationale for this decision is that improperly established meter factors can result in losses of royalty which cannot be recouped by recalculation. The addition of "(0.05%)" was made for clarity, rather than a substitution as suggested in one comment. The corrective action was changed accordingly and the abatement period was changed to 10 business days.

One comment addressed correction for the effect of pressure and temperature on steel (Cps) and (Cts). The comment observed that these corrections apply only to provers. In response to this comment the standard was changed. One comment stated that a properly determined meter factor could be accurate, but could have a value well outside the brackets of 0.9950 to 1.0050. It is agreed that there is such a possibility, but the factor will be required to be within the specified bracket unless the deviation can be justified to the satisfaction of the authorized officer. The violation was changed from major to minor, because inaccurate measurements of this type can be recalculated following recalibration, and a corrected report submitted. The corrective action was clarified and abatement period modified.

Standard No. D.4—Excessive Meter Factor Deviation

Two comments offered suggestions for the calculation of volumetric corrections when excessive meter factor deviation is discovered. One comment observed that current industry practice provides for correction of the error for one-half of the period between current and previous tests. A second comment recommended the Order be made consistent with Minerals Management Service (MMS), 30 CFR Parts 250 and 256, which state the procedures for dealing with meter malfunctions. Following a review of MMS regulations, it was decided to adopt this recommendation. This change in the Order does not in any way relieve the operator/lessee of the responsibility of notifying the authorized officer of meter malfunction or meter failure.

Several comments discussed the standard requiring that a meter factor shall not exceed 1 percent above or below unity. One comment suggested increasing the allowable deviation to 2 percent while another comment recommended the removal of the standard in its entirety. The added explanation under Excessive Meter Factor Deviation (III–D–4) is adequate to

answer these comments and offers a definite method for recalculation of volumes when excessive meter factor deviation or meter factor malfunction occurs. The violation has been changed from major to minor because recalibration will enable the meter factor to be recalculated.

Standard No. D.5—Meter Reporting Requirements

Two comments addressed the forms set out in API Chapter 12 for filing meter proving reports. One comment observed that these forms are only examples and are not intended to be used as a standard form. Another comment recommended an addition to the standard to allow the use of the forms in API Chapter 12 or any similar formats provided all the data are included. It is agreed that the intent of the standard is properly served so long as the report is filed in a timely manner and includes all the data as prescribed on the forms specified by API. Several comments recommended the extension of time for abatement ranging from 15 to 30 days. This recommendation was not deemed appropriate and was not adopted. Proving reports should be available to the operator at the time of proving and the 10 business days is considered reasonable.

E. Oil Measurement by Other Methods or at Other Locations Acceptable to the Authorized Officer

Standard No. E.1—Measurement on Lease, Unit or Communitized Area

One comment objected to the violation being classified as major and another recommended approval of turbine meters for use, and any other method approved by API, without first obtaining approval from the authorized officer. In answer to the first comment, the violation is considered major because there is the potential for immediate and adverse impact on royalty collection and nonrecoupable loss due to possible improper or inaccurate measurement. In answer to the latter comment, 43 CFR 3162.7–2, Measurement of Oil, specifically restricts the measurement of oil, without prior approval, to tank gauging and positive displacement metering systems.

Standard No. E.2—Measurement at a Location Off the Lease, Unit, Unit Participating Area, or Communitized Area

Several comments addressed off-lease measurement. One comment agreed that prior approval is in order, but emphasized that such approval should not be unreasonably delayed, and stated that the violation should not be classified as major. An application for off-lease measurement is not automatically approved. The necessary data is required to be submitted for study and a justification for such an action is required to be made to the authorized officer. If the application is complete and proper justification is provided, the BLM will make a timely decision. The violation is major because there is potential for improper measurement or allocation and adverse impacts on royalty payments that may not be recoupable. Another comment objected to the necessity for obtaining prior approval for existing off-lease measurement. The phase-in period of 6 months is considered sufficient time to obtain needed approvals; however, existing off-lease measurement should have been approved by the authorized officer even without the advent of this Order. For consistency, the abatement period was changed to 20 days.

F. Determination of Oil Volumes by Methods Other Than Measurement

One comment observed that the cost of recording and reporting would exceed the income from the oil. Recording and reporting are required by the Federal Oil and Gas Royalty Management Act. Several other comments agreed with the need for the standards. One comment suggested clarifying the intent by inserting the words "or disposed of" following the words "may be classified". This suggestion was adopted because it recognizes a possible alternative disposition of waste oil.

Concerning slop oil, in response to comments, the standard was rewritten to require only that the authorized officer be notified of the volume sold or disposed of and the method of computation of the volume for proper product accountability.

IV. Variances from Minimum Standards

Two comments recommended that both oral requests and approvals be allowed so long as the oral request was followed by a written request not later than the fifth business day following oral approval. This recommendation is acceptable and is adopted. In addition, the standard was expanded to include language allowing authorized officers to issue Notice to Lessees (NTLs) on their own motion and establish modified standards or variances for specific areas of operation. A provision for the authorized officer to protect royalty income and provide for proper product verification by requiring additional standards was also included to provide administrative flexibility. While situations requiring additional standards should be infrequent, it must be remembered that the Order consists of minimum standards, not necessarily optimum standards applicable to every situation on a nationwide basis. When additional standards are required, the operator/lessee will be notified in writing, the additional requirements will be reasonable, and the rationale for imposing the standards will be fully explained.

The principal authors of this final rulemaking are Richard T. Hunter, Lakewood, Colorado; Joe Delozier, Bakersfield, California; Terry Messerli, Billings, Montana; Upendra Parikh, Jackson, Mississippi; and Joe Chesser, Santa Fe, New Mexico, of the Bureau of Land Management Orders Committee responsible for the development and issuance of this Order, assisted by the Orders Task Group, the staff of the Division of Legislation and Regulatory Management, Bureau of Land Management, the Office of the Solicitor, Department of the Interior, and Raymond W. Vinyard, retired from the Bureau of Land Management. Ronald Heath, Minerals Management Service, was also a part of the Orders Committee and assisted on royalty accounting issues.

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

The final Order will have no adverse economic effects, because its requirements reflect the operating practices currently followed by prudent operators when oil production is measured in accordance with the standards and practices recommended by the American Petroleum Institute. The final Order may provide a beneficial economic effect. Industry is less likely to be subjected to assessments or penalties resulting from violations and/or the requirement to undertake costly remedial actions, if it has a better understanding of the requirements of the Bureau of Land Management that relate to the measurement of oil production. The State Governments that share in the royalties collected and Indian mineral owners will also benefit from assurance of more accurate oil measurement. The minimum standards established by this Order essentially are those that have been required but not officially promulgated by this Department and impose the same burden on all lessees and operators, regardless of the size of

the entity, on lands where the measurement of oil production is under the jurisdiction of the Bureau of Land Management. Therefore, the Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*

The Order does not affect current information collection and recordkeeping requirements. The information collection requirements contained in the Order have been approved by the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*, and assigned clearance numbers 1004–0134, 1004–0135, and 1004–0136.

List of Subjects in 43 CFR Part 3160

Government contracts, Indian lands—mineral resources, Mineral royalties, Oil and gas exploration, Oil and gas production, Public lands—mineral resources, Reporting requirements.

Under the authorities cited below, Part 3160, Group 3100, Subchapter C, Chapter II of Title 43 of the Code of Federal Regulations is amended as set forth below:

January 3, 1989.

James E. Cason,

Acting Assistant Secretary of the Interior.

PART 3160—[AMENDED]

1. The authority citation for Part 3160 continues to read:

Authority: The Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 *et seq.*), the Mineral Leasing Act for Acquired Lands of 1974, as amended (30 U.S.C. 351–359), the Act of May 31, 1930 (30 U.S.C. 301–306), the Act of March 3, 1909, as amended (25 U.S.C. 396), the Act of May 11, 1938, as amended (25 U.S.C. 396a–396q), the Act of February 28, 1891, as amended (25 U.S.C. 397), the Act of May 29, 1924 (25 U.S.C. 398), the Act of March 3, 1927 (25 U.S.C. 398a–398e) the Act of June 30, 1919, as amended (25 U.S.C. 399), R.S. 441 (43 U.S.C. 1457), See also Attorney General's Opinion of April 2, 1941 (40 Op. Atty. Gen. 41), the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 471 *et seq.*), the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), the Act of December 12, 1980 (42 U.S.C. 6508), the Combined Hydrocarbon Leasing Act of 1981 (Pub. L. 97–78), the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1701 *et seq.*) and the Indian Mineral Development Act of 1982 (25 U.S.C. 2102 *et seq.*).

2. Section 3164.1(b) is amended by adding the following entry to the table:

§ 3164.1 Onshore Oil and Gas Orders.

* * * * *

(b) * * *

Order No.	Subject	Effective date	FR Reference	Supersedes
*	*	*	*	*
4.	Measurement of oil.			None.

Note: Numbers will be assigned by the Washington Office, Bureau of Land Management, to additional Orders as they are prepared for publication and added to this table.

Appendix—Text of Oil and Gas Order No. 4

Note: This appendix will not appear in the Code of Federal Regulations.

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I. Sections from 43 CFR Subparts 3163 and 3165.

ONSHORE OIL AND GAS ORDER NO. 4

Federal and Indian Oil and Gas Leases—Measurement of Oil

I. Introduction

A. Authority

This Order is established pursuant to the authority granted to the Secretary of the Interior under various Federal and Indian mineral leasing statutes and the Federal Oil and Gas Royalty Management Act of 1982. This authority has been delegated to the Bureau of Land Management and is implemented by the onshore oil and gas operations regulations contained in Title 43 CFR Part 3160. Section 3164.1 specifically authorizes the Director, Bureau of Land Management, to issue Onshore Oil and Gas Orders when necessary to implement or supplement the operating regulations, and provides that all such Orders shall be binding on the lessees and operators of Federal and restricted Indian oil and gas leases which have been, or may hereafter be, issued.

Specific authority for the provisions contained in this Order is found at § 3162.7–1, *Disposition of Production*; § 3162.7–2, *Measurement of Oil*; and Subpart 3163, *Noncompliance and Assessment.*

B. Purpose

One purpose of this Order is to establish requirements and minimum standards for the measurement of oil, and to provide standard operating practices for lease oil storage and handling facilities, by the methods authorized in 43 CFR 3162.7–2, i.e., measurement by tank gauging, positive displacement metering system, or other methods acceptable to the authorized officer. Proper oil measurement ensures that the Federal Government and Indian mineral owners receive the royalties due, as specified in the governing oil and gas leases.

Another purpose of this Order is to establish abatement periods for corrective action when noncompliance with the minimum standards is detected. This Order also serves as notice to any party cited for noncompliance that it may request from the authorized officer an extension of the abatement period for any violation, provided that the request for extension is applied for and granted prior to the expiration of the abatement period previously allowed.

C. Scope

This Order is applicable to all Federal and Indian (except Osage) oil and gas leases. In addition, this Order is also applicable to all wells and facilities on State or privately owned mineral lands committed to a unit or communitization agreement that affects Federal or Indian interests, notwithstanding any provision of a unit or communitization agreement to the contrary.

II. Definitions

A. Authorized officer means any employee of the Bureau of Land Management authorized to perform the duties described in Groups 3000 and 3100. (See 43 CFR 3000.0–5.)

B. Barrel (bbl) means 42 standard United States gallons of 231 cubic inches each.

C. Business day means any day Monday through Friday excluding Federal holidays.

D. Cpl. means the correction factor for the effect of pressure on liquid.

E. Cps. means the correction factor for the effect of pressure on steel.

F. Ctl. means the correction factor for the effect of temperature on liquid.

G. Cts. The correction factor for the effect of temperature on steel.

H. INC means incident of noncompliance, which serves as a Notice of Violation under 43 CFR Subpart 3163.

I. Lessee means a person or entity holding record title in a lease issued by the United States. (See 43 CFR 3160.0–5).

J. Major violation means noncompliance which causes or threatens immediate, substantial, and adverse impact on public health and safety, the environment, production accountability, or royalty income (43 CFR 3160.0–5).

K. Minor violation means noncompliance which does not rise to the level of a "major violation" (43 CFR 3160.0–5).

L. Operating rights owner means a person or entity holding operating rights in a lease issued by the United States. A lessee also may be an operating rights owner if the operating rights in a lease or portion thereof have not been severed from record title (43 CFR 3160.0–5).

M. Operator means any person or entity, including but not limited to the lessee or operating rights owner, who has stated in writing to the authorized officer that it is responsible under the terms and conditions of the lease for the operations conducted on the leased lands or portions thereof (43 CFR 3160.0–5).

N. Oil, for the purposes of this Order, shall mean all liquid hydrocarbons produced from or for the benefit of jurisdictional leases, including condensate and oil from tar sands that is measured as a liquid.

N.1. Clean Oil/Pipeline Oil means crude oil or condensate that is of such quality that it is acceptable to normal purchasers.

N.2. Slop oil means crude oil that is of such quality that it is not acceptable to normal purchasers and which requires special treatment other than that which can economically be provided at the existing or modified facilities or portable equipment and is usually sold to oil reclaimers.

N.3. Waste oil means lease crude oil that has been determined by the authorized officer to be of such quality that it cannot be treated economically and put in a marketable condition with existing or modified lease facilities or portable equipment and cannot be sold to reclaimers and also has been determined by the authorized officer to have no economic value and for which royalty is not due.

III. Requirements

A. Required Recordkeeping

The operator shall keep all test data, meter reports, charts/recordings, or other similar records for 6 years from the date they were generated, or if involved in an audit or investigation, the records shall be maintained until the record holder is released by the Secretary from the obligation to maintain them. The authorized officer may request these records any time within this period. Records submitted shall include all additional information used to compute volumes so that computations may be verified.

B. General (See 43 CFR 3162.7–2)

1. The regulations at 43 CFR 3162.7–2 authorize oil measurement methods for production from leases, units, and communitization agreements subject to the jurisdiction of the Bureau of Land Management, as such jurisdiction is defined in 43 CFR 3161.1. The authorized oil measurement methods are tank gauging, positive displacement metering systems, and other methods acceptable to the authorized officer. The requirements and minimum standards for each of these methods are set forth below.

2. These requirements and minimum standards are based on the standards and practices recommended by the American Petroleum Institute (API). The API standards and recommended practices are considered by both the Department of the Interior and the oil and gas industry to be appropriate for proper oil measurement. The requirements and minimum standards set out herein are those necessary to promote conservation of natural resources and to ensure that oil production, except for waste oil, is properly measured for sales and allocation purposes, in order that the Federal Government and Indian mineral owners will receive the royalties due under governing oil and gas leases. When an infraction of the minimum standards in this Order is discovered it will be considered noncompliance and an incident of noncompliance (INC) will be issued. Operators who discover noncompliance with these minimum standards and take immediate corrective action will not be issued an INC. If the authorized officer or his representative is present when an operator discovers a malfunction or does not use correct procedures as specified in this Order, an INC will be issued unless immediate corrective action is taken.

A major violation as defined in this Order will generally require an immediate shut-in of the metering device. However, where the non-recoupable loss is not significant or where damage to the resource is likely to occur if a shut-in is required, an abatement period of 24 hours may be given.

The intent of these minimum standards is to ensure that when equipment malfunctions that could result in inaccurate measurement occur, that proper corrective actions are taken, the authorized officer is notified, and an amended production report is submitted.

Equipment failure that is discovered by the operator and promptly corrected will not be considered a violation. However, the incidents of noncompliance that may result from equipment failure are considered violations, and a partial list is as follows:

Failure to install equipment properly.

Failure to repair or correct equipment malfunction properly or in a timely manner.

Failure to submit report of alternate method of measurement for sales.

Failure to submit amended production reports in a timely manner.

Failure to adhere to the minimum standard procedures specified in this Order.

The use of improper equipment, when discovered, will be considered a violation, and an INC will be issued.

The use of improper procedures will be considered a violation and, when witnessed by the authorized officer or his representative, immediate corrective action will be required. In the event that proper procedures are then used as required by this Order, and prior to completing the operation, calibration, or proving, the violation will be considered as properly corrected. In this case, although the violation will be documented in the agency files, no formal INC will be issued.

All future sales and allocation facilities and sales or allocation facilities in existence on the effective date of this Order, unless covered by a valid variance, shall meet the minimum standards prescribed in this Order.

Meter installations constructed in accordance with the API standards in effect at that time shall not automatically be required to retrofit to meet revised API standards. The Bureau will review any revised API standards, and when deemed necessary will amend the Order accordingly through the rulemaking process.

Any variances from these requirements and minimum standards shall be in accordance with section IV of this Order.

3. A violation of a minimum standard established by this Order shall be abated within the time period specified.

Where abatement is required "prior to sales or removal", this means that necessary actions shall be taken so that no oil may be removed beyond the measurement point until properly measured.

If any such violation is not abated within the required period, action shall be initiated in accordance with 43 CFR Subpart 3163.

C. Oil Measurement by Tank Gauging

Oil measurement by tank gauging shall accurately compute the volume of oil withdrawn from a properly calibrated sales tank by measuring the height of the oil level in the tank before delivery (opening gauge) and then measuring the height of the oil level in the tank after delivery (closing gauge). The opening and closing gauges are then used with the tank calibration charts (tank tables) to compute accurately the volume of oil withdrawn. Gauging may be accomplished by measuring the height of the oil level from the tank bottom or a fixed datum plate upward to the surface of the oil in the tank (innage gauging) or by measuring from a fixed reference point at the top of the tank downward to the surface of the oil in the tank (outage gauging). Samples shall be taken from the oil before gauging to determine API oil gravity and sediment and water content. Prior to gauging, the temperature of the oil shall be determined from measurements made in the tank. The measured oil volume shall then be corrected for sediment and water content, and to the standard sales temperature of 60° F.

The following requirements and minimum standards shall be accomplished in accordance with API Standard 2545 (ANSI/ASTM D 1085) "Method of Gauging Petroleum and Petroleum Products," 1985, reaffirmed in 1987, and (ANSI/ASTM D–1250), Tables 5A and 6A.

1. *Sales Tank Equipment.* Each oil storage tank to be used for oil sales by tank gauging shall be properly equipped for such gauging, using the "API Recommended Practice for Setting, Connecting, Maintenance, and Operation of Lease Tanks, API RP 12 R1," 1986. Tanks shall also be connected, maintained, and operated so as to comply with the Site Security Regulations, 43 CFR 3162.7–5, and Onshore Order No. 3, and sales tanks shall meet the following requirements:

a. Each sales tank shall be equipped with a pressure-vaccum thief hatch and/or vent-line valve.

Violation: Major.

Corrective Action: Install proper thief hatch and/or vent line valve or drain.

Abatement Period: 30 days.

b. Each sales tank shall be set and maintained level and free of distortion in accordance with the above-referenced API recommended practice.

Violation: Major.

Corrective Action: Level tank.

Abatement Period: Prior to sales.

c. Pursuant to API Standard 2545 (ANSI/ASTM D 1085), "Method of Gauging Petroleum and Petroleum Products," October 1965 (reaffirmed August 1987), each tank shall be equipped with a gauging reference point, with the height of the reference point stamped on a fixed bench-mark plate or stenciled on the tank near the gauging hatch.

Violation: Minor.

Corrective Action: Affix a gauging reference point in gauging hatch and stamp on bench-mark plate or stencil on tank near gauging hatch.

Abatement Period: 30 days.

2. *Sales Tank Calibrations.* Each oil storage tank to be used for oil sales by tank gauging shall be accurately calibrated for such gauging, using the API Standard 2550 (ANSI/ASTM D 1220), "Method for Measurement and Calibration of Upright Cylindrical Tanks," 1965, reaffirmed August 1987, and API RP 2556, "Correcting Gauge Tables for Incrustation", August 1968. The following minimum standards shall be satisfied:

a. Sales tank capacities shall be determined by actual tank measurements by the method known as "tank calibration," and in accordance with the above-referenced API Standards.

Violation: Minor.

Corrective Action: Make capacity determination and develop appropriate capacity table.

Abatement Period: 60 days.

b. A sales tank shall be recalibrated if it is relocated or repaired or the capacity is changed through denting, damage, or installation or removal of interior components, or otherwise.

Violation: Minor.

Corrective Action: Recalibrate tank and develop new (revised) capacity table.

Abatement Period: 60 days.

c. Calibration charts (tank tables) shall be submitted to the authorized officer on request.

Violation: Minor.

Corrective Action: Submit tables to authorized officer.

Abatement Period: 30 days.

3. *Oil Sampling.* Sampling of oil to be sold from sales tanks is required and shall be conducted in such fashion as to yield a representative sample of the oil for purposes of determining the physical properties of the oil, following the "API Manual of Petroleum Measurement Standards, Chapter 8.1—Manual Sampling" (ASTM D 4057) October 1981 (Reaffirmed August 1987), or Chapter 8.2—Automatic Sampling of Petroleum and Petroleum Products, April 1983 (Reaffirmed August 1987), and shall meet the following minimum standard. All samples shall be taken from the contents of the sales tank prior to gauging, after allowing the tank contents to settle for at least 30 minutes following isolation of the tank, in accordance with the procedures specified in the above-referenced API standard.

Violation: Major.

Corrective Action: Repeat sampling procedure.

Abatement Period: Prior to sales or removal.

4. *Sales Tank Gauging.* Gauging of oil sales tanks is required and shall be accomplished in such fashion as to measure the contents of the tank accurately, following API Standard 2545 (ANSI/ASTM D 1085), "Method of Gauging Petroleum and Petroleum Products" 1965 (Reaffirmed August 1987), and shall meet the following minimum standards.

a. Gauging shall be accomplished using gauging tapes made of steel or corrosion-resistant material with graduation clearly legible, not kinked or spliced, and traceable to the standards of the National Bureau of Standards and certified as accurate by either the manufacturer or an independent testing facility. Working tapes, when checked against a tape certified to NBS standards, will be allowed as NBS traceable.

Violation: Major.

Corrective Action: Replace tape.

Abatement Period: Prior to sales or removal.

b. Acceptable gauging requires 2 identical gauges to the nearest ¼ inch for tanks with a capacity of less than 1,000 barrels, and 2 identical gauges to the nearest ⅛ inch for tanks with a capacity of 1,000 barrels or more.

Violation: Major.

Corrective Action: Repeat gauging until 2 identical readings are obtained.

Abatement Period: Prior to sales or removal.

c. The proper bob for innage gauging or outage gauging shall be used in accordance with the above-referenced API standard.

Violation: Major.

Corrective Action: Repeat gauging using proper bob.

Abatement Period: Prior to sales or removal.

5. *Oil Gravity.* Tests for oil gravity are required, following the "API Manual of Petroleum Measurement Standards Chapter 9—Density Determination" (ASTM D 1298–80) 1981, and (ASTM D 287–82) "Standard Test Method for API Gravity of Crude Petroleum and Petroleum Products" (Hydrometer Method), and shall be performed on a representative sales tank oil sample obtained following "API Manual of Petroleum Measurement Standards Chapter 8.1, "Manual Sampling of Petroleum and Petroleum Products" (ASTM D 4057) October 1981 (Reaffirmed August 1987). Gravity tests shall meet the following minimum standards.

a. All gravity determinations shall be completed before oil sales are made.

Violation: Major.

Corrective Action: Obtain sample from sales tank and determine oil gravity.

Abatement Period: Prior to sales or removal.

b. Accuracy of all instruments used to determine oil gravity for oil sales purposes shall be traceable to the standards of the National Bureau of Standards and certified as accurate by either the manufacturer or independent testing facility.

Violation: Major.

Corrective Action: Replace instruments.

Abatement Period: Prior to sales or removal.

c. The instrument used to obtain the oil gravity shall be clean, with no loose shot weights or detached gravity scale.

Violation: Major.

Corrective Action: Clean and/or replace hydrometer.

Abatement Period: Prior to sales or removal.

d. The instrument used to obtain the oil gravity shall be calibrated for a gravity range that includes the observed gravity of the oil sample being tested.

Violation: Major.

Corrective Action: Repeat gravity tests using hydrometer with proper scale.

Abatement Period: Prior to sales or removal.

e. Temperatures shall be measured and recorded to the nearest 1.0 °F.

Violation: Major.

Corrective Action: Repeat test, measuring and recording temperature to nearest 1.0 °F.

Abatement Period: Prior to sales or removal.

f. Liquid density (gravity) will be measured and recorded to the nearest 0.1 °API gravity, making any necessary meniscus correction. The observed gravity shall be corrected to 60 °F. using Table 5A, "Table 5A—Generalized Crude Oils" and JP–4, Correction of Observed Gravity to API Gravity at 60 °F.

Violation: Major.

Corrective Action: Repeat test, measuring and recording gravity to nearest 0.1 ° API gravity after making necessary correction for fluid meniscus.

Abatement Period: Prior to sales or removal.

6. *Tank Temperature.* Determination of the temperature of oil contained in a sales tank is required following the "API Standard 2543 Method of Measuring the Temperature of Petroleum and Petroleum Products" (ANSI/ASTM D–1086) October 1965 (Reaffirmed August 1987), and shall meet the following minimum standards:

a. Accuracy of all thermometers used for oil sales purposes shall be traceable to the standards of the National Bureau of Standards and certified as accurate by either the manufacturer or independent testing facility. Working thermometers shall be checked against a thermometer certified as accurate to NBS standards and their use shall be permitted.

Violation: Major.

Corrective Action: Replace thermometer.

Abatement Period: Prior to sales or removal.

b. Thermometers shall be kept clean and free of mercury separation.

The temperature measurements shall be taken by immersing the thermometer to the approximate vertical center of the fluid column, not less than 12 inches from the shell of the tank, for a minimum of 5 minutes and then read and recorded to the nearest 1° F.

Violation: Major.

Corrective Action: Replace thermometer or repeat measurement as prescribed.

Abatement Period: Prior to sales or removal.

7. Sediment and Water (S & W). Determinations of the sediment and water content of oil contained in sales tanks is required following the "API Manual of Petroleum Measurement Standards Chapter 10—Sediment and Water Section 4—Determination of Sediment and Water in Crude Oils by the Centrifuge Method (Field Procedure), Second Edition, May, 1988 (ASTM 96–88), and shall meet the following minimum standards:

a. A thoroughly mixed oil sample-solvent combination, prepared in accordance with the procedure described in the above-referenced API Manual, shall be heated to at least 140° F. prior to centrifuging.

Violation: Major.

Corrective Action: Repeat procedures using the defined standards.

Abatement Period: Prior to sales or removal.

b. The heated sample shall be whirled in the centrifuge for not less than 5 minutes, and at the conclusion of centrifuging, the temperature shall be a minimum of 115° F. without water-saturated diluent, and 125° F. with water-saturated diluent.

Violation: Major.

Corrective Action: Repeat test as prescribed.

Abatement Period: Prior to sales or removal.

c. The combined volume of water and sediment at the bottom of the 100 ml. centrifuge tube shall be read:

(1) To the nearest 0.05 ml. in the range from 0.1 to 1 ml.

(2) To the nearest 0.1 ml. if above the 1 ml. graduation.

(3) Estimated to the nearest 0.025 ml. if the volume is less than 0.1 ml.

The water and sediment volume in the centrifuge tube thus determined shall be multiplied by the appropriate factor for the centrifuge tube size and oil sample-solvent ratio, as specified in the above-referenced API Manual, and the product recorded as the percentage of water and sediment.

Violation: Major.

Corrective Action: Repeat test as specified or repeat procedures using specified factors.

Abatement Period: Prior to sales or removal.

D. Oil Measurement by Positive Displacement Metering System

Oil measurement by a positive displacement metering system, for purposes of oil sales, shall be accomplished by a Lease Automatic Custody Transfer (LACT) unit designed to provide for the unattended transfer of liquid hydrocarbons from a production facility to the transporting carrier while providing proper and accurate means for the determination of net standard volume and quality, while also providing for fail-safe and tamper proof operations in accordance with the regulations at 43 CFR 3162.7–4 and Onshore Order No. 3.

A positive displacement meter is one which registers the volume passing through said meter by a system which constantly and mechanically isolates the flowing liquid into segments of known volume.

LACT unit design shall follow API Spec. 11N "API Specifications for Lease Automatic Custody Transfer (LACT) Equipment," 1979, and API Manual of

Petroleum Measurement Standards Chapter 6—Metering Assemblies, Section 1, LACT Systems, February 1981 (Reaffirmed August 1987). LACT units shall be constructed and operated so as to satisfy the following requirements and minimum standards:

1. *LACT Unit Components and General Operating Requirements.*

a. Each LACT unit shall include all of the following listed components as a minimum:

(1) Charging pump and motor.

(2) Sampler, composite sample container and mixing system.

(3) Strainer.

(4) Positive displacement meter.

(5) Meter proving connections.

(6) Meter backpressure valve and check valve.

(7) Air eliminator.

(8) Diverter valve or shut-off valve.

(9) Sediment and Water Monitor.

(10) Automatic Temperature/Gravity Compensator.

Violation: Major: a.1., 2., 4., 5., 6., and 10.

Corrective Action: Install component.

Abatement Period: Prior to sales or removal.

Violation: Minor: a.3., 7., 8., and 9.

Corrective Action: Install component.

Abatement Period: 30 days.

b. All components of LACT unit shall be accessible for reasonable inspection by the authorized officer.

Violation: Minor.

Corrective Action: Provide authorized officer with means of access to LACT.

Abatement Period: 30 days.

c. The authorized officer shall be notified of any LACT unit failure, such as electrical, meter, or other failure that results in use of an alternate method of measurement.

Violation: Minor.

Corrective Action: Notify authorized officer of alternate method used.

Abatement Period: By 5th business day following use of alternate method.

d. Any and all tests conducted on oil samples extracted from LACT samplers for determination of oil gravity and S & W content shall meet the same requirements and minimum standards specified in this Order with respect to oil measurement by tank gauging for all measurements taken of temperature, gravity, and S & W content (section III C.5., 6., and 7.)

Violation: Major.

Corrective Action: Report tests for gravity, temperature, and/or S & W content per section III C.5., 6., and 7 minimum standards.

Abatement Period: Prior to sales or removal.

2. *Operating Requirements for LACT Unit Components.* All required LACT unit components shall be operated to satisfy the following minimum standards:

a. *Charging pump and motor.* The LACT unit shall include an electrically driven pump rated for a discharge pressure and rate that are compatible with the rating for the meter used and sized to assure turbulent flow in the LACT main stream piping.

Violation: Major.

Corrective Action: Install properly designed pump and motor.

Abatement Period: Prior to sales or removal.

b. *Sampler.* The sampler probe shall extend into the center ⅓ of the flow piping in a vertical run, at least 3 pipe diameters downstream of any pipe fitting. The probe shall always be in a horizontal position.

Violation: Major.

Corrective Action: Install component properly.

Abatement Period: Prior to sales or removal.

c. *Composite Sample Container.* The composite sample container shall be capable of holding sample under pressure and shall be equipped with a vapor proof top closure and operated to prevent the unnecessary escape of vapor, and the container shall be emptied upon completion of sample withdrawal.

Violation: Major.

Corrective Action: Install component properly, and empty after each sample withdrawal.

Abatement Period: Prior to sales or removal.

d. *Mixing System.* The mixing system shall completely blend the sample into a homogeneous mixture before and during the withdrawal of a portion of the sample for testing.

Violation: Major.

Corrective Action: Repair mixing system.

Abatement Period: Prior to sales or removal.

e. *Strainer.* The strainer shall be constructed so that it may be depressurized, opened, and cleaned, be located upstream of the meter, and be made of corrosion resistant material of a mesh size no larger than ¼ inch.

Violation: Minor.

Corrective Action: Replace with properly designed strainer, and install properly.

Abatement Period: 30 days.

f. *Positive Displacement Meter.* The meter shall register volumes of oil passing through said meter determined by a system which constantly and mechanically isolates the flowing oil into segments of known volume, and be equipped with a non-resettable totalizer.

Violation: Major.

Corrective Action: Replace or repair meter or non-resettable totalizer.

Abatement Period: Prior to sales or removal.

g. *Meter Proving Connections.* All meter proving connections shall be installed downstream from the LACT meter, with the line valve(s) between the inlet and outlet of the prover loop having a double block and bleed design feature to provide for leak testing during proving operations.

Violation: Major.

Corrective Action: Relocate prover loops downstream from LACT meter, and install block and bleed valve as specified.

Abatement Period: Prior to proving LACT.

h. *Back Pressure and Check Valves.* The back pressure valve and check valve shall be installed downstream from the LACT meter.

Violation: Major.

Corrective Action: Install back pressure valve and check valve downstream from LACT meter.

Abatement Period: Prior to sales or removal.

i. *Air Eliminator.* The air eliminator shall be installed and prevent air/gas from entering the meter.

Violation: Minor.

Corrective Action: Install air eliminator.

Abatement Period: 30 days.

j. *Diverter Valve/Shut-off Valve.* The diverter valve/shut-off valve shall be activated by the Sediment and Water Monitor so that the valve moves to divert flow to the clean oil discharge only when it receives a positive signal, or provide a shut-off valve configured to shut off oil delivery upon failure to receive a positive signal from the Sediment and Water Monitor.

Violation: Minor.

Corrective Action: Install diverter/shut-off valve.

Abatement Period: 30 days.

k. *Sediment and Water (S and W) Monitor.* The Sediment and Water Monitor shall be an internally plastic coated capacitance probe, no smaller in diameter than the skid piping, and shall be mounted in a vertical pipe located upstream from the diverter valve and the meter.

Violation: Minor.

Corrective Action: Install S and W Monitor.

Abatement Period: 30 days.

l. *Automatic Temperature/Gravity Compensator.* The automatic temperature/gravity compensator shall be sized according to the fluid characteristics being measured.

Violation: Major.

Corrective Action: Install automatic temperature/gravity compensator.

Abatement Period: Prior to sales or removal.

3. *Sales Meter Proving Requirements.* LACT positive deplacement meters shall be proved periodically. Meter provings shall follow "API Manual of Petroleum Measurement Standards, Chapter 4—Proving Systems," 1978, and shall meet the following minimum standards.

a. The types of meter provers to be used, and the calibration requirements are as follows:

(1) The acceptable types of meter provers are pipe provers, tank provers, master meters, or other API recognized meter provers.

Violation: Minor.

Corrective Action: Prove again with acceptable meter prover.

Abatement Period: 30 days.

(2) The prover shall have available at the site for review by the authorized officer, evidence that the prover has been calibrated, with the certified calibration date identified by some unique number, i.e., serial number assigned to and inscribed on the prover. The calibration evidence for a pipe or tank prover shall show the certified volume as determined by the water draw method.

If a master meter is used, the most recent calibration report for said master meter shall be available. Said calibration report shall show that the master meter has been calibrated in accordance with API requirements, has an operating factor within the range from 0.9900 to 1.0100, and that 5 consecutive runs have been matched within a tolerance of 0.0002.

Violation: Minor.

Corrective Action: Provide calibration certification.

Abatement Period: Prior to proving.

b. Minimum Proving Frequency: For all sales and allocation meters, the accuracy of the measuring equipment at the point of delivery or allocation shall be tested following initial meter installation or following repair, and if proven adequate, at least quarterly thereafter unless a longer period is approved in writing by the authorized officer.

Violation: Minor.

Corrective Action: Notify authorized officer of scheduled proving and prove meter.

Abatement Period: 10 business days.

(1) In the event that the total throughput exceeds 100,000 bbl per month, then proving shall be accomplished monthly.

Violation: Minor.

Corrective Action: Notify authorized officer of scheduled proving.

Abatement Period: By the 10th business day after discovery of the violation.

c. In Establishing the Operating Meter Factor:

(1) At least 6 runs shall be made. Of these 6 runs, 5 consecutive runs shall match within a tolerance of 0.0005 (0.05 percent) between the highest and the lowest reading.

Violation: Major.

Corrective Action: Notify authorized officer and re-prove meter.

Abatement Period: 10 business days.

(2) The arithmetic average of these 5 consecutive runs shall be used for computation of the meter factor.

Violation: Minor.

Corrective Action: Compute meter factor using arithmetic average of the 5 consecutive runs.

Abatement Period: Prior to completion of proving.

(3) Meter factor computations shall also include the correction for the effect of pressure on steel (Cps) for provers; and the correction for the effect of temperature on steel (Cts) for provers; and the correction for the effect of temperature on liquid (Ctl), and the correction for the effect of pressure on liquid (Cpl). The Cps and Cts correction factors shall be determined using the "API Manual of Petroleum Measurement Standards, Chapter 12, Section 2," 1981, or latest revised standard, and the Ctl correction factor shall be obtained from the "API Standard 2540, Chapter 11.1, Volume I (ASTM D 1250–80), Table 6A," 1980, or latest revised standard, and the Cpl correction factor shall be obtained from the API Manual of Petroleum Measurement Standards, Chapter 11.2.1.

Violation: Minor.

Corrective Action: Include proper correction factors.

Abatement Period: Prior to completion of meter proving.

(4) The initial meter factor for a new or repaired meter shall be within the range from 0.9950 to 1.0050, unless the deviation can be justified to the satisfaction of the authorized officer.

Violation: Minor.

Corrective Action: Replace/repair/re-prove meter or justify deviation from the brackets 0.9950 to 1.0050 to the authorized officer.

Abatement Period: Prior to completion of proving.

4. *Excessive Meter Factor Deviation.* Excessive meter factor deviation may be evidence of meter malfunction, and corrective action shall be taken upon discovery of meter malfunction. However, if the operator determines that the meter did not, in fact, malfunction, the lessee/operator shall submit, for approval by the authorized officer, a report as to the findings and reasons for the excessive meter factor deviation and the determination of no meter malfunction. In the event a malfunction occurred, the meter shall be immediately removed from service, checked for damage or wear, adjusted and/or repaired, and re-proven prior to return to service. The arithmetic average of the malfunction factor and the previous factor shall be applied to the production measured through the meter between the date of the previous factor and the date of the malfunction factor. Malfunction meter factors shall be clearly indicated on the proving report, which shall also contain all appropriate remarks regarding subsequent repairs and/or adjustments.

The minimum standards for evidence of meter malfunction, and corrective action required, are as follows:

Meter Factor Deviation.

(1) Deviation in a meter factor shall not exceed ±0.0025 since the last proving of the meter unless explained by changing conditions, i.e., temperature or gravity or flow-rate.

Violation: Minor.

Corrective Action: Repair or replace meter, or submit report to authorized officer for approval of the findings and reasons for the determination that there is no meter malfunction.

Abatement Period: Prior to completion of meter proving.

(2) A meter factor shall not exceed 1 percent above or below unity, i.e. outside of the range from 0.9900 to 1.0100.

Violation: Minor.

Corrective Action: Same as (1), above.

Abatement Period: Prior to completion of meter proving.

5. *Meter Reporting Requirements:* All meter provings, meter failures, and volume adjustments following meter malfunction shall be reported to the authorized officer, as follows:

Meter Proving Reports. The meter proving report shall be filed on one of the forms set out in "API Manual of Petroleum Measurement Standards. Chapter 12—Calculation of Petroleum Quantities, Section 2—Calculation of Liquid Petroleum Quantities Measured by Turbine or Displacement Meters," 1981 (Reaffirmed Aug. 1987). Any similar format is acceptable provided all required data are included and proper calculation sequence is maintained.

Each meter proving report shall be identified by lease number, communitization agreement number, or unit participating area name, and the location of the facility.

Each meter proving report shall be filed with the authorized officer no later than 10 working days following the meter proving.

Violation: Minor.

Corrective Action: Submit proper proving report to authorized officer.

Abatement Period: File with authorized officer no later than the 10th business day.

E. Oil Measurement by Other Methods or at Other Locations Acceptable to the Authorized Officer

Any method of oil measurement other than tank gauging or positive displacement metering system, requires prior approval, based on applicable API standards, by the authorized officer. Other measurement methods include, but are not limited to: Turbine metering systems, Measurement by calibrated tank truck, Measurement by weight, Net oil computer.

The requirements and minimum standards for oil measurement on the lease, unit, unit participating area, or communitized area by an alternate method, or at a location off the lease, unit, unit participating area, or communitized area by either an authorized or an alternate method of measurement, are as follows:

1. *Measurement on the Lease, Unit, Unit Participating Area, or Communitized Area.*

An application for approval of an alternate oil measurement method shall be submitted to the authorized officer and written approval obtained before any such alternate oil measurement method is operated. Any lessee/operator requesting approval of any alternate oil sales measurement system shall submit performance data, actual field test results, or any other supporting data or evidence acceptable to the authorized officer, that will demonstrate that the proposed alternate oil sales measurement system will meet or exceed the objectives of the applicable minimum standard or does not adversely affect royalty income or production accountability.

Violation: Major.

Corrective Action: Shut in operations. Submit application for approval of desired method of oil measurement.

Abatement Period: Prior to sales or removal.

2. *Measurement at a Location Off the Lease, Unit, Unit Participating Area, or Communitized Area.*

a. An application for off-lease measurement shall be submitted to the authorized officer and written approval obtained before any such off-lease oil measurement facilities are installed or operated. The application for written approval of off-lease measurement shall justify location of the measurement facilities at the off-lease location desired before approval will be granted, but no additional approval as to the oil measurement method is required, provided measurement is to be accomplished by tank gauging or positive displacement metering system, pursuant to the requirements and minimum standards of this Order.

Violation: Minor.

Corrective Action: Submit application for written approval of off-lease measurement.

Abatement Period: 20 days.

b. If oil measurement is to be accomplished at a location off the lease, unit, unit participating area, or communitized area by any alternate measurement method (any method other than tank gauging or positive displacement metering system), then the application, in addition to justifying the location of the measurement facilities, shall also demonstrate the acceptability of the alternate measurement method, pursuant to section III.E.1.

Violation: Major.

Corrective Action: Submit application for approval of off-lease measurement and approval of desired method of measurement.

Abatement Period: Prior to sales or removal.

F. Determination of Oil Volumes by Methods Other Than Measurement

Pursuant to 43 CFR 3162.7–2, when production cannot be measured due to spillage or leakage, the amount of production shall be determined in accordance with the methods approved or prescribed by the authorized officer. This category of production includes, but is not limited to, oil which is classified as slop oil or waste oil.

The minimum standards for determining the volume of oil that cannot be measured are as follows:

1. No oil located in an open pit or sump, in a stock tank, in a production vessel or elsewhere, may be classified or disposed of as waste oil unless it can be shown, to the satisfaction of the authorized officer, that it is not economically feasible to put the oil into marketable condition.

Violation: Major.

Corrective Action: Put oil into marketable condition.

Abatement Period: 10 working days.

2. No slop oil may be sold or otherwise disposed of without prior approval from the authorized officer. Following the sale or disposal, the authorized officer shall be notified as to the volume sold or disposed, and the method used to compute the volume.

Violation: Major.

Corrective Action: Submit complete report of sale.

Abatement Period: 24 hours.

IV. Variances From Minimum Standards

An operator may request that the authorized officer approve a variance from any of the minimum standards prescribed in section III. All such requests shall be submitted in writing to the appropriate authorized officer and shall provide information as to the circumstances that warrant approval of the variance(s) requested and the proposed alternative means by which the related minimum standard(s) will be satisfied. The authorized officer, after considering all relevant factors, shall approve the requested variance(s) on making a determination that the proposed alternative(s) meet or exceed the objectives of the applicable minimum standard(s), or does not adversely affect royalty income or production accountability. In addition, approval may be given orally by the authorized officer before the lessee/operator initiates actions that require a variance from minimum standards. The oral request, if granted, shall be followed by a written request not later than the fifth business day following oral approval, and written approval will then be appropriate.

The authorized officer may also on his/her motion issue NTLs that establish modified standards or variances for specific geographic areas of operations.

After notice to the operator the authorized officer may also require compliance with standards that exceed those contained in this Order whenever such additional requirements are necessary to achieve protection of royalty income or production accountability. The rationale for any such additional requirements shall be documented in writing to the lessee/operator.

Attachment

I. Sections from 43 CFR Subparts 3163 and 3165 (not included with Federal Register publication).

[FR Doc. 89–3885 Filed 2–23–89; 8:45 am]

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federal register

Friday
February 24, 1989

Part IV

Department of the Interior

Bureau of Land Management

43 CFR Part 3160

Onshore Oil and Gas Operations, Federal and Indian Oil and Gas Leases; Onshore Oil and Gas Order No. 5, Measurement of Gas; Final Rulemaking

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 3160

[Circular No. 2618; AA-610-88-4111-02]

Onshore Oil and Gas Operations, Federal and Indian Oil and Gas Leases; Onshore Oil and Gas Order No. 5, Measurement of Gas

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rulemaking.

SUMMARY: This final rulemaking issues Onshore Oil and Gas Order No. 5 under 43 CFR 3164.1. This Order implements and supplements requirements found in 43 CFR Part 3160 relating to the measurement of gas produced under the terms of Federal and Indian (except Osage) oil and gas leases, as well as gas produced from State or privately owned when Federal and/or Indian leases receive a share of such production under the terms of an approved agreement. The Order addresses gas measurement by orifice meter and gas measurement by other methods acceptable to the authorized officer of the Bureau of Land Management. Gas measurement by electronic flow computers, utilizing an orifice, which calculate volume using the equations specified by the American Gas Association (AGA) Committee Report No. 3, may be approved by the Bureau of Land Management (BLM) State Office having jurisdiction over the producing area. The Bureau of Land Management's existing internal guidelines on the subject of gas measurement were never formalized in a Notice to Lessees and Operators. Thus, this Order has no direct predecessor.

EFFECTIVE DATE: March 27, 1989; this order is applicable March 27, 1989 for new facilities, August 23, 1989 for existing facilities measuring 200 MCF or more per day of gas, and February 26, 1990 for existing facilities producing less than 200 MCF per day of gas.

ADDRESS: Suggestions or inquiries may be submitted to: Director (610), Bureau of Land Management, Room 601, Premier Building, 1800 C Street, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Richard T. Hunter, (303) 236-1750, or Sie Ling Chiang (202) 653-2127.

SUPPLEMENTARY INFORMATION: The Bureau of Land Management published the rulemaking proposing Onshore Oil and Gas Order No. 5 in the Federal Register on February 3, 1988 (53 FR 3158), asking for comments on the proposed rulemaking by April 4, 1988. At the request of several respondents, BLM published a Federal Register Notice on April 6, 1988 (53 FR 11318), which extended the comment period through April 19, 1988.

During the comment period, written comments were received from 44 sources: 32 from business interests related to the oil and gas industry, 6 from offices of Federal agencies, 5 from associations, and 1 from a State agency. The time and effort spent in reviewing the proposed rulemaking and the highly detailed responses offering constructive and skillful suggestions for improvement are appreciated. Many of the comments, both technical and editorial, were adopted and are reflected in the final rulemaking.

Discussion of General Comments

A number of comments supported formalizing measurement requirements and stated that promulgating rules will facilitate a better understanding of the requirements. Three comments objected to the entire concept of the proposed rulemaking, arguing that it is unnecessary. One comment stated that the proposed rulemaking in its present form was not authorized by the statutes. The necessary authority for the rulemaking exists at 30 U.S.C. 1711 and 30 U.S.C. 189. The Order will benefit overall both the oil and gas companies and the various government agencies by providing the minimum standards critical to accurate measurement and reporting of production nationwide.

Custody Transfer/Allocation Meters

A number of comments stated that the proposed rule should apply only to custody transfer measurements and not allocation measurements. They argued that the proposed rules are for application to single phase, homogeneous oil, gas, or condensate flows that have been cleaned up and stabilized for commercial pipeline transport. The comments also argued that allocation meters may involve the two-phase flow of vapor and liquids and, therefore, the allocation meter should not be held to the same tolerances as the custody transfer or sales meter. A custody transfer or sales meter is one from whose measurements royalty is determined directly. An allocation meter is a meter whereby production is measured and credited to a lease(s) or well(s). BLM has the responsibility to designate or accept measurement points (meters) from whose measurements royalties will be determined. All such designated measurement points are required to meet the minimum standards of this Order. The designated or accepted measurement point may be a custody transfer meter, a sales meter or an allocation meter. In any case, the meters are required to be measuring single phase flow. BLM requires that all production removed or sold from the lease be placed into marketable condition using appropriately sized and maintained production equipment, and that the oil, water, and gas be separated prior to measurement or that a variance be approved. To make it clear that the proposed standards apply to allocation as well as sales meters, the phrase "and allocation" has been added to paragraph 2 of section III-B.

Responsibility for Proper Measurement

Several comments were received expressing concern that the proposed Order would hold the lessee/operator responsible for the handling and proper measurement of lease production, when in some cases the sales meters are owned and operated by the purchaser/transporter. In such cases, the operator may not have control over the measurement equipment. Most comments urged that the responsibility for proper sales measurement be placed on the owner of the sales meter and that only the responsibility for allocation measurement should be placed on the lessee/operator. It is recognized that the purchaser often owns and maintains the custody transfer/sales meter. However, requirements for proper measurement are normally included in the purchase contract. Existing regulations hold the lessee/operator responsible for assuring that all lease oil and gas production operations, including proper measurement, comply with Department of the Interior regulations, whether conducted by the lessee or by parties having contractual agreements with the lessee. This Order does not change the responsibility of the lessee. The rationale is that (1) the standards in this Order are generally AGI standards, (2) normal sales contracts require the purchaser to maintain the sales meter properly, and (3) historically, holding the lessee/operator responsible for proper measurement has not created significant problems for the operators or purchasers. It is recognized that the operator is often personally unable to correct violations resulting from meter problems, and this has been taken into account in setting abatement periods. In addition, 43 CFR 3163.2(f)(1) provides civil penalties up to $25,000 for any person who knowingly or willfully prepares, maintains or submits false, inaccurate or misleading reports. This regulation applies to the purchaser as well as the lessee/operator.

Electronic Flow Computers

A few comments stated that electronic flow computers were widely used and accepted by both the purchaser and seller, and recommended that the use of this type of secondary element be authorized without case-by-case approval. It is recognized that electronic flow computers are accurate and when properly installed and used with an orifice will measure gas volumes correctly. However, because this type of secondary element is still not proven over long periods of time, the capabilities of each instrument type, including all limitations, will be subject to a review by appropriate BLM personnel and approval by the State Director.

AGA Standards

Many comments referred to AGA Committee Report No. 3, most of them calling attention to the desirability of using the American National Standards Institute (ANSI) and API designation (ANSI/API 2530) in conjunction with AGA or in place of AGA. One comment suggested that, in order to ensure that no confusion exists as to the standard to be used, Section III should state the full title as follows: ANSI/API 2530–1985 hereafter referred to as AGA Committee Report No. 3, Second Edition. This comment was adopted as a useful clarification. Other comments suggested adding several additional references and stated that AGA Report No. 3 was insufficient for gas measurement. It is recognized that AGA Report No. 3 includes the required method for computing gas volumes, and that other data required are included in numerous other publications by the Gas Processors Association (GPA). However, it is not appropriate to expand the order to include all of the references.

Phase-in Period

Specific comments were requested regarding a phase-in period of time after which this Order will become effective. Seventeen comments were received stating that a phase-in period is necessary to avoid shut-in of production and in some cases premature abandonment of some wells, and to allow time to train field personnel. The recommended time for the phase-in ranged from six months to five years. It is agreed that a phase-in period is appropriate where the installation of new equipment or the modification of existing equipment, and the training of field personnel, is required. The phase-in period will also allow those companies desiring to obtain justifiable variances to do so and be in full compliance on the effective date of this Order. Accordingly, all sales and allocation facilities measuring 200 MCF per day or more are required to be in full compliance within six months; and all other sales and allocation metering facilities are required to be in compliance within 12 months or to be in possession of a valid variance issued by the authorized officer. The phase-in periods will commence on the date this Order is published as a final rulemaking in the **Federal Register**.

During the phase-in period until the effective date of the Order, BLM will continue to inspect and enforce all current measurement standards. The phase-in period is intended to allow time for the operator to bring all operations, including all existing equipment, specified procedures, and reporting practices into full compliance, and does not in any way relieve the operator from complying with the orders of the authorized officer, or from being subject to the existing laws, regulations, and practices under which BLM has carried out the inspection and enforcement functions in the past.

Exemptions for Low Volume Production

Some wells producing gas may not be able to support compliance with some of the minimum standards for gas measurement. Numerous comments requested exemptions for wells producing low volumes of gas, fields with declining production and a projected production life of five years or less, and wells drilled into and producing from certain shallow producing horizons. The suggestions ranged from case-by-case exemptions based on economic hardship to a broad exemption for all wells or any field sharing a common meter measuring 1000 MCF per day or less. Some comments suggested that wells qualifying for exemption should be exempt from the entire Order rather than selected standards. Other comments stated that standards B–1, 2, 4, and 7 were the ones most restrictive to low volume production, and with which it would be difficult or impossible to comply. It is recognized that some wells producing gas may not be able to support compliance with some of the minimum standards. Specific language exempting low volume production and the standards involved has been added in Part III.C. Low volume wells requiring artificial means to draw gas to the surface, and fields with a remaining production life of five years where production rates are declining, may also qualify for a variance from some standards on a case-by-case basis. BLM will, however, be working with lessees/operators to designate consolidated gas sales and allocation meters which may be required to meet all the standards even though individual well production may be 100 MCF per day or less.

Abatement Periods

The proposed rulemaking specifically requested comments as to whether a specific time period or firm deadline should be added to the abatement period "prior to sales or removal". One comment recommended that specific deadlines should not be set. Another comment stated that many of the abatement periods are entirely too short to provide adequate time to correct violations, and made specific recommendations for several standards recommending increases of 5 to 30 days for abatement. Specific deadlines were not added where the abatement period is "prior to sales or removal," but clarification of that phrase has been added to Section III.C.3. A number of abatement periods for specific violations were lengthened as recommended in the comments, where such extensions could be justified. Whenever the abatement period is prior to sales or removal, the potential for permanent loss of royalty exists and no oil or gas may pass the measurement point. It is assumed that any irregularities in calibration of the gas meter will be corrected during the calibration of the meter as prescribed in the Order. Accordingly, the abatement period in the appropriate section of the Order is stated as prior to completion of the calibration. Irregularities, (improper or inaccurate calibration of the gas meter) discovered after the calibration will be treated as a violation. An incidence of noncompliance will be issued stating the appropriate corrective action required and abatement period.

Purpose

One comment supported the stated intent to provide regulations pertaining to the rights of the operator to administrative and/or judicial review and appeal. The regulations pertaining to the rights to administrative review and hearing on the record, as well as the right to appeal, are contained in 43 CFR Subpart 3165, and language of assurance from that regulation has been added to the Order in this section, and a provision allowing extensions of abatement periods for any violation under certain conditions, as well.

Scope

One comment suggested that the description of the applicable lands subject to this Order, in addition to all Federal and Indian (except Osage) oil

and gas leases, be changed to the wording contained in 43 CFR Subpart 3161.1 Jurisdiction. The suggestion was adopted and the wording in Section I–C, Scope, was changed to correspond with Subpart 3161.1. Another comment stated that the scope is too broad, and that it was arbitrary for the Order to be applicable to State or privately-owned lands, when Federal and/or Indian leases are entitled to share the revenues, no matter how small, from non-jurisdictional wells. BLM will maintain the wording in 43 CFR 3161.1 as authorized by the Federal Oil and Gas Royalty Management Act of 1982.

Definitions

Numerous comments offered specific language for amending the proposed definitions or suggesting the addition of new ones.

The term "authorized representative" was removed to clarify the intent and "authorized officer" was added as recommended in several comments.

A definition for "business day" was added and the term "working day" was changed to "business day" throughout the Order.

One comment observed that most of the major violations listed will not result in a substantial adverse impact on royalty income. All of the violations identified as "major" in the proposed Order were re-examined to determine their effect on royalty income, and several were changed to minor violations. Violations designated as major involve improperly designed and/or installed equipment incapable of correct measurement, or other circumstances that directly and adversely affect Federal or Indian royalty calculations.

One comment requested clarification of the term "minor violation" because it could be construed to ripen ultimately into a major violation. This Order uses the definitions of major and minor violations used in the regulations. They are separate offenses with separate penalties. However, a minor violation remaining uncorrected for as little as a few hours could indeed attain the status of a major violation and the Incident of Noncompliance be reissued as major. The civil penalties for failure to comply with written orders to correct major and minor violations are contained in 43 CFR 3163.2(g)(2).

One comment suggested the addition of definitions for "operator" and "operating rights owner". These definitions were added in order to explain the distinction between the terms. One comment suggested that the definition of "Production Unit Measure" be changed from (Mcf) to (Mscf). This suggestion was not adopted. The definition of standard cubic foot should suffice with the change of 520°, Rankine to 519.67° Rankine, made in the interest of accuracy as recommended in several comments.

Several comments addressed the definition of "by-pass", offering varying language. All references to "by-pass" were removed from this Order. This term is adequately covered in Onshore Oil and Gas Order No. 3.

One comment observed that the definition of "Incident of Noncompliance" (INC) was not consistent with Onshore Oil and Gas Order No. 4 on Oil Measurement and suggested that it be changed. The definition was rewritten to maintain consistency between the measurement orders.

Several comments offered various changes to the definition of gas. These suggestions were not adopted, because the definition used is taken directly from the regulations. Several comments submitted additional terms they thought out to be defined, such as "custody transfer", "purchaser/transporter", "BTU content", "point of delivery", "allocation measurement", and "primary and secondary elements". The suggestions were reviewed and the terms found not sufficiently useful to be defined in this Order.

Requirements

Minimum standard no. 30 on recordkeeping was removed and relocated as an introductory paragraph III.A. notifying the public of this requirement, because recording and reporting are a procedural requirement of the Federal Oil and Gas Royalty Management Act rather than being an enforceable minimum standard. To accommodate this insertion, section III.A. General was changed to III.B. General. Also, the words "and allocation" were inserted in III.B.2. to clarify the intent of the Order.

Numerous comments asked questions as to the intent of the Order in general terms and as to how the Government would respond in certain situations, such as whether equipment failure would result in a violation citation for an operator. In response to such questions, section III.B. of the Order was greatly expanded to provide this information.

C. Gas Measurement by Orifice Meter

In response to many comments, the language in section III.C. was changed to exclude the requirement that metering stations in compliance with this Order be retrofitted, as a result of revisions to AGA Report No. 3. The term "prior to sales" was further defined, appropriate language for the exemption of certain low volume production was inserted, and a paragraph notifying the lessee/operator that the authorized officer may require consolidated metering stations was added.

Standards No. C.1 and C.2

Numerous comments addressed the requirements for maintaining beta ratios within the AGA prescribed range. Most comments were concerned with exemptions for low volume wells. Other comments stated that the standards were too lengthy and needed clarification. Both standards were condensed and amended to clarify the intent and to be consistent with AGA.

Standard No. C.3

One comment stated that the term "normal" when applied to flow conditions was nebulous and suggested that substituting "optimum" would make the meaning clearer. The suggestion was adopted. Several comments were received calling for clarification of the minimum length of pipe preceding and following an orifice and suggesting the insertion of the word "straight" as a better description of the length of (straight) pipe. The suggestion improves the meaning and was adopted. Two comments stated that the phrase "shut-in gas meter" in the corrective action was inappropriate and should be removed. The term has been removed from all the standards in this Order. One comment stated that a violation of this standard should not be classed as major. However, there is a potential for reductions in royalties collected that may not be recoupable, and the suggestion to change the violation to minor was not adopted.

Standard No. C.4

Two comments stated that low volume producers (100 to 200 MCF/D) should be exempted from this standard. It is agreed that production of 100 MCF/D measured on a monthly basis should be exempt from this standard as stated in the Order. Several comments argued that maintaining recordings in the middle one-third of the chart range was too restrictive. Some stated the outer two-thirds of the chart range was more acceptable, while others suggested that the middle one-third of the chart range be required where practical or possible. It is agreed that the middle one-third is too restrictive. In the final Order the range has been expanded to include the outer third of the chart range to accommodate improved chart recordings for various production rates.

Standard No. C.5

Numerous comments recommended that the standard be amended to require the static element to be sized so that it records in the 50 to 70 percent of the chart range. This is agreed to in part for the same reason discussed in the previous paragraph, and the standard is changed to read "outer two-thirds of the chart range".

Standard No. C.6

Several comments recommended the removal of the sentence, "Sample probes may be installed upstream of the straightening vanes," because it serves no purpose and is confusing. The sentence has been removed.

Standard No. C.7

Numerous comments included recommendations ranging from exemption of wells producing 500 MCF/D from the requirement of a continuous temperature recorder to the use of indicating thermometers only, especially where the flowing gas temperatures did not vary more than 5 to 10 °F. Following an intensive review, the standard has been removed and a new standard substituted exempting a broad class of sales and allocation meters measuring 200 MCF/D or less from the necessity of employing a continuous temperature recorder, and providing for possible issuance of a variance for sales and allocation meters measuring between 200 and 500 MCF/D. It is not intended to exempt any sales or allocation meters from temperature measurements of the flowing as which are required by AGA for computing volumes. The relaxation of the standard does allow for the use of indicating thermometers to measure the temperature within the limitation of the new standard. Even small temperature changes will result in significant variations in royalty revenues where large volumes of gas are measured and sold and in these cases strict adherence to the standard is required.

Standard No. C.8

Several comments were received, one of which offered rewording for and another suggested removal of the standard, arguing that the standard is restrictive and not in accordance with AGA Report No. 3. The intent of the standard is to require compliance with AGA standards and avoid any recess of the orifice plate as measured parallel to the axis of the meter tube. If the inside diameter of the meter tube pipe differs from the orifice fitting the difference in sizes shall be within AGA specified tolerances. One comment stated that meter tube inspections are time consuming and require shut-in, and recommended inspections at reasonable intervals not to exceed four years. It is agreed that the inspection is time consuming and requires shut-in, and that short intervals between inspections are not appropriate. Predetermined intervals are not intended to be set for meter tube inspections. The normal inspection for other minimum standards may reveal the need for inspection of the meter tube as well. However, the inspections will not be regularly scheduled. It is recognized that some orifice fittings and pipe connections are of different sizes, but in some cases have been machined or modified to consistent internal diameters. In these cases, the operators should stamp notice of such modifications on the fitting where appropriate. An inspection may still be conducted to confirm the modification.

Standards No. C.9 and C.10

Several comments stated that the standards were more restrictive than the AGA requirements and suggested removal of the phrase "Shut-in gas meter and". Recommendations for the abatement period were to change to 60 days. This is agreed to in part and the provision rewritten to combine the 2 standards as number 9 and to refer to the recommended AGA requirements. Field experience has shown that shutting in the gas meter is not always necessary and could result in damage to the resource. The abatement period recommendation was not adopted because of a potential for nonrecoupable loss of royalty revenue.

Standard No. C.11

Numerous comments suggested different wording and clarification. After review, it was decided to remove the standard from this order, because it is adequately covered in Onshore Oil and Gas Order No. 3.

Standard No. C.12 (now no. 10)

All the comments on this standard addressed the frequency of inspection of the orifice plate. Two comments recommended changing the frequency of removal and inspection to every 6 months. This is agreed to in part and the standard has been changed to read "at least semiannually".

Standard No. C.13 (now no. 11)

Several comments addressed this provision. One recommended changing the abatement period to 24 hours while another recommended 30 days or prior to sales whichever occurs first. Two comments agreed with the requirement and abatement period. Two comments suggested minor changes to the corrective action. No changes were made to the standard or abatement period. Minor changes in wording were made to the corrective action, but did not change the intent. The violation remains major because of the potential for nonrecoupable loss of royalty revenue.

Standard No. C.14 (now no. 12)

A few comments addressed the standard, suggesting only minor rewording of the corrective action to include recording of the "as found" and "as left" readings. This recommendation has been adopted.

Standard No. C.15 (now no. 13)

Several comments were received and some agreed with the standard. One comment suggested changing the term "meter pen" to "meter differential pen" and one observed that the zero position of the recording devices should be checked every time data is collected from the recording device. The former suggestion has been adopted in part, to clarify the term "meter pen", and the words "the static and differential" inserted. The corrective action was also changed to require the recording of the "as found" and "as left" readings as suggested by a comment.

Standard No. C.16 (now no. 14)

One comment recommended that the corrective action be changed to include the "as found" and "as left" readings. This recommendation was adopted.

Standard No. C.17 (now no. 15)

Several comments were received addressing this standard. One comment recommended changes to the corrective action to include the word "calibration." The recommendation was not adopted. However, the corrective action was rewritten and clarified. Several comments asked for clarification of the standard regarding the number of points in the chart range where accuracy of the differential pen should be tested. One comment observed that the differential pen should be the most accurate within the recording range. The suggestion was adopted in part and the standard was rewritten to include tests for accuracy of the differential and static pens at only 3 points, one of which must be within the normal range of the differential recording.

Standard No. C.18 (now no. 16)

Two comments addressed this standard. One comment suggested that the corrective action and abatement period should be altered to include the words "after the as found calibration is

performed," while the other comment suggested clarification of the standard. The former suggestion was not adopted, but the standard was rewritten to clarify the intent and parts of the corrective action were merged into the standard.

Standard No. C.19 (now no. 17)

Numerous comments objected to the requirement that meters be tested monthly for the first 3 months following installation and repair. Most comments suggested that if initial calibration of the meter is found to be adequate, the meter testing frequency should then be semi-annual. This was agreed to in part and the requirement for the monthly tests following installation or repair has been removed. However, the suggestion that meters be calibrated on a semi-annual basis rather than quarterly as prescribed was not adopted. The corrective action was simplified to read "Test meter for accuracy." The abatement period of prior to sales was removed and a two-part abatement provision inserted to cover both abatement following installation and repairs and failure to calibrate the meter quarterly.

Standard No. C.20 (now no. 18)

Numerous comments objected to the requirement that the authorized officer be given at least 24 hours notice when meter calibrations are conducted. Several comments urged that the abatement period should be changed to prior to next calibration. The suggestions to remove or change the requirement were not adopted. The intent of this requirement is to permit the authorized officer to schedule visits to witness some of the meter calibrations. The calibration schedule may be submitted in advance for the current year if desired. It is recognized that schedules determined far in advance may not be followed exactly. However, a schedule from each operator will permit the BLM to arrange visits to witness calibrations and work with the operator regarding later changes to the planned schedule. The abatement period was changed as recommended.

Standard No. C.21 (now no. 19)

Several comments suggested that the abatement period should be lengthened for the submission of corrected volumes when meter inaccuracies exceed 2 percent. Recommendations were to delete the current "prior to completion of calibration" and change to a time period ranging from 10 to 120 days. One comment recommended a dual corrective action and abatement period that would apply to (a) situations where the meter was being calibrated, and (b) the submission of a corrected volume report. This suggestion was adopted. Also, in response to requests to allow a more reasonable time to submit a corrected volume report, the abatement period was changed to 60 days in the final rulemaking.

Standard No. C.22 (now no. 20)

Several comments were submitted regarding estimating volumes when measuring equipment is discovered to be out of service. Most of the comments were concerned with the abatement period and recommended a longer period ranging from 30 to 120 days. A longer abatement period is justified because the violation is minor and more time may be needed to obtain information from other parties: The period has been extended to 60 days in the final rulemaking. No changes were made in the standard and the corrective action received minor word changes.

Standard No. C.23 (now no. 21)

Several comments recommended the deletion of the reference to paragraph 6.3 of AGA Committee Report No. 3, stating that the reference would be too restrictive in computing volumes of gas. One comment suggested that volumes of gas delivered should be calculated in accordance with the flow equations specified in AGA Committee Report No. 3. This suggestion was adopted and the reference to paragraph 6.3 was removed. The abatement period was changed to 60 days because the violation is minor and 60 days may be necessary to obtain chart recordings from the purchaser and make recalculations.

Standard No. C.25 (now no. 23)

Several comments addressed the determination of the weighted average BTU content. Several stated that the term "weighted average" needs clarification and that BTU content is not appropriate for noncombustible gases. Other comments recommended the abatement period be changed to 30 days. After due consideration the decision was made to remove the term "weighted average" and the monthly reporting requirements, because it is more appropriate for the authorized officer to prescribe or approve the variables used in the BTU value determination on a case-by-case basis. The abatement period was changed to 30 days.

Standard No. C.26

After a review of the comments this requirement was removed as unnecessary and imposing too large a routine paperwork burden.

Standard No. C.27 (now no. 24)

Several comments objected to filing calibration reports with the authorized officer on a routine basis, preferring to file them only upon request. In addition, the abatement period was stated to be too short. The comment was adopted and the Order includes the requirement to submit the meter calibration reports to the authorized officer "upon request". Also, the abatement period was changed to 15 days to allow sufficient time for mailing the reports, considering that the calibration report may not be available to the operator as the oil meter proving report is available to the operator under Order No. 4.

Standard No. C.28 (now no. 25)

Several comments addressed the method for determining the atmospheric pressure at the metering station for purposes of measurement and meter calibration. Three comments recommended extending the abatement period to 30 days, and one recommended that the atmospheric pressure be established by actual measurement at the elevation of the measurement station. The recommendations have been adopted in the final rulemaking, because it was not the intent of the proposed Order to restrict the determination of the elevation of the measurement station, and because potential losses are recoupable by recalculation after determination of the elevation.

Standard No. C.29 (now no. 26)

Several comments suggested that the term "specific gravity" should be changed to "relative density". The 2 terms are related. Because of common usage, "specific gravity" can be used synonymously and is a useful term. The abatement period has been changed to 30 days as suggested, because laboratory analysis may be necessary to determine specific gravity.

Standard No. C.30

This standard was removed and made a notification at the beginning of Section III of the Order.

D. Gas Measurement by Other Methods or at Other Locations Acceptable to the Authorized Officer

Several comments stated that any method of measurement approved by the AGA should be acceptable to the BLM, and that other methods as listed should not be included without referring to the standards governing their use. 43 CFR 3162.7–3 specifically approves gas measurement by orifice meter or other methods that may be acceptable to the

authorized officer. Since the vast majority of metering stations employ an orifice for measurement, it has been determined that applications for the use of other methods of measurement should be accompanied by the specific standards for the method proposed on a case-by-case basis rather than make the Order more lengthy and complex. The suggestion to add the words "participating area" wherever units are involved, and the recommendation of one comment to add "positive-displacement meter" to the list of other measurements, were adopted.

1. Measurement on the Lease, Unit, Unit Participating Area, or Communitized Area

Two comments were submitted. One comment stated that, because both working interest gas and royalty gas are involved, the classification of a major violation for unapproved alternate gas measurement methods was too severe. This comment was not agreed to because it has been determined that there is a possible potential for nonrecoupable loss of royalty gas. Another comment recommended rewording of the conditions of approval wherein the alternate method could be approved if it did not adversely affect royalty income. The recommendation was adopted.

2. Measurement at a Location Off the Lease, Unit, Unit Participating Area, or Communitized Area

A number of comments were received on this provision. To clarify the intent of this requirement, the BLM will continue to require prior approval for off-lease measurement and emphasize that the application is required to be complete and to justify the need and type of measurement method to be used. The violation is classed as major because there is the potential for adverse effects on royalty income. The phase-in time period is sufficient to obtain needed approvals.

IV. Variances from Minimum Standards

Two comments recommended that both oral requests and approvals be allowed so long as the oral request is followed by a written request not later than the fifth business day following oral approval. This recommendation is reasonable and has been adopted. In addition, the standard was expanded to include language allowing the authorized officer to issue a Notice to Lessees (NTL) and establish modified standards or variances for specific geographic areas of operation. A provision for the authorized officer to protect royalty income and provide for proper product verification by requiring additional standards was also included. While situations requiring additional standards should be infrequent, it should be remembered that the Order consists of minimum standards rather than optimum standards applicable to every situation on a nationwide basis. When additional standards are required, the operator/lessee will be notified in writing. All additional requirements will be reasonable and the rationale for imposing the standards will be fully explained.

The principal authors of this final rulemaking are Richard T. Hunter, Lakewood, Colorado; Terry Messerli, Billings, Montana; and Upendra Parikh, Jackson, Mississippi, of the Bureau of Land Management Orders Committee responsible for the development and issuance of this Order, assisted by the Orders Task Group, the staff of the Division of Legislation and Regulatory Management, Bureau of Land Management, the Office of the Solicitor, Department of the Interior, and Jim Fisher, retired from the Bureau of Land Management. Scott Ellis, Minerals Management Service, was also a part of the Orders Committee and assisted on royalty accounting issues.

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

The final Order will have minimal adverse economic effects, because its requirements reflect the operating practices currently followed by prudent operators when gas production is measured in accordance with the standards and specifications published by the American Gas Association (AGA), officially designated as American National Standard ANSI/API 2530, 1985, and AGA Committee Report No. 3, second edition. The final Order may provide a beneficial economic effect. Industry is less likely to be subjected to assessments or penalties resulting from violations and/or the requirement to undertake costly remedial actions, if it has a better understanding of the requirements of the Bureau of Land Management that relate to the measurement of gas production. The State Governments that share in the royalties collected and Indian mineral owners will also benefit from assurance of more accurate gas measurement. The minimum standards established by this Order essentially are those that have been required but not officially promulgated by this Department and impose the same burden on all lessees and operators, regardless of the size of the entity, on lands where the measurement of gas production is under the jurisdiction of the Bureau of Land Management. Therefore, the Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

The information collection requirements contained in the Order have been approved by the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*, and assigned clearance numbers 1004–0134, 1004–0135, and 1004–0136.

List of Subjects in 43 CFR Part 3160

Government contracts, Indian lands—mineral resources, Mineral royalties, Oil and gas exploration, Oil and gas production, Public lands—mineral resources, Reporting requirements.

Under the authorities cited below, Part 3160, Group 3100, Subchapter C, Chapter II of Title 43 of the Code of Federal Regulations is amended as set forth below:

James E. Cason,

Acting Assistant Secretary of the Interior.

January 3, 1989.

PART 3160—[AMENDED]

1. The authority citation for Part 3160 continues to read:

Authority: The Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 *et seq.*), the Mineral Leasing Act for Acquired Lands of 1947, as amended (30 U.S.C. 351–359), the Act of May 31, 1930 (30 U.S.C. 301–306), the Act of March 3, 1909, as amended (25 U.S.C. 396), the Act of May 11, 1938, as amended (25 U.S.C. 396a–396q), the Act of February 28, 1891, as amended (25 U.S.C. 397), the Act of May 29, 1924 (25 U.S.C. 398), the Act of March 3, 1927 (25 U.S.C. 398a–398e), the Act of June 30, 1919, as amended (25 U.S.C. 399), R.S. 441 (43 U.S.C. 1457), See also Attorney General's Opinion of April 2, 1941 (40 Op. Atty. Gen. 41), the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 471 *et seq.*), the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), the Act of December 12, 1980 (42 U.S.C. 6508), the Combined Hydrocarbon Leasing Act of 1981 (Pub. L. 97–78), the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1701 *et seq.*) and the Indian Mineral Development Act of 1982 (25 U.S.C. 2102 *et seq.*).

2. Section 3164.1(b) is amended by adding the following entry to the table:

§ 3164.1 Onshore oil and gas orders. (b) * * *

* * * * *

Order No.	Subject	Effective date	FEDERAL REGISTER reference	Supersedes
	* * * * * * *			
5	Measurement of Gas			None

Appendix—Text of Oil and Gas Order No. 5

Note.—This appendix will not appear in the Code of Federal Regulations.

Onshore Oil and Gas Order No. 5

Measurement of Gas on Federal and Indian Oil and Gas Leases

I. Introduction.
- A. Authority.
- B. Purpose.
- C. Scope.

II. Definitions.

III. Requirements.
- A. Required Recordkeeping.
- B. General.
- C. Gas Measurement by Orifice Meter.
- D. Gas Measurement by Other Methods or at Other Locations Acceptable to the Authorized Officer.

IV. Variances from Minimum Standards.

Attachment.

I. Sections from 43 CFR Subparts 3163 and 3165.

Onshore Oil and Gas Order No. 5

Measurement of Gas on Federal and Indian Oil and Gas Leases

I. Introduction

A. Authority

This Order is established pursuant to the authority granted to the Secretary of the Interior pursuant to various Federal and Indian mineral leasing statutes and the Federal Oil and Gas Royalty Management Act of 1982. This authority has been delegated to the Bureau of Land Management and is implemented by the onshore oil and gas operating regulations contained in 43 CFR Part 3160. Section 3164.1 thereof specifically authorizes the director to issue Onshore Oil and Gas Orders when necessary to implement or supplement the operating regulations and provides that all such Orders shall be binding on the lessees and operators of Federal and restricted Indian oil and gas leases which have been, or may hereafter, be issued.

Specific authority for the provisions contained in this Order is found at: § 3162.7–1, *Disposition of production*; section 3162.7–3, *Measurement of gas*; and subpart 3163, Noncompliance and assessments.

B. Purpose

One purpose of this Order is to establish requirements and minimum standards for the measurement of gas by the methods authorized in 43 CFR 3162.7–3, i.e., measurement by orifice meter or other methods acceptable to the authorized officer. Proper gas measurement ensures that the Federal Government, the general public, State Governments which share in the proceeds, and Indian mineral owners receive the royalties due, as specified in the governing oil and gas leases.

Another purpose of this Order is to establish abatement periods for corrective action when noncompliance with the minimum standards is detected. The assessments and penalties that will be imposed as a result of noncompliance and/or a failure to correct the noncompliance within the specified abatement period.

This Order also serves as notice to any party cited for noncompliance that it may request from the authorized officer an extension of the abatement period for any violation, provided that the request for extension is applied for and granted prior to the expiration of the abatement period previously allowed.

C. Scope

This Order is applicable to all Federal and Indian (except Osage) oil and gas leases. In addition, this Order is also applicable to all wells and facilities on State or privately owned mineral lands committed to a unit or communitization agreement that affects Federal or Indian interests, notwithstanding any provision of a unit or communitization agreement to the contrary.

II. Definitions

A. Authorized Officer means any employee of the Bureau of Land Management authorized to perform the duties described in 43 CFR Groups 3000 and 3100 (see 43 CFR 3000.0–5).

B. Business Day means any day Monday through Friday excluding Federal holidays.

C. Gas means any fluid, either combustible or noncombustible, which is produced in a natural state from the earth and which maintains a gaseous or rarefied state at standard temperature and pressure conditions (see 43 CFR 3000.0–5(a)).

D. INC means incident of noncompliance, which serves as a Notice of Violation under 43 CFR Subpart 3163.

E. Lessee means a person or entity holding record title in a lease issued by the United States (see 43 CFR 3160.0–5).

F. Major violation means noncompliance which causes or threatens immediate, substantial, and adverse impacts on public health and safety, the environment, production accountability, or royalty income (see 43 CFR 3160.0–5).

G. Minor violation means noncompliance which does not rise to the level of a major violation (see 43 CFR 3160.0–5).

H. Operating Rights Owner means a person or entity holding operating rights in a lease issued by the United States. A lessee also may be an operating rights owner if the operating rights in a lease or portion thereof have not been severed from record title.

I. Operator means any person or entity including but not limited to the lessee or operating rights owner, who has stated in writing to the authorized officer that it is responsible under the terms and conditions of the lease for the operations conducted on the leased lands or portion thereof.

J. Production unit means, for purposes of reporting production, a measurement unit of 1000 standard cubic feet (Mcf).

K. Standard cubic foot means the volume of gas contained in one cubic foot at a base pressure of 14.73 pounds per square inch absolute (psia), at a base temperature of 60°F or 519.67° Rankine (43 CFR 3162.7–3).

III. Requirements

A. Required Recordkeeping

The operator shall keep all test data, meter reports, charts/recordings, or other similar records for 6 years from the date they were generated, or if

involved in an audit or investigation, the records shall be maintained until the record holder is released by the Secretary from the obligation to maintain them. The authorized officer may request these records any time within this period. Records submitted shall include all additional information used to compute volumes so that computations may be verified.

B. General

All gas production shall be measured in accordance with an authorized method of measurement. As set out in 43 CFR 3162.7–3, gas measurement authorized for gas produced from leases, units, and communitization agreements subject to the jurisdiction of the Bureau of Land Management, as such jurisdiction is defined in 43 CFR 3161.1, may be by orifice meter or other methods acceptable to the authorized officer. The requirements and minimum standards for gas measurement are set out below.

The requirements of this Order are based on the standards and specifications published by the American Gas Association (AGA) and officially designated as ANSI/API 2530 and AGA Committee Report No. 3, second edition, 1985, hereafter referred to AGA Committee Report No. 3. The AGA published standards and specifications are considered to be appropriate for proper gas measurement by both the Department of the Interior and the Oil and Gas Industry. The requirements set minimum standards necessary to promote conservation of natural resources and to ensure proper measurement of gas production for sales and allocation purposes, so that the Federal Government and Indian mineral owners will receive the royalties due under governing oil and gas leases.

All future sales and allocation facilities and sales or allocation facilities in existence on the effective date of this Order, unless covered by a valid variance, shall meet the minimum standards prescribed in this Order, provided, however, that all gas produced from or allocated to Federal and Indian (except Osage) oil and gas leases wherein the gas is measured through sales or allocation meters handling 100 MCF per day or less on a monthly basis are exempt from the standards in Section III.C.1, C.2, and C.4 of this Order. The authorized officer may, where apropriate and necessary for proper measurement, work with the operators in designating consolidated gas sales and/or allocation meter stations.

Meter installations constructed n accordance with the AGA Committee Report No. 3 standards in effect at that time shall not automatically be required to retrofit if the standards are revised. The Bureau will review any revised standards, and when it is deemed necessary will amend the Order accordingly through the rulemaking process.

The intent of these minimum standards is to ensure that when equipment malfunctions that could result in inaccurate measurement occur, proper corrective actions are taken, the authorized officer is notified, and an amended production report is submitted.

Failure to comply with these minimum standards will be considered as noncompliance and an incident of noncompliance (INC) will be issued. Operators who discover noncompliance with these minimum standards and take immediate corrective action will not be issued an INC. If the authorized officer or his representative is present when an operator discovers a malfunction or uses incorrect procedures as specified in this Order, an INC will be issued unless immediate corrective action is taken. Failure of equipment will not be considered a violation. However, the incidents of noncompliance which may result from equipment failure are considered violations and a partial list is as follows:

Failure to install equipment properly.

Failure to repair or correct equipment malfunction properly or in a timely manner.

Failure to submit report of alternate method of sales.

Failure to submit amended production reports in a timely manner.

Fail to adhere to the minimum standard procedures specified in this Order.

The use of improper equipment, when discovered, will be considered as a violation and a formal INC will be issued.

The use of improper procedures will be considered as a violation and when witnessed by the authorized officer or his representative, immediate corrective action will be required. In the event that proper procedures are then used as required by this Order, and prior to completing the operation, calibration, or proving, the violation will be considered as properly corrected. In this case, although the violation will be documented in the agency files, no INC will be issued.

A major violation as defined in this Order will generally require an immediate shut-in of the metering device. However, where the non-recoupable loss is not significant or where damage to the resource is likely to occur if a shut-in is required, an abatement period of 24 hours may be given.

Where abatement is required "prior to sales or removal", this means that necessary action is required to be taken so that no gas may be removed beyond the measurement point until properly measured.

C. Gas Measurement by Orifice Meter

The following are minimum standards for the measurement of natural gas using orifice meters.

1. The orifice to pipe diameter ratio (d/D), or the beta ratio, with meters using "flange taps," shall be between 0.15 and 0.70.

Violation: Major.

Correction Action: Install an orifice of such size that subsequent measurements will be within the appropriate beta ratio range. If changing the orifice causes the differential pressure to be recorded in the lower one-third of the chart, then either the meter tube or the differential element shall be changed, sizing the straight pipe sections in a manner that will provide subsequent measurement within the appropriate beta ratio range.

Abatement Period: Prior to sales.

2. The orifice to pipe diameter ratio (d/D), or the beta ratio, with meters using "pipe taps," shall be between 0.20 and 0.67.

Violation: Major.

Correction Action: Same as A.1. above.

Abatement Period: Prior to sales.

3. To obtain flow conditions as near optimum as possible and minimize the effects of turbulence in gas flow, the minimum length of straight pipe preceding and following an orifice and the use of straightening vanes, shall conform to those specifications detailed in Figures 4 through 9 of AGA Committee Report No. 3.

Violation: Major.

Corrective Action: Install proper length of pipe where appropriate or install straightening vanes in accordance with appropriate AGA Committee Report 3 specifications.

Abatement Period: Prior to sales.

4. The orifice shall be sized to make the pen that records differential pressure operate in the outer ⅔ of the chart range for the majority of the flowing period.

Violation: Minor.

Corrective Action: Size orifice to meter tube so that differential pen will deflect and record in the outer ⅔ of the chart range and so that the measurement will be within the prescribed beta ratio range.

Abatement Period: 20 days.

5. The static element shall be sized to make the pen that records the static

pressure operate in the outer ⅔ of the chart range for the majority of the flowing period.

Violation: Minor.

Corrective Action: Size static element so as to cause static pen to record in the outer ⅔ of the chart range.

Abatement Period: 20 days.

6. There shall be no pipe connections between the orifice and the nearest pipe fitting other than the pressure taps and/or thermometer wells as specified in AGA Committee Report No. 3.

Violation: Major.

Corrective Action: Replace entire length of pipe ahead of orifice meter with pipe of appropriate length and inside smoothness in accordance with AGA Committee Report No. 3.

Abatement Period: Prior to sales.

7. Continuous temperature recorders to measure the flowing gas temperature are required on all sales or allocation meters measuring 200 MCF per day or more on a monthly basis. All other sales or allocation meters shall have a continuous temperature recorder or an indicating thermometer to measure flowing gas temperature. Sales or allocation meters measuring between 200 and 500 MCF per day on a monthly basis may be considered for a variance by the authorized officer on a case-by-case basis.

Violation: Major.

Corrective Action: Install temperature measuring device as required.

Abatement Period: Prior to sales.

8. The internal diameters of the meter tube pipe and the orifice fittings shall be the same or, if not, within tolerance limits set by AGA.

Violation: Major.

Corrective Action: Install properly sized meter tube.

Abatement Period: Prior to sales.

9. Meter tubes using flange taps or pipe taps shall have the pressure tap holes located as specified in AGA Committee Report No. 3.

Violation: Major.

Corrective Action: Install pressure tap as specified.

Abatement Period: Prior to sales.

10. Orifice plates shall be removed from the flange or plate holder, and inspected for visual conformance with AGA standards and specifications, at least semi-annually, during testing of the accuracy of measuring equipment.

Violation: Minor.

Corrective Action: Remove and inspect orifice plate for visual conformance with AGA standards and specifications.

Abatement Period: No later than the next meter calibration.

11. Any plate or orifice that is determined not in conformance with AGA standards shall be replaced with one that is in conformance.

Violation: Major.

Corrective Action: Replace orifice plate.

Abatement Period: Prior to sales.

12. All connections and fittings of the secondary element (including meter pots and meter manifolds) shall be leak tested prior to conducting tests of the meter's accuracy.

Violation: Minor.

Corrective Action: Stop meter calibration and conduct leak test. When leaks are detected the meter setting shall be determined and recorded "as found", the meter calibrated, and readings recorded "as left".

Abatement Period: Prior to completion of calibration.

13. The appropriate "zero" position of the static and differential meter pens shall be checked during each test of meter accuracy, and adjustments made if necessary.

Violation: Minor.

Corrective Action: Stop meter calibration and record "as found" readings; calibrate meter and record readings "as left".

Abatement Period: Prior to completion of calibration.

14. The meter's differential pen arc, the ability of the differential pen to duplicate the test chart's time arc over the full range of the test chart, shall be checked during each testing of the meter's accuracy and adjustments made if necessary.

Violation: Minor.

Corrective Action: Stop meter calibration and record "as found" readings; adjust differential pen arc, and record "as left" readings.

Abatement Period: Prior to completion of calibration.

15. Differential and static pen accuracy shall be tested for linearity at zero and 100 percent and at 1 point within the normal range of the differential and static recordings to assure accuracy.

Violation: Minor.

Corrective Action: Adjust pens to assure accuracy.

Abatement Period: Prior to completion of calibration.

16. During testing of the meter accuracy, the static pen time lag shall be adjusted to ensure independent movement of the static pen in relation to the differential pen.

Violation: Minor.

Corrective Action: Make appropriate adjustments.

Abatement Period: Prior to completion of calibration.

17. For all sales and allocation meters, the accuracy of the measuring equipment at the point of delivery or allocation shall be tested following initial meter installation or following repair and, if proven adequate, at least quarterly thereafter unless a longer period is approved by the authorized officer. All extensions of intervals between tests of meters shall be approved in writing by the authorized officer.

Violation: Minor.

Corrective Action: Test meter for accuracy.

Abatement Period:

a. 24 hours for initial meter installation or following repairs.

b. 30 days for failure to calibrate meter quarterly.

18. At least a 24-hour notice shall be given to the authorized officer prior to conducting the tests and calibrations required by this order.

Violation: Minor.

Corrective Action: Notify authorized officer of scheduled meter tests and calibrations at least 24 hours prior to next tests and calibrations.

Abatement Period: Prior to next calibration.

19. If the inaccuracy in the measuring equipment results in a volume calculation more than 2 percent in error, the volume measured since the last calibration shall be corected in addition to adjusting the meter to zero error. Also, the operator shall submit a corrected report adjusting the volumes of gas measured, and showing or discussing all calculations made in correcting the volumes. The volumes shall be corrected back to the time the inaccuracy occurred, if known. If this time is unknown, volumes shall be corrected for the last half of the period elapsed since the date of last calibration.

Violation: Minor.

Corrective Action:

a. Adjust meter to zero error.

b. Submit corrected report.

Abatement Period:

a. Prior to completion of calibration.

b. 60 days.

20. If, for any reason, the measuring equipment is out of service or malfunctioning so that the quantity of gas delivered is not known, the volume delivered during this period shall be estimated using one of the following methods, in this order of priority:

a. Record data on check metering equipment if used in lieu of main meter recordings. If check meters are not installed or are found to be recording inaccurately; then,

b. Base corrections on the percentage error found during the instrument test. If that is not feasible; then,

c. Estimate the quantity of gas run, based on deliveries made under similar conditions when the metering equipment was registering accurately.

Violation: Minor.

Corrective Action: Estimate volumes delivered during those periods cited using one or more of the approved methods identified in the order of priority and, where necessary, submit an amended report showing corrected volumes.

Abatement Period: 60 days.

21. Volumes of gas delivered shall be determined according to the flow equations specified in AGA Committee Report No. 3.

Violation: Minor.

Corrective Action: Recalculate all gas volumes not determined in accordance with flow equations specified in § 6.3 of the AGA Committee Report No. 3 and submit an amended Form 3160 report.

Abatement Period: 60 days.

22. Unless otherwise established, the point of sales delivery and appropriate measurement shall be on the leasehold (or within the boundaries of the communitized area (CA) or unit participating area). Sales measurement off the leasehold (or outside the CA or unit participating area) may be approved by the authorized officer.

Violation: Minor.

Corrective Action: Submit application to authorized officer for approval of off lease (CA or Unit participating area) measurement.

Abatement Period: 30 days.

23. The BTU content shall be determiend at least annually, unless otherwise required by the authorized officer, by means of (1) a recording calorimeter, (2) calculations based on a complete compositional analysis of the gas and the heating value of each constituent, in accordance with AGA Committee Report No. 3, or (3) any other method acceptable to the authorized officer. The authorized officer shall be apprised of the method used for each determination and be furnished with all needed analytical data or other documentation upon request. The BTU content most recently determined and used for royalty purposes shall be reported.

Violation: Minor.

Corrective Action: Determine BTU values and submit an amended report.

Abatement Period: 30 days.

24. All meter calibration report forms shall include the following information, if applicable, and shall be submitted to authorized officer upon request.

a. Name of producer or seller.

b. Name of purchaser.

c. Federal or Indian lease number, communitization agreement number, or unit name or number, and participating area identification.

d. Station or meter number.

e. Meter data (make, differential and static range, recording period).

f. Type of connections (flange or pipe, upstream, or downstream static connections).

g. Orifice data (plate size and ID of meter tube).

h. Base of data used on each chart or record (temperature, specific gravity, atmospheric pressure).

i. Time and date of test.

j. Instrument error(s) found and certification of corrections, and "found" and "left" data for all instruments.

k. Signatures and affiliations of tester and witness.

l. Remarks.

Violation: Minor.

Corrective Action: Submit amended meter calibration report(s) to authorized officer, including all required information.

Abatement Period: 15 days.

25. For purposes of measurement and meter calibration, atmospheric pressure is that value defined in the buy/sell contract (normally assumed to be a constant value). In the absence of such a definition in the buy/sell contract, the atmospheric pressure shall be established through an actual measurement or assumed to be a constant value based on the elevation at the metering station.

Violation: Minor.

Corrective Action: Recalibrate gas meter and submit amended report indicating corrected volumes using the adjusted absolute zero or properly calculated pressure extensions.

Abatement Period: 30 days.

26. The method and frequency of determining specific gravity are normally defined in the buy/sell contract. Except when a continuous recording gravitometer is used, specific gravity may be determined at the time of an instrument check using a spot or cumulative gas sample, and is usually effective the first of the following month. The continuous recorder may be of a gravity balance or kinematic type. Also, specific gravity may be determined from a laboratory analysis of a spot or cumulative gas sample.

Violation: Minor.

Corrective Action: Determine specific gravity of gas by approved method and submit an amended report with a corrected volume.

Abatement Period: 30 days.

D. Gas Measurement by Other Methods or at Other Locations Acceptable to the Authorized Officer

Using any method of gas measurement other than by orifice meter at a location on the lease, unit, unit participating area, or communitized area, requires prior approval from the authorized officer pursuant to 43 CFR 3162.7–3. Other measurement methods include, but are not limited to:

Turbine metering systems
Positive displacement meter
Pitot tube
Orifice well tester
Critical flow prover
Gas-oil ratio

The requirements and minimum standards for gas measurements on the lease, unit, unit participating area, or communitized area by an alternate method of measurement, or at a location off the lease, unit, unit participating area, or communitized area by either an authorized or an alternate method of measurement, are as follows:

1. Measurement of the Lease, Unit, Unit Participating Area, or Communitized Area

a. A written application for approval of an alternate gas measurement method shall be submitted to the authorized officer and written approval obtained before any such alternate gas measurement method is installed or operated. Any lessee/operator requesting approval of any alternate gas sales measurement system shall submit performance data, actual field tests results, or any other supporting data or evidence acceptable to the authorized officer, that will demonstrate that the proposed alternate gas sales measurement system will meet or exceed the objectives of the applicable minimum standard or does not adversely affect royalty income or production accountability.

Violation: Major.

Corrective Action: Submit application and obtain approval.

Abatement Period: Prior to sales.

2. Measurement at a Location Off the Lease, Unit, Unit Participating Area, or Communitized Area

a. A written application for off-lease measurement shall be submitted to the authorized officer and written approval obtained before any such off-lease gas measurement shall justify location of the measurement facilities are installed or operated. The application for approval of off-lease measurement facilities at the desired off-lease location before approval will be granted, but no

additional approval as to the gas sales measurement method is required, provided measurement is to be accomplished by orifice meter pursuant to the requirements and minimum standards of this Order.

Violation: Minor.

Corrective Action: Submit application and obtain approval.

Abatement Period: 20 days.

b. If gas measurement is to be accomplished at a location off the lease, unit, unit participating area, or communitized area by any alternate measurement method (any method other than measurement by orifice meter), then the application, in addition to justifying the location of the measurement facilities, shall also demonstrate the acceptability of the alternate measurement method pursuant to Sec. III.D.1. of this Order.

Violation: Major.

Corrective Action: Submit application and obtain approval.

Abatement Period: Prior to sales.

IV. Variances From Minimum Standards

An operator may request that the authorized officer approve a variance from any of the minimum standards prescribed in Section III. All such requests shall be submitted in writing to the appropriate authorized officer and shall provide information as to the circumstances warranting approval of the variance(s) requested and the proposed alternative means by which the related minimum standard(s) will be satisfied. The authorized officer, after considering all relevant factors, shall approve the requested variance(s) if it is determined that the proposed alternative(s) meets or exceeds the objectives of the applicable minimum standard(s), or does not adversely affect royalty income or production accountability.

In addition, approval may be given orally by the authorized officer before the lessee/operator initiates actions which require a variance from minimum standards. The oral request, if granted, shall be followed by a written request not later than the fifth business day following oral approval, and written approval will then be appropriate.

The authorized officer may also issue NTLs that establish modified standards and requirements for specific geographic areas of operations.

After notice to the operator the authorized officer may also require compliance with standards that exceed those contained in this Order whenever such additional requirements are necessary to achieve protection of royalty income or production accountability. The rationale for any such additional requirements shall be documented in writing to the lessee/operator.

Attachment

I. Sections from 43 CFR Subparts 3163 and 3165 (not included with **Federal Register** publication).

[FR Doc. 89-3886 Filed 2-23-89; 8:45 am]

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federal register

Friday
February 24, 1989

Part V

Environmental Protection Agency

40 CFR Part 799

Testing Consent Order for Diisodecyl Phenyl Phosphite; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 799

[OPTS-42101A; FRL-3528-3]

Testing Consent Order for Diisodecyl Phenyl Phosphite

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule announces that EPA has signed an enforceable Testing Consent Order with three manufacturers of diisodecyl phenyl phosphite (PDDP; CAS No. 25550-98-5), who have agreed to perform certain neurotoxicity tests with PDDP. This action is in response to the Toxic Substances Control Act (TSCA) Interagency Testing Committee's (ITC) recommendation of PDDP for testing. PDDP is added to the list of Testing Consent Orders for which export notification requirements of 40 CFR Part 707 apply.

EFFECTIVE DATE: February 24, 1989.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Rm. EB-44, 401 M St., SW., Washington, DC 20460, (202) 554-1404, TDD (202) 554-0551.

SUPPLEMENTARY INFORMATION: Under procedures described in 40 CFR Part 790, three manufacturers have entered into a testing consent order with EPA in which they have agreed to perform certain neurotoxicity tests with PDDP. This rule amends 40 CFR 799.5000 by adding PDDP to the list of chemical substances and mixtures subject to testing consent orders.

I. ITC Recommendation

In its 17th report to EPA, published in the **Federal Register** of November 19, 1985 (50 FR 47603; Ref. 1), the ITC listed PDDP under Part C (chemicals recommended without designation for response within 12 months) of the section 4(e) priority list. PDDP was recommended for health effects testing, specifically toxicokinetics and subchronic toxicity, including neurotoxicity. The ITC's rationale for the listing was: limited health effects data; the structural relationship between PDDP and a known neurotoxicant, triphenyl phosphite (TPP); high production volume (1-10 million pounds per year); National Institute for Occupational Safety and Health survey data reporting 900 potential workplace exposures; and a dispersive use pattern.

II. Testing Consent Order Negotiations

Prior to the issuance of the Interim Rule establishing the Testing Consent Order Process (51 FR 23706), EPA made findings under TSCA section 4 as the basis for rulemaking in response to the ITC's designation of chemical substances for priority testing. Part 790 now provides for a consent order process to expedite the development of data for risk assessment.

On December 16, 1985, EPA held a public meeting with the manufacturers of PDDP and other interested parties to discuss the ITC listing of PDDP, related health data, and manufacturing and use information (Ref. 1). On February 11, 1988, in accordance with the procedures in 40 CFR 790.22, EPA issued a notice (53 FR 4072) that asked interested parties to participate in consent order negotiations concerning PDDP and announced a public meeting to be held on February 22, 1988 (Ref. 2). At that meeting, EPA presented its tentative testing decisions concerning PDDP and initiated negotiations which led to the adoption of a testing consent order. The identified manufacturers of PDDP, Borg-Warner Chemicals, Inc., Witco Chemicals, and Dover Chemical Corporation, presented their analysis of the existing manufacturing, use, and health data relating to PDDP. Subsequently, negotiation meetings were held on March 10, 1988, and April 6, 1988, to discuss testing options and TSCA testing guidelines. On April 21, 1988, the Phenyl Diisodecyl Phosphite Industry Group, composed of the aforementioned three companies, submitted a letter of intent to perform a testing program for PDDP utilizing specific test standards (Ref. 3). On November 9 and 11, 1988, Borg-Warner Chemicals, Inc., Witco Corporation, and Dover Chemical Corporation signed the Testing Consent Order for PDDP.

Under the Order, the test sponsors agree to conduct or provide for the conduct of the following two health effects tests: a subchronic delayed neurotoxicity test designed for organophosphorus substances and a neurotoxic esterase assay. The specific test standards to be followed and the testing schedule for each test are included in the Order. EPA has concluded that this testing battery is adequate to evaluate PDDP for the concerns identified by the ITC. Procedures for submitting study plans, modifying the Order, monitoring the testing, and other provisions are also included in the Order.

III. Use and Exposure

The phosphite chemicals market may be categorized by two major end-uses; insecticide intermediates and plastic stabilizers/antioxidants (Ref. 4). The stabilizer/ antioxidant market consists of the aryl phosphites, aryl alkyl phosphites, and the higher molecular weight alkyl phosphites.

Phosphite stabilizers inhibit the tendency of high-density polyethylene polymers to degrade and discolor during processing. These phosphites are termed secondary antioxidants; they are peroxide decomposing or preventative antioxidants since they reduce hydroperoxides to alcohols, to inhibit the further reaction of free radicals in polymers (Ref. 4). They are also color stabilizers and inhibit the formation of colored quinoid structures by primary phenolic antioxidants (Ref. 4).

PDDP is a dialkyl monophenyl phosphite (aryl-alkyl) and its primary use is as a low cost heat/light stabilizer and secondary antioxidant for polymeric materials, including vinyl polymers and polyurethanes, poly (ether ester) rubbers, and epoxy resins. Its predominant use is in polyvinyl chloride (PVC) as a secondary heat stabilizer, but it is also used in other polymers and elastomers such as polypropylene, polystyrene, high density polyethylene, and ABS rubber as an antioxidant (Ref. 5).

PDDP is a clear liquid that is essentially insoluble in water, with an estimated water solubility of 0.01 to 20 ppb (Refs. 5 and 6). PDDP is soluble in most common aprotic organic solvents, has a vapor pressure of less than 1 mm Hg at 20°C (Ref. 6), and has a calculated log P of greater than 12. (Ref. 7).

The National Occupational Hazard Survey reports 900 potential workplace exposures yearly (Ref. 8). Based on the physical properties of PDDP, EPA believes that dermal exposure to PDDP may occur during manufacture and processing. The potential also exists for inhalation of PDDP by workers during the processing of PDDP. Sampling, cleaning, or replacing of filters and packaging operations are the activities most likely to produce exposures during manufacturing operations. Exposures resulting from PDDP's use as a stabilizer/antioxidant are expected to occur during the milling and bagging of powdered products, from the blending of stabilizers, and from the extrusion of PVC resins.

IV. Testing Program

The only existing neurotoxicity data concerning PDDP is a neurotoxicity

screening study where single doses of 5 g/kg of PDDP were administered by gavage to hens (Ref. 9). Although no signs of ataxia were noted during the 21-day observation period, the study has a major limitation in that the dose, administered only once, may not have been sufficient to elicit an effect. This characteristic is typical of other organophosphorous substances.

EPA is concerned that human exposure to PDDP may result in delayed neurotoxic effects. These concerns are based on test data in cats, rats, and chickens where triphenyl and tricresyl phosphites produced delayed neurotoxic effects including spinal cord and brainstem lesions accompanied by ataxia and paralysis (Ref. 10) in animals exposed by several routes, either acutely or subacutely. The dermal exposure of hens with as little as a single dose of 50 mg/kg of triphenyl phosphite produced severe neurological damage to the central nervous system (Ref. 11). After comparing the chemical structures and expected activities of triphenyl phosphite and PDDP, EPA believes that the potential delayed neurotoxicity of PDDP may be similar to the type observed with triphenyl phosphite (Ref. 7).

In signing the PDDP Consent Order, the manufacturers have agreed to conduct a testing program that EPA believes will identify PDDP's potential to produce delayed neurotoxic effects. The testing program consists of two studies that will be conducted concurrently. The first study is a subchronic delayed neurotoxicity study normally conducted with organophosphorus substances. This study will be conducted according to a modified version of 40 CFR 798.6560, and will use hens as test animals, repeated oral exposures by gavage for 28 days, observations for behavioral effects, and histopathologic examination of tissues (neuropathology). Although the exposure period for this type of test is normally 90 days, EPA expects that any neurologic effect that PDDP may produce will be manifested in 28 days.

The second test is the Neurotoxic Target Esterase Assay, 40 CFR 798.6450, as modified in the Consent Order for PDDP. This test, used in evaluating organophosphorus compounds, measures the inhibition of the esterase activity of a protein called neurotoxic esterase (NTE) in the brain or spinal cord of animals. Animals are sacrificed at regular intervals during repeated exposures and tissues are prepared and chemical activity is measured. NTE measurements provide quantitative data on the first step in the initiation of delayed neurotoxicity.

The Consent Order provides one year for completion and final reporting of the study results to EPA.

Normally, EPA requires that chemical substances to be tested under section 4 of TSCA be 99 percent pure or closely approaching that level of purity. This helps to ensure that any toxic effect produced in a test can be attributed to the activity of the test substance and not a contaminant or confounding factor. However, in the case of PDDP, EPA is accepting a purity level of 92 percent. The PDDP test substance is prepared from an impure intermediate and, after reviewing several attempts by the manufacturers to further purify the compound, EPA believes that the compound is thermally unstable. This instability interferes with the purification of the intermediate and therefore limits the attainable purity of the test substance.

V. Export Notification

The issuance of the Consent Order subjects any person who exports or intends to export PDDP to the export notification requirements of section 12(b) of TSCA. The specific requirements are listed in 40 CFR Part 707. In the Interim Rule of June 23, 1987, (52 FR 23548), EPA added and reserved Subpart C of Part 799 for a listing of chemical substances subject to testing consent orders issued by EPA. This listing serves as notification to persons who export or who intend to export chemical substances or mixtures which are the subject of testing consent orders that 40 CFR Part 707 applies.

VI. Rulemaking Record

EPA has established a record for this rule (docket number OPTS-42101A). This record contains the information EPA considered in developing this rule and the Consent Order and includes the following information.

A. Supporting Documentation

(1) Testing Consent Order for PDDP.

(2) Federal Register notices pertaining to this rule and the Consent Order consisting of:

(a) Notice containing the ITC designation of PDDP to the Priority List (50 FR 47603; November 19, 1985).

(b) Notice soliciting interested parties for developing a Testing Consent Order for PDDP (53 FR 4072; February 11, 1988).

(3) Communications consisting of:

(a) Written letters.

(b) Contact reports of telephone conversations.

(c) Meeting summaries.

(4) Reports—published and unpublished materials.

B. References

(1) USEPA. Seventeenth Report of the Interagency Testing Committee to the Administrator; Receipt of Report and Request for Comments Regarding Priority List of Chemicals (50 FR 47603; November 16, 1985).

(2) USEPA. Testing Consent Agreement; Development for Diisodecyl Phenyl Phosphite (PDDP); Solicitation for Interested Parties (53 FR 4072, February 11, 1988).

(3) Borg-Warner Chemicals. Letter to David Price, Test Rules Development Branch, Office of Toxic Substances, USEPA, from Richard Brooke, Borg Warner Chemicals, advising EPA of manufacturer's intent to agree with testing via Consent Order (April 21, 1988).

(4) Mathtech Inc. Memorandum from J.K. Orrell of Mathtech to Mark Dreyfus, Regulatory Impacts Branch, Office of Toxic Substances, USEPA. Phosphites Market Study (September 30, 1986).

(5) Syracuse Research Corporation. Technical Support Document, Diisodecylphenyl Phosphite. Contract No. 68-02-4209, Task 14 (July 1, 1986).

(6) CRCS Inc. Information Review, Diisodecyl Phenyl Phosphite, IR-377 (April 16, 1984).

(7) USEPA. Memorandum from Pauline Wagner, Toxic Effects Branch, Office of Toxic Substances, USEPA, to Charles Auer, Chemical Risk Evaluation Branch, Office of Toxic Substances, USEPA. SAR Report on Phenyl Diisodecyl Phosphite (PDDP) (August 18, 1987).

(8) NIOSH. National Occupational Hazard Survey (1972-74) [data base]. Department of Health and Human Services, National Institute for Occupational Safety and Health, Cincinnati, OH (1976).

(9) Borg-Warner Chemicals. TSCA section 8(d) Submission 878216267 received January 15, 1986. Study report: Screening Report for Neurotoxicity of Phenyldiisodecyl Phosphite (PDDP) in the Chicken, March 1981. Washington D.C. U.S. Environmental Protection Agency.

(10) Smith et al. The pharmacologic action of the phosphorus acid esters of the phenols. *Journal of Pharmacology and Experimental Therapeutics* 49:78-99, 1933.

(11) Borg-Warner Chemicals. TSCA section 8(e) submission 8EHQ-1282-0451. Follow-up. 88-8300447. Screening test for neurotoxicity of triphenyl phosphite in the chicken following dermal application to the comb. 1982. Washington, DC: Office of Toxic Substances, U.S. Environmental Protection Agency.

List of Subjects in 40 CFR Part 799

Testing procedures, Environmental protection, Hazardous substances, Chemicals, Chemical export, Recordkeeping and reporting requirements.

Dated: February 17, 1989.

Susan F. Vogt,

Acting Assistant Administrator for Pesticides and Toxic Substances.

Therefore, 40 CFR Part 799 is amended as follows:

PART 799—[AMENDED]

1. The authority citation for Part 799 continues to read as follows:

Authority: 15 U.S.C. 2603, 2611, 2625.

2. Section 799.5000 is amended by adding diisodecyl phenyl phosphite to the table in CAS Number order, to read as follows:

§ 799.5000 Testing consent orders.

* * * * *

CAS number	Substance or mixture name	Testing	Federal Register citation
*	*	*	*
25550-98-5	Diisodecyl phenyl phosphite	Neurotoxic effects	February 24, 1989
*	*	*	*

[FR Doc. 89-4304 Filed 2-23-89; 8:45 am]

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federal register

Friday
February 24, 1989

Part VI

Environmental Protection Agency

Captan; Intent To Cancel Registrations; Conclusion of Special Review; Notice of Final Determination

ENVIRONMENTAL PROTECTION AGENCY

[OPP-30000/34C; FRL-3528-2]

Captan; Intent To Cancel Registrations; Conclusion of Special Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final determination; notice of intent to cancel registrations and deny applications for registration.

SUMMARY: This Notice annouces the conclusion of EPA's Special Review and risk/benefit analysis of captan and EPA's intent to cancel registrations and to deny registration applications for all pesticide products containing captan as an active ingredient except the following: (i) All non-food uses including technical captan; (ii) seed treatments; and (iii) the following food uses: Almonds, apples (pre- and post-harvest), apricots, blackberries, blueberries, celery (plant-bed), cherries (pre- and post-harvest), dewberries, eggplant (plant-bed), grapes, green onions, lettuce, mangoes, nectarines, peaches, pears (post-harvest only), peppers (plant-bed), pimentos (plant-bed), plums/prunes, raspberries, spinach (plant-bed), strawberries, taro and tomatoes (plant-bed).

This action concludes EPA's Special Review of captan (first announced in the **Federal Register** of August 18, 1980: 45 FR 54938) and is based on EPA's determination that retention of all food uses of captan products will result in unreasonable adverse effects on humans or the environment.

DATES: Requests for a hearing by a registrant, applicant, or other party adversely affected by this Notice must be received on or before March 27, 1989 or, for a registrant or applicant, within 30 days from the receipt of this Notice: whichever occurs later.

ADDRESS: Requests for a hearing must be submitted to: Hearing Clerk (A-110), Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

Information supporting this action is available for public inspection from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays in the Information Services Section, Field Operations Division, (TS-787C), Office of Pesticide Programs, Environmental Protection Agency, Room 240, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA 22202. Telephone: 703/557-2805.

FOR FURTHER INFORMATION CONTACT: By mail: Kathleen M. Pearce, Special Review Branch, Special Review and Reregistration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

Office Location and Telephone Number: Room 1006, CM #2, 1921 Jefferson Davis Highway, Arlington, VA (703) 557-7400.

SUPPLEMENTARY INFORMATION: This Notice announces EPA's decision to cancel registrations and deny applications for registrations of pesticide products containing uses of captan (N-trichloro-methylthio-4-cyclohexene-1,2-dicarboximide) as an active ingredient, which are cancelled as a result of this Notice. This Notice concludes EPA's administrative Special Review of the risks and benefits of captan which was initiated in a **Federal Register** Notice of August 18, 1980 (45 FR 54938). A proposed decision concerning captan was published in the **Federal Register** on June 21, 1985 (50 FR 25884). Supporting documents including the Technical Support Document for the PD 2/3 were made available to any requesting party at that time. EPA has evaluated the issues raised in the preliminary documents listed above in light of comments and additional data received during the Special Review process. In summary, EPA has decided to allow the continued registration of technical captan and all currently registered non-food uses including non-food agricultural uses (e.g. ornamentals) and to cancel the registration of all food uses of captan except for the following: Almonds, apples (pre- and post-harvest), apricots, blackberries, blueberries, celery (plant-bed), cherries (pre- and post-harvest), dewberries, eggplant (plant-bed), grapes, green onions, lettuce, mangoes, nectarines, peaches, pears (post-harvest only), plums/prunes, peppers (plant-bed), pimentos (plant-bed), raspberries, spinach (plant-bed), strawberries, taro and tomatoes (plant-bed), and all seed treatments.

It should be noted that the residue chemistry data required under FIFRA section 3(c)(2)(b) have not been submitted for all of the uses listed in the preceding paragraph, and that in some cases data have only been submitted in support of particular formulations or application methods. On December 7, 1988, EPA issued a Notice of Intent to Suspend all agricultural food uses (except seed treatments) for which residue data had not been received. Registrants were given 30 days to submit data or request a hearing. Due to a technical error on the part of EPA, this Notice of Intent to Suspend is being revoked. Registrants will be notified of the revocation. The Agency is considering whether to issue a new Notice of Intent to Suspend the agricultural food uses for which residue data have not been received. Therefore, although EPA, in terminating this Special Review of captan, has determined that the benefits of the use of captan on the food sites listed in the summary outweigh the risks from these uses, the use of captan on some food sites (i.e., blackberries, blueberries, celery, dewberries, eggplant, lettuce, mangoes, green onions, peppers, pimentos, raspberries, spinach, and taro) are subject to suspension for failure to provide data required to support the continued registration. EPA's actions are summarized in the following Table 1:

TABLE 1.—STATUS OF REGISTERED FOOD USES OF CAPTAN [1]

	Uses cancelled by this notice (PD 4) (C)	Uses not cancelled but subject to suspension (S)	Uses *not* cancelled and *not* subject to suspension (*)
Almonds			(*)
Apples			(*)
Apricots			(*)
Avocados	C		
Beans, Dry	C		
Beans, Succulent	C		
Beets	C		
Blackberries		S	
Blueberries		S	
Broccoli	C		
Brussels sprouts	C		

TABLE 1.—STATUS OF REGISTERED FOOD USES OF CAPTAN [1]—Continued

	Uses cancelled by this notice (PD 4) (C)	Uses not cancelled but subject to suspension (S)	Uses *not* cancelled and *not* subject to suspension (*)
Cabbage	C		
Cantaloupes	C		
Carrots	C		
Cauliflower	C		
Celery: plant-bed		S	
foliar	C		
Cherries			(*)
Collards	C		
Corn, Sweet	C		
Cotton	C		
Crabapples	C		
Cranberries	C		
Cucumbers	C		
Dewberries		S	
Eggplant: plant-bed		S	
foliar	C		
Grapefruit	C		
Grapes			(*)
Honeydew	C		
Kale	C		
Leeks	C		
Lemons	C		
Lettuce		S	
Limes	C		
Mangoes		S	
Muskmelon	C		
Mustard Greens	C		
Nectarines			(*)
Onions, Dry Bulb	C		
Onions, Green		S	
Oranges	C		
Peaches			(*)
Pears: pre-harvest	C		
post-harvest			(*)
Peas	C		
Peppers: plant bed		S	
foliar	C		
Pimentos: plant-bed		S	
foliar	C		
Pineapple	C		
Plums/Prunes			(*)
Potatoes	C		
Pumpkin	C		
Quince	C		
Raspberries		S	
Rhubarb	C		
Rutabagas	C		
Shallots	C		
Soybeans	C		
Spinach: plant-bed		S	
Squash	C		
Strawberries			(*)
Tangerines/Tangelos	C		
Taro		S	
Tomatoes: plant-bed			(*)
foliar	C		
Turnips	C		
Watermelon	C		

[1] This list attempts to identify all currently registered uses. However, due to variations in nomenclature on product labels, some uses may not be listed. The "uses not cancelled but subject to suspension (S)" and "uses not cancelled and not subject to suspensions (*)" constitute the only legally registered uses once this Final Determination becomes final.

The sites which are not being cancelled but which may be subject to suspension for failure to provide required data include some minor uses (e.g., blueberries, blackberries, eggplant, peppers and pimentos). Since the benefits have been determined to outweigh the risks for these uses of captan, registration can be supported with the submission of required data. It is EPA's policy to work with the Interregional Research Program (IR–4), the pesticide industry and user groups in an effort to obtain data in support of new and existing registrations for minor uses. EPA policies implemented to facilitate minor use registrations are discussed in a Policy Statement of April 2, 1986 (51 FR 11341). Those interested in having captan products available for the minor uses retained in this Notice but subject to suspension action under FIFRA section 3(c)(2)(B) are encouraged to pursue registration with a captan registrant. If the registrant determines that the cost of meeting the data requirements are prohibitive for these uses, it may be feasible for grower organizations or other associations to enter into a financial agreement with a

captan registrant who is prepared to collect the required data for a particular registration. Alternatively, a request may be submitted to the IR–4 Program for the development of the required data. The IR–4 Program is a nation-wide cooperative effort including EPA, the U.S. Department of Agriculture, State agricultural experiment stations and industry, which assists in the development of data (primarily residue data) for pesticide minor uses. Additional information may be obtained from the IR–4 Program, Cook College, P.O. Box 231, Rutgers University, The State University, New Brunswick, New Jersey 08903.

Other regulatory actions concerning products containing captan that are pending but are not part of the Special Review process are as follows:

(i) EPA will propose to revoke the tolerance for captan on detreated corn seed since data in support of this tolerance have not been submitted. The proposed revocation will be announced in the **Federal Register.**

(ii) A Data Call-In (DCI), issued October 26, 1988, required the submission of a 90-Day Inhalation Toxicity Study and a 90-Day Dermal Toxicity Study in rats. EPA is concerned with renal changes in male rats and local irritation of nasal passages, esophagus and forestomach in both sexes that were reported in a supplementary 90-day inhalation study submitted by industry's Captan Task Force representing the major manufacturers of captan including ICI Americas, Inc., Chevron Chemical Company, Inc., and Makhteshim-Agan (America), Inc. The data must be submitted in 10 and 15 months respectively from receipt of the DCI.

(iii) The time for submission of required residue chemistry data to support the continued use of captan for seed treatment use patterns was extended by 1 year to July 6, 1989.

(iv) Data on exposure to captan for fieldworkers and harvesters have recently been received by EPA.

The current reentry requirement (4 days) and protective clothing for field workers and harvesters will be reassessed when these data have been evaluated.

Additionally, as a result of uses being cancelled by this Notice and new residue data available to EPA, tolerance reductions or revocations will be proposed for a number of food commodities. This proposal regarding captan tolerances will be published in the **Federal Register** during 1989.

This Notice is organized into eight units. Unit I. is an Introduction providing background information on captan, EPA actions prior to this Notice, and the legal basis for these actions. Unit II. summarizes the toxicological data base for captan and EPA's concerns regarding the hazard of oncogenicity. Unit III. presents EPA's assessment of dietary and non-dietary exposure to captan and their respective risks. Unit IV. gives use and benefits information on captan. Unit V. includes the comments of the Scientific Advisory Panel and the Secretary of Agriculture on the regulatory actions previously proposed by EPA in its proposed decision concerning captan issued June 21, 1985. Unit VI. describes EPA's risk/benefit assessment and final determination regarding captan and the actions required by this Notice.

Comments received from interested parties on specific risk and benefit issues are presented with EPA's response in the appropriate Units II. through VI. Unit VII. describes the procedures for implementing the actions required by this Notice, as well as the procedures for requesting a hearing. Unit VIII. lists references used in concluding this Special Review of captan.

I. Introduction

Captan is the common name for N-trichloromethylthio-4-cyclohexene-1, 2-dicarboximide. Captan acts as a broad spectrum non-systemic protectant against fungal diseases. There are approximately 320 federally registered pesticide products containing the active ingredient captan. These registrations are held by 83 registrants. The major producers/ registrants of captan formed a Captan Task Force, currently headed by ICI Americas, Inc., in order to generate toxicological and residue data to support the continued registration of selected uses of captan.

There are more than 60 registered uses for captan which is also known as Orthocide, Vancide 89, Merpan and Agrox. Captan is used as a fungicide on many food crops especially almonds, tree fruits, and small berries and as a protectant for plant seeds. There are also several non-food agricultural uses including ornamental plants and shrubs and cut flowers. Methods of application for agricultural crops include ground and aerial foliar applications, seed treatments and post harvest treatments of tree fruits. Captan formulations include dusts, wettable powders, aqueous suspensions and granules.

In the United States, usage of captan is estimated at 10 million pounds of active ingredient (a.i.) per year. About 30 percent of the total a.i. sold is used on apples and about 28 percent on seed treatments. The next largest uses are cherries, peaches and nectarines which account for about 25 percent of total a.i. sales each year.

Available estimates indicate that captan is used on 60 percent of almonds harvested in the United States, on 85 percent of sweet cherries, and approximately 50 percent of all apple acreage. Captan is used in the culture of about 20 percent of California grapes and nearly 100 percent of Florida strawberries are treated with captan. It is estimated that at least 75 percent of all vegetable seeds are treated with captan. From information received from growers and grower associations, it is also likely that at least 25 percent of all small berries, including blueberries, blackberries and raspberries are treated with captan. The United States Department of Agriculture (USDA) and the Captan Task Force have provided data indicating that the post-harvest use of captan, particularly on apples, cherries and pears, is significant (Refs. 20 and 37). In the United States, at least 1 million tons of apples and approximately 261,000 tons of pears receive this treatment annually. Industry also estimates that about 30,000 of the 50,000 tons of cherries exported from the State of Washington to Canada each year, and an additional 17,000 tons sold on the the domestic market, are treated with a captan/benomyl mixture. EPA estimates that captan is used alone or in combination with another fungicide as a post-harvest treatment on approximately 25 percent of all apples, 35 percent of pears and 33 percent of cherries.

Captan is also applied to packing boxes used for storing and shipping of fruits and vegetables. Household uses of captan include applications to home gardens and orchards. Captan is registered for use on ornamentals, including house plants. It is also used as a preservative or protectant for awnings, draperies, and leather goods and is incorporated into paints, paper, paste (wallpaper flour), and plastic.

A. 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 use instructions, precautions, and other items and conditions.

In order to obtain a registration for a pesticide under FIFRA, an applicant 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," as defined in FIFRA section 2(bb), or 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 product causes unreasonable adverse effects on the environment. EPA 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 the risk criteria set out in the regulations at 40 CFR Part 154. EPA announces that a Special Review is initiated by issuing a notice in the Federal Register. Registrants and o her interested persons are invited to review the data upon which the Special Review is based and to submit data and information to rebut EPA's conclusions by showing that EPA'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 rebuttal evidence, persons wishing to comment may submit relevant information to aid in the determination of whether the economic, social and environmental benefits of the pesticide outweigh the risks of use. After reviewing the comments received and other relevant material obtained during the Special Review process, EPA makes a decision on the future status of registrations of the pesticide.

The Special Review process may be concluded in various ways depending upon the outcome of EPA's risk/benefit assessment. If EPA concludes that all of its risks concerns have been adequately rebutted, the pesticide registration will be maintained unchanged. If, however, all risk concerns are not rebutted, EPA will proceed to a full risk/benefit assessment. In determining whether the use of a pesticide poses risks which are greater than its benefits, EPA 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 EPA 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, EPA 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 EPA makes such a determination, it may seek suspension, and, if necessary, cancellation. In either case, EPA must issue a Notice of Intent to Suspend or a Notice of Intent to Cancel the registration. If the Notice requires changes in the terms and conditions of registration, cancellation may be avoided by making the specified changes set forth in the Notice, if possible. Adversely affected persons, including registrants and applicants for registration may also request a hearing on the suspension or 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.

B. Regulatory History

1. *Rebuttable Presumption Against Registration.* On August 18, 1980 EPA issued a Notice of Rebuttable Presumption Against Registration (RPAR) and Continued Registration of Pesticide Products Containing Captan (45 FR 54938). This action initiated what is now called the Special Review process. The need for a Special Review of captan was based on EPA's finding that registration of pesticide products containing captan met the risk criteria set forth in 40 CFR 162.11(a)(3) relating to oncogenicity and mutagenicity. Comments were solicited from registrants, applicants for registration and the public, on EPA's finding that products containing captan met or exceeded these risk criteria.

In the Notice initiating the Special Review, EPA also solicited evidence on other possible adverse effects of captan that while not being the bases for issuing the RPAR (referred to as Position Document 1 or PD 1), were of concern. These effects included fetotoxicity/teratogenicity, hypersensitivity, and acute toxicity to aquatic wildlife.

Registrants and applicants were required to submit evidence in rebuttal of the presumption against registration. EPA sought information regarding the risks posed by captan to man or the environment and the benefits from EPA registered uses of captan.

2. *Preliminary Notice of Determination and Notice of Intent to Cancel: Captan Position Document 2/3 June, 1985*—a. *Oncogenicity.* This section provides a summary of EPA's proposed decision (PD 2/3) on captan, issued in June, 1985 (Ref. 55). As part of the Special Review process, EPA reviewed all comments and data submitted in response to the captan RPAR/PD 1. Data submissions included additional studies of chronic exposure to captan in the mouse and rat. EPA evaluated these data and concluded that the studies showed statistically significant increases in incidence of tumors in the gastrointestinal tract in mice (Refs. 4 and 7) and kidney tumors (benign and malignant combined) in male rats (Ref. 24).

Using a weight-of-evidence approach, captan was classified as a Group B_2 (probable human) carcinogen under EPA proposed Guidelines for Carcinogen Risk Assessment (46 FR 46294, Nov. 23, 1984). Specifically, the criteria used were that there was sufficient evidence of an increased incidence of tumors (a) in multiple species or strains of test animals; or (b) in multiple experiments, for example with different dose levels or routes of administration; or (c) to an unusual degree in a single experiment with regard to high incidence, unusual site or type of tumor, or early stage of onset.

The classification of captan as a Group B_2 carcinogen was based on data showing statistically and biologically significant oncogenic responses in both sexes of mice (Refs. 4 and 7) and in male rats (Ref. 24). Supporting evidence included captan's structural activity relationship with folpet and captafol both of which have demonstrated oncogenic effects (Ref. 8) in certain laboratory animals; and captan's mutagenic effects in microbial systems and *in vitro* cell assays (Ref. 46).

b. *Dietary exposure and risk.* EPA's principal concern was the risk of cancer to humans through dietary exposure to captan. Adequate residue data upon which EPA could base an estimate of dietary risk were not available at the time Position Document 2/3 (PD 2/3) was issued. Therefore EPA used the highest residue levels that are legally

permissible, the tolerance levels, as a basis for the dietary risk estimates. Risks were also based on a worst-case assumption that 100 percent of the food crops are treated with captan. Using this assumption, the upper bound estimate of total lifetime dietary risk for the total U.S. population is 10^{-4} to 10^{-3}. A dietary oncogenic risk of 10^{-3} means that statistically one additional case of cancer is estimated to occur for every 1,000 individuals as a result of ingesting captan residues in or on foods consumed.

c. *Non-dietary exposure and risk.* EPA calculated the oncogenic risk from non-dietary exposure to captan. Without protective measures, the upper bound estimates of risk to agricultural applicators and mixer/loaders from combined dermal and inhalation exposure ranged from 10^{-7} to 10^{-5}. Using exposure data from studies of exposure to captan from picking strawberries that have been treated with captan, EPA's upper bound estimates of lifetime risk for field workers ranged from 10^{-6} to 10^{-4}.

For non-agricultural end-users of non-food products containing captan, the upper bound estimates of risk included 10^{-5} to 10^{-4} for human exposure to pet shampoos (this use is no longer registered), 10^{-5} for exposure to commercial applicators of oil-based paints (if no gloves are worn), and 10^{-9} for aerosol sprays.

d. *Other toxicological concerns*—i. *Mutagenicity.* As documented in the RPAR, captan has been shown to be mutagenic in *in vitro* experiments in lower organisms and the following *in vitro* mammalian cells in cultures: SV40 transformed human fibroblasts, chinese hamster lung fibroblasts, and in chinese hamster ovary V79 cells (this last study, Ref. 46, was not included in the RPAR).

A heritable translocation study was performed by Stanford Research Institute (SRI) for EPA (Ref. 40). This study was described in the RPAR. One translocation was found in the high dose group which would normally be sufficient to classify captan as positive for heritable translocations; however one translocation was also seen in the negative control group. This study has been evaluated as negative, equivocal, or positive at various times. Before the PD 2/3 was published, however, a committee of experts in the field of heritable translocation testing was formed by EPA. This group was charged with evaluating all heritable translocation tests available to them. This group of experts has evaluated the SRI captan heritable translocation study as negative (Ref. 14). EPA accepts their assessment of this study.

In summary, as documented in the PD 2/3, captan has been shown to be mutagenic in *in vitro* experiments in lower organisms, but the results in the *in vivo* experiments were evaluated as negative. EPA concludes that captan is either non-mutagenic *in vivo* or possesses such a low mutagenic capacity in the *in vivo* assays used for quantitative heritable mutagenic risk assessment that it is not possible to detect its mutagenic activity. Although captan may be able to cause somatic mutational events which are potentially associated with captan's oncogenic problem, the risk to humans of heritable mutagenicity is extremely low or does not exist and does not warrant further testing at this time.

ii. *Fetotoxicity/teratogenicity.* EPA remained concerned in the PD 2/3 regarding the potential for fetotoxic/teratogenic effects from the use of captan and three studies received after the RPAR/PD 1 was issued were discussed in the document. In one study in the rabbit, no teratogenic effects were observed (Ref. 6), but two studies in the Golden Syrian Hamster were suggestive of teratogenicity but not conclusive (Refs. 15 and 39). EPA asked for additional information on the Golden Syrian Hamster studies to help clarify the studies' findings.

The registrant submitted additional information after EPA issued the PD 2/3. EPA is now able to conclude that captan is not a teratogen.

iii. *Reproductive effects.* In the PD 2/3, EPA expressed its concerns regarding the potential for reproductive effects resulting from dietary exposure to captan. Laboratory animal studies demonstrated that captan caused a decrease in pup litter weights.

In determining the acceptability of dietary risk, EPA typically calculates the maximum amount of residue a person should consume from a toxicological point of view and compares it to the amount of residue a person is likely to consume. So long as the likely residue is less than the maximum allowed, risks are assumed to be acceptable. In the PD 2/3, the specific concern expressed was that the theoretical maximum residue concentration (TMRC) exceeded the allowable daily intake (ADI) by 63 percent. In calculating the TMRC, EPA assumed that exposure to captan for a particular commodity occurred at the tolerance level and that 100 percent of the commodity was treated with captan.

Since the issuance of the PD 2/3, EPA has reviewed data which allow for a better estimation of the actual dietary residues to which people are likely to be exposed. Using the refined exposure estimates, EPA has now calculated that only 1.2 percent of the ADI is utilized for the overall U.S. population and that only 4.1 percent is utilized by the subpopulation with the greatest exposure (i.e., non-nursing infants). EPA is consequently no longer concerned with captan's potential for reproductive effects.

iv. *Hypersensitivity.* In issuing the RPAR/PD 1 on captan, EPA had requested additional information concerning the potential for allergic reactions to captan. EPA received no additional information before issuing the PD 2/3 but did receive additional data after that time. Based on a primary dermal irritation and sensitization study in the guinea pig, EPA has now concluded that captan is a mild irritant and moderate skin sensitizer (Ref. 32). There have also been reports of workers exposed to captan who have developed skin irritation. No additional data have been required by EPA. Based on these findings, EPA specified in the Registration Standard and amendments that labeling include the use of protective clothing. EPA also specified that labelling of all manufacturing and end use products containing captan include the following statement: "May cause allergic skin reaction."

v. *Risks to aquatic organisms.* EPA had expressed its concern in the captan RPAR/PD 1 about the toxicity of captan to aquatic organisms. The rainbow trout (*Salmo gairdneri*) and bluegill (*Lepomis macrochirus*) 96 hour LC_{50} values are 73.2 (66.6–80.7) and 141 (119–167) ug/1 respectively. Comments were received from Stauffer Chemical Company point out that the risk criteria under 40 CFR 162.11 assume direct application to water and that there are no registered aquatic uses of captan. Aquatic contamination could occur only indirectly i.e., through drift, runoff or leaching. Stauffer's rebuttal of the aquatic risk criterion was accepted by EPA (Ref. 45). There are no aquatic uses of captan and the available data show that captan hydrolyzes rapidly in water (half-life of 1 to 2 days, usually ½ day or less (Ref. 44). The potential risks from indirect contamination are likely to be localized and would be expected to be minor.

e. *Preliminary benefit assessment.* EPA conducted a preliminary analysis to assess the benefits associated with the use of captan. This analysis was based on data made available by the USDA, registrants, and other sources. EPA assessed the economic impact for growers and consumers if captan were cancelled and an assessment was made of the likely shift to alternative disease control programs. EPA expressed its

concern that fungicides as a class present toxicological problems and that cancellation of captan might encourage users to switch to alternative chemicals that are equally or more toxic. However, for many chemicals the data base was incomplete and EPA was not able to judge the relative toxicities of the alternatives as compared to captan. Some of these data were later obtained as part of EPA's Registration Standards process. This issue is addressed in Unit VI of this Notice which summarizes EPA's risk/benefit assessment and conclusion of this Special Review of captan.

The benefits of captan were assessed in terms of the economic impacts which would result if its uses were cancelled and users were forced to employ available alternatives. EPA concluded that there would be moderate economic impacts on the ornamental plant industry due to the loss of captan use on carnations ($6 to $12.6 million). It was predicted that resistance to the available alternatives to captan for carnations would build up within 2 years. Moderate impacts were also expected to occur if captan were not available for the following uses: almonds ($1.4 million), apples ($0.9 to $3.3 million), apricots ($0.4 to $0.7 million), bushberries ($3.5 to $4.0 million), nectarines ($0.7), peaches ($2.3 to $5.0 million) and strawberries ($5.9 million). The impact if captan were not available as a seed treatment was estimated at up to $9.2 million overall, although the per acre impact was estimated to be minor.

Although not quantified, it was estimated that cancellation of home garden uses of captan could result in an increase in the costs of disease control as several of the alternatives to captan were more expensive.

For all other uses, EPA estimated that if captan were not available the impacts to growers and consumers would be minor. EPA did not expect any measurable impact on nationwide production or prices of food, or any other aspect of the agricultural economy.

f. *Risk/benefit analysis and proposed regulatory action—*

i. *Agricultural uses: food uses.* As a result of EPA's review of the risks and benefits associated with the use of captan, the EPA issued a Position Document (PD) 2/3 in which EPA proposed to cancel or deny registrations of products containing captan for use on food and feed crops. However, it was proposed that food uses would be retained in EPA's final decision on captan if data were submitted showing that captan residues in or on food were sufficiently lower than the tolerances used in calculating dietary exposure to captan in the PD 2/3, or that alternative application methods would sufficiently reduce dietary exposure to captan.

Captan was registered for use on seeds without submission of data to establish tolerances for the food and feed commodities derived from the treated seeds. In the PD 2/3, EPA assumed that the dietary risks to humans from residues resulting from captan seed treatments would be insignificant. However, EPA took the position that seed treatments will result in residues in the raw agricultural commodity, and, in the absence of data to demonstrate otherwise, required the submission of data to establish appropriate tolerances for those residues. These data must be submitted to EPA by July 6, 1989.

EPA decided to continue to allow the feeding of detreated corn seed to cattle and hogs up to 14 days before slaughter if the residues are less than 100 ppm. The tolerances that allow the feeding of captan detreated corn seed were established under a raw agricultural commodity tolerance regulation 40 CFR 180.103 and in conjunction with a feed additive tolerance regulation 40 CFR 186.500 (formerly codified as 21 CFR 581.65). These tolerances were established under Final Rules published in the **Federal Register** of November 6, 1981 (46 FR 55091 and 46 FR 55113). However, while the **Federal Register** notice (46 FR 55091) which established the feed additive tolerance mentions washing and roasting, thereby implying that these are acceptable methods of detreating the captan treated corn seed, EPA had inadequate data to support either method. These data were subsequently required by the captan Registration Standard issued in March, 1986. In January, 1987, the American Seed Trade Association (ASTA) (who originally requested EPA to set the tolerances: EPA Pesticide Petition No. 3E1367 and EPA Food Additive Petition No. 3E1367) proposed to EPA that ASTA would not submit data supporting the feed additive tolerance but would instead develop alternate disposal methods for captan treated corn seed (over-sowing/incineration) which would allow for the revocation of the feed tolerance for this use. The data were not submitted in support of this tolerance and EPA will propose to revoke the feed additive tolerance through a Notice in the **Federal Register**.

ii. *Agricultural uses: Non-food uses.* EPA did not propose cancellation of non-food uses of captan. However, it proposed that the risks to applicators, mixer/loaders and field workers must be reduced by modifying the terms of registration. For applicators and mixer/loaders, EPA proposed that labels be amended to require them to wear impermeable gloves and dust masks. For field workers, EPA proposed that labels be amended to require the use of water resistant gloves such as leather or other synthetic materials when working in captan treated fields. It was estimated that these measures would result in reducing the risk (by 80 percent) to 10^{-6} for applicators and mixer/loaders and (by 90 percent) to 10^{-5} to 10^{-7} for field workers.

iii. *Non-agricultural uses.* The risks to industrial mixer/loaders and applicators incorporating captan into plastics, paints and cosmetics were estimated as negligible as long as they wear protective clothing and dust masks. The risk to mixer/loader/applicators incorporating captan into adhesives was estimated at 10^{-5} and EPA proposed to require the use of protective clothing or equipment during this procedure which would reduce the risk to adhesive applicators significantly (by 80 to 90 percent). EPA proposed that gloves, protective clothing and respirators be required at all phases of the application process (dust masks for incorporation into cosmetics) for all non-agricultural uses.

EPA also calculated the potential oncogenic risks to users of non-food end-use products containing captan. For exposure to captan treated plastics and to captan treated packing boxes, the risks were estimated to be negligible. The risks from certain end-use products were low enough that EPA proposed no regulatory action. For example, the risks from exposure to surface sprays and pet powders containing captan were estimated at 10^{-9} and 10^{-8}, respectively, and EPA concluded that the benefits outweighed the risks from using these products. The benefits of the availability of sanitizing deodorant powdered hand soap containing 0.87 percent captan (Vancide 89) as an antimicrobial agent were also believed to outweigh the risks which were estimated, using a worst-case scenario, at 10^{-6} to 10^{-5}. EPA expects actual risks to be lower because hands are typically rinsed off right away. In addition, the presence of captan controls bacteria and fungi, which could degrade the product, and pathogenic bacteria which could lead to infections.

Risks from direct exposure to captan treated mattresses and pillows were calculated at 10^{-6} to 10^{-5}. However, it was estimated that the risks would be at least an order of magnitude lower and range from 10^{-7} to 10^{-6} since sheets and pillowcases are usually used over these

products. No regulatory action was proposed for captan treated mattresses and pillows.

Risks from use of captan treated adhesives was estimated at 10^{-7} to 10^{-6} for home use and 10^{-5} for professional uses. No regulatory action was proposed as the benefits were believed to outweigh the risks from captan treated adhesives.

EPA estimated the risk from exposure to water-based paint containing captan to be 10^{-6} and that the benefits outweighed the risk. Exposure to oil-based paint was estimated at 10^{-5} for commercial applicators and EPA proposed that the labels for this use be amended to require that impermeable gloves be worn during application. It was estimated that the use of impermeable gloves would reduce risks by 80 percent and would result in the risks from oil-based paints being outweighed by the benefits.

The use of gloves was also proposed to reduce the risks from exposure to dog and cat shampoos containing captan. It was estimated that the calculated risks of from 10^{-5} to 10^{-4} would be reduced to 10^{-6} to 10^{-5}. (There are no remaining registrations for pet shampoos.) Exposure to pet powders containing captan was estimated at 10^{-8} and EPA did not propose the use of gloves with this product. Although powders were erroneously mentioned with shampoos in the PD 2/3 Unit IV.E.3.b.4, Unit IV.F.3.d.2 correctly summarized EPA's proposed action regarding pet powders and shampoos. EPA considered that the benefits outweighed the risks from these captan uses.

3. *Registration Standard and Data Call-In.* In March, 1986, as part of EPA's Registration Standards program, EPA published the Guidance for the Reregistration of Pesticide Products Containing Captan (referred to as the Registration Standard). Certain deficiencies in the captan data base were identified during EPA's initial assessment of this chemical. A Data Call-In Notice (DCI) was issued on April 29, 1985, requesting residue chemistry and toxicological data. In addition to these data, the Registration Standard identified data gaps in the following areas: product chemistry, toxicology, environmental fate, wildlife and aquatic organisms and residue chemistry. The Registration Standards program involves a thorough review of the scientific data base underlying pesticide registrations and the identification of essential but missing studies which may not have been required when the product was initially registered, or studies that are now considered insufficient. As part of the Registration Standards program, all currently available data on a pesticide active ingredient are reviewed and evaluated and are considered in the development of EPA's regulatory position on the pesticide.

4. *Captan Registration Standard—Amendments.* On April 25, 1986, EPA again notified all registrants of manufacturing-use products (MPs) containing captan of the data submissions required by the Registration Standard.

In response to EPA's issuing the captan Registration Standard, registrants of technical captan formed a Captan Task Force (initially called the Captan Task Group). The Task Force represented the three major manufacturers of captan: Chevron Chemical Company, Stauffer Chemical Company (replaced by ICI Americas, Inc. in 1987) and Makhteshim-Agan (America), Inc. These registrants agreed to share the responsibility and costs of developing the data identified as data gaps in the Registration Standard; however, the Captan Task Force indicated to EPA that they would only develop the residue data required to support the continued registration for certain specific food crop uses.

On April 24, 1987, all registrants were mailed a copy of the captan Registration Standard and a Data Call-In amendment which notified registrants that the Captan Task Force did not intend to develop data for all captan registrations. The end-use registrants, who had not received the Registration Standard initially, were given 90 days to respond to EPA if they intended to develop these data; if not, the unsupported food use patterns were to be deleted from all EPA-registered captan product labels.

Registrants were also notified that EPA had reevaluated certain data requirements required by the Registration Standard and that these requirements were being amended. These amendments reflected EPA's agreement to requests made by the Captan Task Force regarding the relabeling of existing stocks. The required time limits for the relabeling of existing stocks of registered captan products in the channels of trade was extended by 1 year. The changes were required to be in effect by March, 1988. An additional extension of 1 year, until March, 1989, was granted in January, 1988.

EPA also clarified and expanded some protective clothing and precautionary labeling changes mandated in the Registration Standard. For example, the earlier requirement that "impermeable gloves" be worn while handling captan products was amended to "chemical resistant gloves". The required endangered species precautionary statements were deleted to reflect an Agency-wide delay in implementing its endangered species policy. In addition, a crop rotation restriction was removed.

5. *Notice of Intent to Suspend.* A Notice of Intent to Suspend (NOIS) was issued on December 7, 1988. This NOIS was sent to all registrants informing them of EPA's intent to suspend certain formulations and agricultural food and feed use patterns of captan products for which residue chemistry data had been required by the Data Call-In or the captan Registration Standard, but had not been provided. Registrants were initially given 30 days to respond to this Notice or to request a hearing. However, because of a technical error on the part of EPA, this Notice of Intent to Suspend is being revoked. Registrants will be notified of the revocation. EPA is considering issuing a new Notice of Intent to Suspend the agricultural uses for which residue data have not been received. This suspension action, part of the Registration Standards program, is authorized under FIFRA 3(c)(2)(B) and is independent of the Special Review and risk/benefit assessment of captan.

6. *Conclusion of Special Review (PD/4).* EPA's assessment and final decision regarding the risks and benefits associated with products containing captan are set forth in this document. The EPA has received additional data and comments in response to EPA's Position Document regarding captan (PD 2/3, June 1985). This information is summarized and included in the appropriate Units of this document along with EPA's response.

II. Summary of Toxicological Concerns and Agency Evaluation of Comments and Additional Data

A. Oncogenicity

This Unit documents EPA's review of studies of the oncogenic effects of captan and EPA's classification of captan as a B_2 (probable human) carcinogen. This Unit also includes public comments on oncogenicity that have been received since EPA's proposed decision concerning captan was issued in June, 1985.

1. *Rebuttable Presumption Against Registration (RPAR) and PD 2/3.* The Rebuttable Presumption Against Registration, or RPAR (now known as the Special Review process) of captan was initiated in 1980 because of EPA's concerns regarding the oncogenic effects of captan demonstrated in laboratory animal feeding studies. One study in

mice showed significantly elevated incidences of duodenal tumors in males and females following 20-month oral administrations of captan (Ref. 35). Another study showed an increased incidence of hepatomas in males only following 18-month oral administrations of captan (Ref. 22). Preliminary results of a 2-year feeding study available at the time appeared to confirm an increased incidence of duodenal tumors among mice fed captan (Ref. 7). Two long-term rat studies resulted in no significantly increased levels of tumors (Refs. 35 and 18). One rat study (IBT B9267) and one mouse study (IBT B9271) were determined to be invalid by a joint United States/Canadian governmental audit and were not used in evaluating captan's oncogenicity (Ref. 3).

In response to EPA's initiation of the Special Review, the registrant submitted comments regarding the oncogenicity of captan and EPA's evaluation of data. EPA responded to these comments in detail in the Captan PD 2/3 of June, 1985. EPA concluded that the concern for oncogenicity for captan had not been rebutted. Additional studies were also received from registrants and were evaluated by EPA. The additional information on oncogenicity included three long-term feeding studies submitted by the registrants: a high-dose study using CD–1 mice (Ref. 7); a low-dose study in Charles River CD–1 mice (Ref. 4); and a 2-year feeding study in Charles River CD rats (Ref. 24). A detailed discussion of those studies is presented in the Captan PD 2/3.

The data from these studies demonstrate a statistically and biologically significant oncogenic response in both sexes of mice and in male rats. Tumors include adenomas (benign) and adenocarcinomas (malignant) of the gastrointestinal tract in both sexes of mice and kidney tumors in male rats. As further supporting evidence of oncogenicity, EPA noted that captan has mutagenic activity *in vitro* and is structurally similar to two other chemicals, folpet and captafol. Both of these are also oncogenic in laboratory animals and demonstrate mutagenic effects in *in vitro* systems.

Thus, using a weight-of-the-evidence approach, and following the classification scheme set forth in EPA's Carcinogenic Risk Assessment Guidelines (proposed: November 23, 1984, 49 FR 46294; finalized: September 24, 1986, 51 FR 33992), captan was categorized as a B2 (probable human) carcinogen. The overall potency or Q_1^* value for captan was estimated by calculating the geometric mean of the five Q_1^* values for male and female mice in two studies (Refs. 4 and 7) and for male rats (Ref. 23). The resulting Q_1^* for captan was 2.3×10^{-3} $(mg/kg/day)^{-1}$ (PD 2/3 Unit II.2). The rationale for combining organ sites and tumor types is outlined in the National Toxicology Program—Board of Scientific Counselors Meeting, September 23 and 24, 1982 (Ref. 51).

In accordance with section 6 of FIFRA, EPA's proposed decision to cancel certain uses of captan due to the identified risks of oncogenicity, was submitted to the FIFRA Scientific Advisory Panel (SAP) for review. An open meeting was held by the SAP on September 26, 1985. The SAP's report of October 4, 1985, is reprinted in its entirety in Unit V. of this Notice.

One issue raised with the SAP was whether the panel agreed with EPA;s qualitative assessment (i.e. weight-of-the-evidence conclusions) of the oncogenic potential of captan. After reviewing the evidence, the SAP's findings were that one mouse study demonstrates oncogenic effects in the duodenum of mice exposed to a high dose of captan (Ref. 7); and that two other studies are less convincing, but supportive because they indicate tumors at the same site (Refs. 4 and 35). The Panel found the rat studies equivocal, at best, in indicating oncogenicity.

The SAP was also asked to comment on EPA's calculation of the geometric mean of the Q_1^*s from five oncogencity studies to determine the potency value (Q_1^*) for captan. The Panel expressed its reservations about EPA's procedures and assumptions in determining and using Q_1^* values. Their specific criticism of the way EPA had calculated the Q_1^* for captan was that the geometric mean was calculated using studies that were not of equal value. EPA's reevaluation of the studies showing captan's oncogenic effects and calculations of a new Q_1^* for captan are discussed in Unit II.A.4. and 6. of this Notice.

2. *Registrants comments on the PD 2/3.* Stauffer Chemical Company and Chevron Chemical Company submitted their comments on the Captan PD 2/3 in August, 1985. Both companies have essentially the same discussions as related to the toxicology and risk assessment of captan. These comments and EPA's response to these issues are summarized below:

a. The registrants expressed their opinion that captan is not carcinogenic in rats. They submitted historical control data and stated that the EPA focused on only one of three chronic rat feeding studies: The IRDC, 1982 study. In this study, although the evidence for oncogenicity is poor, there is a positive statistical trend for renal tumors in males; however, there are no statistically significant pair-wise comparisons between any treatment group and the controls. The two other rat studies are negative.

EPA response: EPA disagrees with the registrant and maintains that captan may be considered weakly oncogenic in the IRDC rat study. EPA used the more sensitive Cochran-Armitrage trend test, rather than the Fisher's pair-wise exact test for statistical significance. The trend test utilizes information from all experimental groups which becomes more important as the number of dosed groups increases.

In addition, the structure activity relationship of captan should also be considered. Captafol, a pesticide cancelled voluntarily by the registrant in 1987 after a Special Review had been initiated, has the same ring structure as captan, and is also initially metabolized to tetrahydrophthalimide (THPI). The lesions of concern, renal cortical tubular adenomas and carcinomas have been observed to increase in frequency with increasing doses of captafol in the same strain of rat (Charles River CD) as in the IRDC 1982 study on captan. This evidence adds support to the position that the renal lesion may be related to the ingestion of captan and the subsequent metabolism to a derivative of the THPI moiety.

The IRDC rat historical control data referred to by the registrant in support of their argument that captan is not carcinogenic in the rat, indicate that the average incidence of renal cortical neoplasms is 0.6 percent in male rats, based on a male population of 1279 (14 studies). The range is from 0 to 3.9 percent. This is lower than the incidence in the high dose group after captan treatment (4/57, or 7 percent, had renal tumors (excluding rats from the 1-year sacrifice)). The concurrent male control group of the captan rat study also had a renal tumor incidence of 1/60, or 1.7 percent which is within the range of historical values. Therefore the renal tumors are considered related to treatment.

In summary, EPA's position that captan may be considered weakly oncogenic in the rat is supported by the following evidence: (a) There are statistically significant differences when the trend test is used instead of the less sensitive pair-wise comparisons; (b) captan's structure activity relationship to captafol which also appears to be associated with a slight increase in the incidence of renal cortical neoplasia; and (c) the incidence of renal tumors in male controls of the captan study is

within the range of the historical control data while the incidence of tumors in the high dose group is outside both the historical and concurrent control range.

b. Chevron/Stauffer claimed that no oncogenic effects were observed at doses of up to and including 800 ppm in the mouse (Ref. 4).

EPA response: Captan is associated with gastrointestinal tumors at doses of 6000 ppm and above in 3 studies in the mouse (Refs. 4 and 7). Although the data do not unequivocally indicate oncogenic potential at lower doses, they are suggestive of such potential. EPA combined tumors of the glandular stomach, duodenum, jejunum and ileum in the PD 2/3. This practice of combining various organs is controversial, as the registrant indicated. EPA cited a National Toxicology Program Board of Scientific Counselors Meeting (September, 1982) which presented a list of acceptable organ combinations including glandular tissues of the stomach and small intestine. Stauffer also quotes from the same document that neoplasia of the glandular stomach is usually evaluated independently. Separation of the stomach data, however, does not significantly alter the conclusions.

The primary issue raised by Stauffer is whether or not EPA recognizes a threshold in carcinogenesis for intestinal tumors due to captan. In order for a threshold mechanism to be considered in analyzing oncogenicity data, several criteria need to be met and although it may be possible that a threshold does exist for intestinal tumors due to captan, the data supporting this position do not yet exist. Examples of information that may aid in assessing whether a threshold for captan carcinogenicity exists are as follows: (a) Extensive testing at low doses demonstrating the absence of pre-neoplastic or neoplastic changes below the alleged threshold level; (b) an identified change in metabolism or a secondary mechanism that occurs only at higher doses: this high dose model in the laboratory animal must be shown to be applicable in assessing potential oncogenicity in man; and (c) the nature of the oncogenic compound or metabolite must be identified and its presence demonstrated only at levels above the alleged threshold.

c. Stauffer stated that the current epidemiological data do not support a captan-related oncogenic risk to man. They cited a retrospective cohort epidemiologic study involving workers at the Calhio plant where technical captan is manufactured.

EPA response: The epidemiological study performed at the Calhio plant indicated that mortality due to malignant neoplasms was not increased. Although deaths (18) appeared greater than expected based on the national average (11), the increase was related to cardiovascular effects rather than neoplasia. This study, however, has several shortcomings. Only 16 of the employees were exposed to captan for longer than 20 years. The small population examined (134 males), small number of deaths (18 males), and short observation period (23 years) make it difficult to determine the oncogenic potential of captan in the workplace. Although the age-adjusted table for malignant neoplasms of the small intestine indicates that the incidence has stabilized (.3), this is an insensitive indicator.

3. *Other comments on oncogenicity.* The Natural Resources Defense Council, Inc. (NRDC) and the California Rural Legal Assistance Foundation (CRLAF) submitted their amended comments in response to EPA's PD 2/3 on August 12, 1985. They stated their opinion that captan is a carcinogen producing statistically significant increases in tumor incidence in both sexes of mice and in male rats.

EPA response: The NRDC/CRLAF are correct in stating that captan produced adenocarcinomas of the digestive tract in both sexes of mice in three studies, and that this tumor type is not commonly observed in rodents. They also state that kidney tumors were observed in male rats in one study. EPA has determined that these rat data show only a borderline increase in kidney tumors; however, this increase was taken into consideration in determining the oncogenicity classification and risks from captan. EPA supports the classification of captan as a B_2 (probable human) carcinogen.

4. *Toxicology Branch Peer Review.* The Office of Pesticide Program's Toxicology Branch Peer Review Committee reviewed the oncogenicity data on captan in December, 1985. The committee considered the criteria in EPA's proposed guidelines for classifying a carcinogen (49 FR 46294). After careful reevaluation of all the evidence, the committee determined that captan meets all the criteria for category B_2, any one of which alone can be sufficient for such classification. The evidence for carcinogenicity includes the following: (a) Captan produces an increased incidence of renal cortical tubular cell neoplasms in male Charles River CD rats and an increased incidence of uterine sarcomas in Wistar rats; (b) captan produces an increased incidence of intestinal neoplasms in $B6C3F_1$ mice; in ICR-Derived CD–1 mice, tumors appeared early and there is a dose-related trend for both sexes; and in Charles River CD–1 mice (tumors appeared after 9 months); and (c) captan demonstrated mutagenic activity and is structurally related to two oncogens (captafol and folpet), which also have mutagenic activity.

5. *Captan Task Force rebuttal of the Toxicology Branch Peer Review.* The Captan Task Force, formed by the registrants, submitted their rebuttal to the Toxicology Branch Peer Review of captan. They expressed their opinion that there is no substantive evidence that captan presents a risk as a human oncogen. They held that the nature of the murine intestinal tumors, the lack of credible systemic tumors elsewhere (either in the mouse or the rat) and an evaluation of the probable mechanism of action, all lead to the conclusion that captan is not a probable human carcinogen. The arguments presented by the Captan Task Force are addressed below.

a. *Oncogenicity of captan in rats.* i. The Task Force stated that EPA's use of the Cochran-Armitage trend test to evaluate kidney tumors in the two-year oral toxicity carcinogenicity study of captan in Charles River CD rats (Ref. 24) is inappropriate because the incidence is too low. They noted that pair-wise comparison indicates no significant increase in the incidence of renal tumors in this study.

EPA response: Several factors are considered in determining the relevance of increased tumor incidence, including the percent increase in tumors over concurrent and historical controls as well as pair-wise and trend statistical analyses. In this case, the incidence of renal tumors in male Charles River CD rats was increased over both concurrent (treated—7 percent vs control—2 percent, excluding animals sacrificed at 1 year and deaths prior to 1 year) and historical controls for 14 studies (1279 rats). Historical controls for adenomas ranged from 0 to 1.7 percent with a mean of 0.4 percent, while the range for adenocarcinomas was 0 to 2.1 percent with a mean of 0.2 percent. Therefore, while the Task Force is correct that the pair-wise comparison is not statistically significant, the incidence appears to be treatment related. EPA agrees with the registrant that the Cochran-Armitage trend test may be inappropriate with low tumor incidence; however, it would not alter the conclusion that renal tumors are associated with the administration of captan in this study since (i) it is a rare tumor; and (ii) incidences are outside the historical and concurrent control ranges.

ii. The Task Force held that there was absolutely no evidence of renal tumors in the other two chronic rat studies at very high dose levels: A bioassay of captan for possible carcinogenicity in Osborne-Mendel rats (Ref. 35) with doses up to 6050 ppm (time weighted average); and a Life-Span oral carcinogenicity study of captan (Merpan) in Wistar Cpb:Wu rats (Ref. 34) at doses of 2000 ppm.

EPA response: The three rat studies were performed on 3 different strains, Charles River CD, Osborne Mendel and Wistar Cpb:Wu rats. Therefore, they cannot be considered as replicates of the same study. Two negatives would not necessarily neutralize one positive study. In addition, Chevron has recently submitted a subchronic inhalation study in the CD rat in which renal lesions (hyaline droplet nephropathy) occurred at all doses. The literature indicates that this lesion has on occasion been associated with low level increases in renal tumors.

iii. The Task Force disagreed with EPA's finding on the incidence of uterine sarcomas. They found that induction of uterine sarcomas in the Wistar rat (Ref. 34) was not confirmed in studies of the Osborne Mendel rat (Ref. 35) or the Charles River CD rat (Ref. 24).

EPA response: Again, EPA does not accept that two negative studies in different strains of the rat would neutralize one positive study. In addition, the incidence (8 percent) of uterine sarcomas in the high dose Wistar Cpb:Wu rats is substantially above concurrent controls (0 percent) and historical controls (based on 7 studies, 422 rats, range of 0–2 percent, mean 0.2 percent). In the absence of additional information, captan will be considered a weak oncogen for uterine sarcomas in this strain of rat. Therefore captan appears to be a potential, albeit weak, rat oncogen.

b. *Oncogenicity of captan in mice.* The following comments were submitted by the Captan Task Force regarding the oncogenicity of captan in the mouse.

i. Captan is rapidly detoxified in mammals via two mechanisms. First, thiol-containing compounds such as glutathione react with captan, and secondly, hydrolysis, particularly rapid at alkaline pH levels, serves to neutralize captan. The active moiety, thiophosgene, formed during captan metabolism, can be rapidly detoxified by additional reaction with thiol groups. Other reactions with sulphate and water (hydrolysis) also serve to neutralize the thiophosgene.

ii. Studies on the effects of captan show local, not systemic tumors. The rapid detoxification/hydrolysis of captan noted above prevents the parent compound from entering the systemic circulation.

iii. There is no bioaccumulation of captan or its metabolites.

iv. Large oral doses of captan give no evidence of clastogenic damage in the target tissue (duodenal mucosa) as noted by Chidiac and Goldberg (Ref. 10).

EPA response: EPA agrees with the Task Force that captan does appear to be rapidly metabolized; that tumors in mice are localized in the intestines; and that there is no bioaccumulation in, or clastogenic damage to, the duodenal mucosal cells. However, these factors do not alter the fact that tumors do occur in mice. These factors do not provide a basis for altering the oncogenic classification of captan.

c. *The structure activity relationship of captan with captafol and folpet.* The Task Force disagreed with EPA's finding that the increase in renal tumor incidence at a dose level of 1200 ppm in a study of captafol supports EPA's position that captan causes renal tumors. Captafol induces renal tumors only at a dose level that also produces renal tubular cell toxicity and therefore the tumors are attributable to prolonged injury and repair in the kidney. The Task Force finds that there is no evidence that captan produces similar toxicity.

EPA response: The structure activity relationship between chemicals is not used to determine the classification of an oncogen but rather as supporting evidence for its classification, depending on the strength of the information. In the case of captan, there is a structural relationship with the fungicides captafol and folpet. As was mentioned above, it has been demonstrated that administration of captan (by a different route of exposure) is associated with renal tubular cell changes. These cell changes have, for other chemicals, been associated with low level increases of renal cortical tumors.

6. *Toxicology Branch Second Peer Review.* The Office of Pesticide Program's Peer Review committee met on April 13, 1988 to reevaluate the classification of captan as a B_2 oncogen, and to determine if the Q_1^* used in the PD 2/3 is still appropriate. In the PD 2/3, the Q_1^* (potency) for captan was calculated using a geometric mean based on the Q_1^*s from the following studies: male and female mice in a high dose study (Ref. 7) male and female mice in a low dose study (Ref. 4); and from one study of the male rat (Ref. 24).

In reviewing EPA's PD 2/3 on captan, the Scientific Advisory Panel had not found EPA's approach to calculating the Q_1^* for captan useful because the five studies used to calculate the geometric mean were not of equal value.

EPA's initial position in response to the SAP reservations was that although the studies do vary qualitatively, the Q_1^* for each study is sufficiently similar that using a different system of establishing the Q_1^* for captan would not make a practical difference.

During the Second Peer Review of captan the committee examined EPA's laboratory audit of the Bio/dynamics (Ref. 4) 2-year mouse feeding study referred to as the low-dose study. The low incidence of tumors at the highest dose of 6000 ppm in this study was not consistent with the incidence of intestinal tumors at this dose level in both the Chevron (Ref. 7) study and a Stauffer single dose (6000 ppm) study submitted since the PD 2/3 was issued. The audit suggests that there was a problem with achieving and maintaining the appropriate dose levels throughout the Bio/dynamics study (Ref. 4).

In determining the overall Q_1^* for captan, the committee decided to omit the Q_1^* values based on the Bio/dynamics study and the Q_1^* value based on the rat kidney tumors which the SAP had found equivocal. The new overall Q_1^* for captan, based only on the Chevron (Ref. 7) high dose study in male and female mice (geometric mean) is 3.6×10^{-3}.

The committee reaffirmed the classification of captan as a B_2 (probable human) carcinogen based on tumors in two species, mutagenicity and structural activity relationships.

B. Mutagenicity

In initiating a special review of captan, EPA concluded that on the basis of the information then available to EPA, captan exceeded the risk criteria for mutagenicity (45 FR 54938, August 18, 1980). As discussed in Unit I of this Notice, the Toxicology Branch evaluated additional data on mutagenicity prior to issuing the PD 2/3 on captan in 1985. EPA determined that captan shows positive mutagenic activity in gene mutation and chromosomal aberration tests *in vitro* but not *in vivo*. Therefore, EPA concluded that although captan may cause somatic mutational events which are potentially associated with captan's oncogenic potential, the risk to humans of heritable mutagenicity is extremely low or does not exist and does not warrant further testing at this time.

Subsequent evaluation of the mutagenicity data by the Toxicology Branch Peer Review Committee has confirmed EPA's PD 2/3 on the mutagenic potential of captan. The

studies on the mutagenicity of captan lend significant support to its classification as an oncogen, but there is little or no risk of its producing mutagenic effects in humans.

C. Teratogenicity

Information available to EPA prior to the issuance of a Notice initiating the Special Review of captan, indicated that captan might produce other adverse effects including teratogenicity (45 FR 54936). Studies reviewed and evaluated prior to the PD 2/3 included a study in New Zealand white rabbits (Ref. 6) in which no teratogenic effects were observed, and two studies in the Golden Hamster which were suggestive of teratogenicity but not conclusive (Refs. 15 and 39). A Data Call-In (April, 1985) required the submission of another teratology study in the hamster.

Comments on the teratogenicity of captan were submitted by the registrant, Stauffer Chemical Company, in August, 1985. The registrant said that the Roben's hamster study which EPA had cited as being suggestive of teratogenicity, was not consistent with EPA Guidelines. The registrant's position was that captan had been tested exhaustively for potential teratogenicity in mice, hamsters, rats, rabbits and rhesus monkeys and had not been shown to be teratogenic in any species. It was their opinion that an additional hamster teratology study was unnecessary.

EPA response: After the PD 2/3 was issued, additional historical data on the Golden Syrian hamster were submitted by the registrant. EPA's evaluation of these data resulted in the Goldenthal, IRDC study classification being upgraded to core minimum (a classification which means that the study is scientifically sound but incomplete), which then satisfied the guideline requirement for developmental data in one species. Thus, there is no need for another teratology study in the hamster required in the 1985 Data Call-In Notice. A teratogenicity study in rabbits was also considered core minimum. There were no indications of teratogenic effects in either species.

EPA's assessment that captan is not a teratogen in the hamster or the rat (based on Agency accepted studies) was reviewed by the SAP in September, 1985 and the Panel concurred with EPA's judgement.

D. Reproductive Effects

1. *Agency's data evaluation and risk assessment.* EPA's preliminary risk assessment for reproductive effects was based on a three generation study in COBS CD rats (Ref. 24) and a one generation rat study (Ref. 25). While neither the three nor the one generation study was adequate in itself due to the dose selection in each study, each study provided sufficient information for EPA to reach a scientific conclusion on the reproductive toxicity potential of captan. These studies satisfy EPA's reproduction testing requirements.

No compound-related effects were seen at any dosage level in the one-generation study in which captan was given in the diet at dosage levels of 0, 6, 12.5, and 25 mg/kg/day. In the three-generation study, captan was administered in the diet at dosage levels of 0, 25, 100, and 500 mg/kg/day. No treatment-related effects were seen in this study with the exception of a reduction in body weight and food consumption. The reduced parental (male and female) weight gain and reduced food consumption occurred in all but the low dose groups. There was a treatment-related decrease in food consumption in all pup groups except for the 25 mg/kg/day, F1 (first generation) males and F2 (second generation) females, and 100 mg/kg/day females. A decrease in pup litter weights was observed at all dosage levels. The NOEL for toxic effects is 12.5 mg/kg/day and the LEL is 25 mg/kg/day.

A new chronic dog study was recently received and reviewed by EPA. Although this study is classified core grade supplementary (scientifically sound but incomplete), it is sufficient to complete the required data base for the Reference Dose (RfD). These data show that the rat remains the more sensitive species.

To determine whether there is an adequate margin of safety (MOS) between the NOEL for toxic effects and dietary residue levels to which humans might be exposed, EPA calculates the Reference dose (RfD), formerly called the Acceptable Daily Intake (ADI). The RfD is based on the most sensitive NOEL and an uncertainty factor used to account for the interspecies and intraspecies differences and data gaps.

In the PD 2/3, an uncertainty factor of 1,000 was used because of the incomplete data base. Since the data base is now complete, an uncertainty factor of 100 is used with the most sensitive NOEL (12.5 mg/kg/day). The resulting RfD is 1.25×10^{-1} mg/kg/day and is discussed in Unit III.A of this Notice which concerns dietary exposure to captan.

2. *Comments in response to the PD 2/3.* NRDC/CRLAF expressed their concern about the adequacy of the reproduction studies on which EPA had based their estimate of Margins of Safety (MOS).

EPA response: As stated earlier, EPA recognizes that each study had deficiencies. However, when the two studies are considered together, they provide sufficient information regarding captan's reproductive toxicity potential that additional studies are not needed.

EPA believes, as described earlier in this Unit, that when taken together the two reproduction studies submitted by the registrants and described above have satisfied the guideline requirement for data on reproduction effects.

E. Other Toxicological Concerns

1. *The captan metabolite, tetrahydrophthalimide (THPI)—Comments in response to the PD 2/3.* a. NRDC/CRLAF commented that it is now widely recognized that metabolites of pesticide active ingredients can be potentially as dangerous, if not more dangerous, than the parent compound. They stated that although EPA had correctly considered the metabolite THPI in addition to the parent compound, the existing toxicity data base on this metabolite was inadequate.

b. Industry's Captan Task Force commented that the major metabolite (plant and animal) of captan, tetrahydrophthalimide (THPI) has not been implicated as a carcinogen and is not a mutagen.

EPA response: The toxicity of a plant metabolite is considered to be examined when the parent is tested in animal toxicity studies, since any toxicity detected in the study could result from the metabolite as well as the parent, provided that the metabolite is also an animal metabolite. Since THPI is produced both in plants and in animals, EPA believes the available data base is sufficient to reflect the oncogenic potential of THPI.

2. *Hypersensitivity.* In initiating a Special Review of captan, EPA was aware that there were some data associating captan with allergic skin reactions. EPA received no additional information before issuing the PD 2/3. Based on a primary dermal irritation and sensitization study in the guinea pig, EPA concluded that captan is a mild irritant and moderate skin sensitizer (Ref. 33). There have also been reports of workers exposed to captan who have developed skin irritation.

Based on these findings, EPA specified in the Registration Standard and amendments that labeling for captan products include protective clothing. EPA also specified that labelling of all manufacturing and end use products containing captan include the following statement: "May cause allergic skin reaction."

III. Dietary and Non-Dietary Exposure and Risk

A. Dietary Exposure and Risk

In the captan PD 2/3, EPA assumed food residues were at tolerance levels and that 100 percent of a crop was treated in order to estimate dietary exposure of the U.S. population to captan. Exposure was estimated to be 0.1169 mg/kg (body weight)/day. Although these assumptions resulted in a worst-case estimation of dietary exposure they were used in the absence of actual residue data and sufficient current market data. EPA calculated an upper bound estimate of total dietary risk of 10^{-4} to 10^{-3} based on this exposure estimate. Data from market basket surveys available at the time suggested that actual exposure may have been substantially lower; however, concerns regarding the reliability of these surveys prevented EPA from using them as a basis to calculate dietary risk.

The use of captan on seeds had previously been considered a non-food use and therefore establishment of tolerances was not necessary. EPA has since determined that tolerances are required for seed treatments unless radio-labeled studies demonstrate that there is no uptake of residues by the plant. Although EPA realized the need for tolerances for seed treatments at the time of the PD 2/3, no data were available. EPA assumed that residues would be insignificant due to the limited amount of pesticide that could be transferred from the seed coating to the whole plant. Data were required and are expected to be submitted by July 6, 1989. For the purposes of this exposure assessment, EPA considers the residues resulting from seed treatment to make an insignificant contribution to the diet. EPA will review the data when available and modify this position if necessary. No seed treatments are being canceled by this Final Determination due to dietary concerns.

Similarly, in the PD 2/3 EPA had no data on residues on corn seed that had been detreated in accordance with 40 CFR 186.500 (formerly codified as 21 CFR 561.65). EPA believed at that time that there are no detectable residues in cattle and hogs as a result of feeding detreated corn seed. However, residue data required by EPA to support the detreated corn seed tolerance have not been provided and a notice proposing to revoke this tolerance will be issued shortly.

A Special Data Call-In Notice issued in April, 1985, required the submission of a number of studies which could be used by EPA in refining its dietary exposure assessment for captan. Included were residue reduction data which measured levels of both captan and its major metabolite tetrahydrophthalimide (THPI) on a number of commodities after washing, peeling, and/or cooking to better estimate actual residues consumed. Also requried were crop residue data for all registered crops and processing studies to determine levels of captan and THPI as well as feeding studies in poultry to determine levels in eggs and tissues.

EPA used these data as well as other data available to revise its dietary exposure assessment. The percentage of crop treated has also been taken into account for this assessment unlike in the assessment presented in the PD 2/3. As a result, the best data available have been used in estimating actual dietary exposure to residues of captan and THPI on each individual commodity. Monitoring data were used whenever possible in determining exposure levels as these data measure residues at the point closest to purchase and thus consumption by an individual. Where monitoring data were not available for a particular commodity or there were an insufficient number of samples upon which to base an estimate, data from field tests were used. Finally, in the absence of both monitoring and field tests, tolerance levels were used (Ref. 16). EPA relied upon feeding studies in order to estimate the residue levels occurring in meat and milk.

As mentioned previously, exposure to residues of captan was estimated to be 0.1169 mg/kg (body weight)/day in the PD 2/3. EPA, in light of the new data and information, now estimates total exposure to be 0.001606 mg/kg/day using EPA's Tolerance Assessment System. Using this exposure estimate, the upper bound lifetime oncogenic risk from dietary exposure to captan ranges from 10^{-6} to 10^{-5} for the overall U.S. population. The oncogenic risk is calculated by multiplying exposure by the oncogenic potency factor or Q_1^* [3.6×10^{-3} (mg/kg/day)$^{-1}$]. The following Table 2 presents the upper-bound risks for individual commodities. The type of data used in estimating exposure are indicated in parentheses.

TABLE 2—UPPER-BOUND LIFETIME ONCOGENIC RISK

Crop	Risk
Almonds (M)	10^{-11} to 10^{-10}
Apples (M)	10^{-7}
Apricots (M)	10^{-8} to 10^{-7}
Avocados (T)	10^{-8} to 10^{-7}
Beans, dry (T)	10^{-7}
Beans, succulent (T)	10^{-7}
Beets (M)	10^{-10}

TABLE 2—UPPER-BOUND LIFETIME ONCOGENIC RISK—Continued

Crop	Risk
Blackberries (M)	10^{-9}
Blueberries (M)	10^{-11}
Broccoli (M)	10^{-8}
Brussels sprouts (T)	10^{-10} to 10^{-9}
Cabbage (T)	10^{-8}
Cantaloupe/muskmelon (FT)	10^{-9}
Carrots (M)	10^{-9} to 10^{-8}
Cauliflower (T)	10^{-9}
Celery (M)	10^{-9}
Cherries (M)	10^{-6}
Collards (T)	10^{-8} to 10^{-7}
Corn, sweet (T)	10^{-8}
Cotton (T)	10^{-9}
Crabapples (M)	10^{-11} to 10^{-10}
Cranberries (M)	10^{-10} to 10^{-9}
Cucumbers (M)	10^{-10} to 10^{-9}
Dewberries (FT)	10^{-8} to 10^{-7}
Eggplant (M)	10^{-11}
Grapefruit (FT)	10^{-10}
Grapes (M)	10^{-8} to 10^{-7}
Honeydew (FT)	10^{-10} to 10^{-9}
Kale (T)	10^{-9}
Leeks (T)	10^{-9}
Lemons (FT)	10^{-9}
Lettuce (M)	10^{-7}
Limes (FT)	10^{-11} to 10^{-10}
Mangoes (T)	10^{-8} to 10^{-7}
Meat (FS)	10^{-7} to 10^{-6}
Milk (FS)	10^{-6}
Mustard greens (T)	10^{-8}
Nectarines (M)	10^{-10} to 10^{-9}
Onions, dry bulb (T)	10^{-7}
Onions, green (T)	10^{-9}
Oranges (FT)	10^{-10} to 10^{-9}
Peaches (M)	10^{-7}
Peas (T)	10^{-8}
Pears (M)	10^{-9}
Peppers (M)	10^{-9}
Pimentos (M)	10^{-9}
Pineapples (T)	10^{-7}
Plums/Prunes (M)	10^{-9}
Potatoes (T)	10^{-6}
Pumpkin (T)	10^{-8}
Quince (M)	10^{-13}
Raspberries (M)	10^{-8}
Rhubarb (T)	10^{-7} to 10^{-6}
Rutabagas (T)	10^{-9} to 10^{-8}
Shallots (T)	10^{-8}
Soybeans (M)	10^{-12}
Spinach (M)	10^{-8}
Squash (FT)	10^{-9}
Strawberries (M)	10^{-7}
Tangerines (FT)	10^{-11} to 10^{-10}
Taro (T)	10^{-12}
Tomatoes (M)	10^{-8}
Turnips (T)	10^{-8}
Watermelon (T)	10^{-7} to 10^{-6}
Total risk	10^{-6} to 10^{-5}

Key: FDA monitoring data: (M); Field tests: (FT); Tolerances: (T); Feeding studies: (FS).

Approximately 33 percent of the dietary risk is due to consumption of milk. However, this calculation most likely overestimates risk from milk due to conservative assumptions used in arriving at exposure estimates.

For example, EPA uses exposure estimates based on field trial data rather than monitoring data to estimate the levels of captan in animal feed items. These data tend to maximize residue levels, as discussed below. EPA also uses conservative estimates of the

percentage of particular feed items which might be present in an animal's diet. The two main feed items which can contain captan residues are almond hulls and raisin waste. EPA assumes that up to 25 percent of an animal's diet may be almond hulls or that up to 10 percent may be raisin waste. The crops which these feed items come from are primarily limited to California. Consequently, the current estimates likely overestimate actual exposure nationwide.

EPA also believes that the estimated risk from food commodities is likely to exceed the total actual risk. As mentioned previously, either the tolerance level, field trial data or FDA monitoring data were used in estimating dietary exposure for a particular food crop. FDA monitoring data are most representative of the level to which the public is exposed because residues are measured closest to the point of purchase. However, sufficient FDA monitoring data were not available for all crops. EPA then relied on field trial data to estimate dietary exposure. These data, used by EPA in establishing tolerances, reflect the maximum registered use conditions of the pesticide (i.e. applications occur at the maximum rate and as close to harvest as the label permits). Residue levels are measured at the time the crop is harvested. Thus field trial data would overestimate actual dietary exposure because (i) residues would have time to degrade from field to market; and (ii) not all growers use the maximum number of applications or the maximum application rate. Finally, when neither sufficient FDA monitoring data nor adequate field trial data were available, EPA used the tolerance level for the commodity as the level of dietary exposure; a worst-case estimate of exposure.

In the PD 2/3, EPA expressed concern regarding the potential for reproductive effects from dietary exposure. It was noted that the dietary exposure of the average human exceeds by 63 percent the level calculated to be an acceptable daily intake (now referred to as the Reference Dose (RfD)). However, EPA stated that the final analysis of this risk would depend on residue data being required of the registrants.

Using the exposure estimates derived from the new data submitted since the time of the PD 2/3, the anticipated residue contribution represents only 1.25 percent of the RfD for the overall U.S. population and 4.1 percent for non-nursing infants which is the sub-population with the greatest exposure. Therefore, the potential for reproductive effects from dietary exposure to captan is no longer believed to present a risk of concern.

1. *Comment:* A number of comments were received regarding the dietary exposure assessment in the PD 2/3 and Technical Support Document. Stauffer Chemical Company and Chevron Chemical Company both argued that EPA had overestimated dietary exposure by basing exposure estimates on tolerance levels rather than FDA monitoring data and market basket survey data.

EPA Response: EPA noted in its PD 2/3 that risks were based on worst-case assumptions about dietary exposure and that although market basket surveys suggest exposure, and thus risk, may be substantially lower, definitive data were lacking to predict those lower risks. However, many data have been submitted since then which have allowed for a more refined dietary exposure assessment.

2. *Comment:* Stauffer and Chevron also stated that sufficient THPI data were available from which to extrapolate estimates.

EPA Response: EPA did not estimate THPI levels for the PD 2/3 because the ratios of captan levels to THPI levels in the data available were sufficiently different that EPA was unsure what ratio to use. Since that time, the Agency has requested and received actual data on residue levels of both captan and THPI in a number of raw and processed agricultural commodities. The new data indicate that THPI is an insignificant portion of the residue on raw agricultural commodities. Therefore, EPA no longer believes it necessary to estimate residues of THPI for raw agricultural commodities. THPI is included in the residue estimates for animal commodities.

3. *Comment:* The Natural Resources Defense Council, Inc. (NRDC) commented that the captan metabolite THPI was inadequately discussed in the PD 2/3. The NRDC also expressed interest in whether EPA would attempt to determine the conversion of captan to THPI that could occur through such processes as cooking or commercial food processing.

EPA Response: EPA agrees that the PD 2/3 did not adequately discuss THPI for the reason given in response to the previous comment. As previously noted, the Special Data Call-In Notice required a number of studies in order to determine the levels of captan and THPI in a variety of raw agricultural commodities, and in the same commodities following the washing, peeling, and processing steps. These data show that, while negligible amounts of THPI are present in the raw agricultural commodities, as the processing steps proceed captan is almost completely converted to THPI.

The levels of captan present on the raw agricultural commodities are now being used in our exposure assessment because they represent the upper-bounds of consumer exposure. With the exception of raisins, in all cases where data on processed commodities were available, total residues (captan plus THPI) on the items processed for human consumption were lower than captan residues on the raw agricultural commodity. (Residues are lost to washing water, peeling, cooking water, etc.)

4. *Comment:* NRDC also expressed concern regarding the adequacy of FDA's routine multi-residue analysis to detect the presence of captan.

EPA Response: EPA has used FDA monitoring whenever possible to estimate exposure. Samples collected by FDA were analyzed with a reported recovery of 80 percent for captan. The estimated limit of detection is 0.02 ppm. Consequently, EPA believes these data adequately characterize exposure to captan. While it is true that the multi-residue analytical method used by the FDA in monitoring activities detects captan but not its major metabolite THPI, this is not considered a problem because virtually all of the residue on raw agricultural products is the parent compound.

5. *Comment:* The Scientific Advisory Panel was requested to comment on EPA's "worst-case" calculation of dietary risk in the PD 2/3 and whether and to what degree EPA should use FDA's Market Basket Survey data. The SAP disagreed with the method of estimating human dietary exposure to captan. Particularly, the Panel objected to the use of tolerances, especially when FDA's Market Basket Survey data were available. It was suggested that the Survey data be used to the maximum extent possible or use alternative methods for making estimates more realistic.

EPA Response: EPA did not believe that FDA's Market Basket Survey data were appropriate in estimating captan exposure due to an inadequate number of samples. However, since the time of the PD 2/3, EPA has obtained FDA surveillance monitoring data, which encompasses a much greater number of samples of commodities than the Market Basket Survey, as well as data provided by the registrants, as discussed previously. Where the FDA monitoring data were considered sufficient (e.g., at

least 100 samples with positive detections for frequently sampled crops), EPA used these data to determine exposure levels because they are believed to be the best available data and result in a more reliable dietary exposure estimate (Ref. 16). FDA surveillance monitoring samples are not randomly chosen, but are selected partly on the basis of volume of production of a commodity, and also on the basis of prior residue problems with a particular food. Thus, residues detected in the surveillance samples probably are somewhat higher than in randomly selected samples and provide a more conservative estimate of risk. Samples are collected as close as possible to the point of production in the food chain, because the aim is to monitor fresh food being shipped in interstate commerce. This also would lead to a more conservative exposure estimate than exists when the product finally reaches the consumer. In addition, a very large number of samples from many different areas are analyzed in the surveillance program, many times more than in field trials or in FDA's Market Basket Survey. For example, 697 samples of strawberries were analyzed in 1985–1987 with 270 positive findings reported in 18 states nationwide. EPA believes that it has used the best data available in estimating exposure to captan and thus has satisfied the concerns expressed by the SAP. A more detailed discussion of the data used to estimate residues for each crop, the basis for selecting those data, and the impact the respective data set had on the calculations of dietary risk from all food uses of captan is presented in the Office of Pesticide Policy's Dietary Exposure Branch memorandum (Ref. 16).

B. Non-Dietary Exposure and Risk

1. *Initiation of Captan Special Review (RPAR).* One of the EPA's concerns in initiating a Special Review of captan was the potential oncogenic risk from non-dietary exposure to technical captan and to products containing this fungicide (45 FR 54938). At that time, no information was available on the exposure potential from non-agricultural uses of captan or exposure to home uses. EPA reviewed two studies that gave estimates of exposure to captan for mixer/loaders and applicators in orchards using airblast speed sprayers (Ref. 36) and hand held equipment (Ref. 17). EPA also expressed concern regarding the potential hazards of exposure to harvesters through reentry into fields of crops treated with captan before residues on stone and pome fruits, almonds and vegetable crops had dissipated (Ref. 17).

2. *Proposed Decision (PD 2/3).* In preparing its proposed decision on captan in 1985, EPA reviewed data submitted by registrants on non-dietary exposure to captan and products containing captan. These data were supplemented by studies in the published scientific literature and EPA's own surrogate data bank. In calculating exposure to captan EPA used a dermal absorption rate of 1.3 percent per hour. This rate was based on a study in the rate submitted by a registrant (Ref. 42) and reviewed by EPA (Ref. 61). EPA assumed 100 percent as the inhalation absorption rate (Ref. 29).

Exposure to captan was estimated by calculating the Lifetime Average Daily Dose (LADD) using the following formula: LADD = (Dose acquired in 1 working day in mg/kg/day) × (Number of days exposed per year/365) × (35 years of working/70 years lifetime). EPA quantified the oncogenic risks for various agricultural and non-agricultural uses of captan by multiplying the Ladd by the hazard potency (Q_1^*) for technical captan of 2.3×10^{-3} (mg/kg/day)$^{-1}$.

3. *Registration Standard and amendments.* EPA's PD 2/3 on captan proposed that certain protective measures and precautionary statements be required which would reduce exposure to captan to minimize the risks to workers and home users. Since EPA proposed cancellation of all food uses of captan, the protective measures were specified only for non-food uses. However, in order to protect all users while captan was in Special Review, these measures were specified for both food and non-food uses in the Captan Registration Standard issued in March, 1986 and in subsequent amendments in April 1986 and April 1987. These measures included the use of chemical resistant gloves by mixer/loaders, field workers, harvesters and home users. In addition, reentry to treated fields was not allowed within 4 days following application unless a coverall or long-sleeved shirt and long pants are worn.

The new protective measures specified in the Registration Standard were to be included on the labels on all products containing captan released for shipment after March 6, 1988. EPA considered and granted a request submitted by the Captan Task Force on June 10, 1987 to extend the dateline for relabeling existing stocks of captan pesticide products in the channels of trade by 1 year. All registrants were notified that the specified changes should appear on all labels by March 6, 1989.

C. Final Determination on Non-Dietary Exposure and Risks

As part of the Special Review process, EPA has reevaluated the exposure estimates used in calculating the risks from non-dietary exposure to captan. Information from a larger surrogate data base, developed since the PD 2/3 on captan was issued in June, 1985, and information received in response to the captan PD 2/3 have been used in this exposure analysis.

The estimated potency or Q_1^* for captan has been revised since the captan PD 2/3 was issued. The new Q_1^* is 3.6×10^{-3} (mg/kg/day)$^{-1}$ and is discussed in Unit II of this Notice. The difference in estimated potency is not sufficient to change the risk estimates for non-dietary exposure to captan presented in the PD 2/3.

Some of the comments submitted in response to EPA's PD 2/3 on captan included information or opinions regarding the accuracy of EPA's non-dietary exposure estimates and the risk assessment based on those exposure estimates. These comments and EPA's responses are summarized below in the appropriate section. Unit III.C.1. concerns agricultural uses of captan including home uses on plants and trees. Unit III.C.2. addresses exposure and risks from non-agricultural uses including use of pet products containing captan. Unit III.C.3. presents comments and EPA's responses on other issues including the use of surrogate data. In Unit III.C.4., EPA's assessment of non-dietary exposure and risk from captan are summarized.

1. *Comments and EPA response regarding exposure and risk from agricultural uses of captan.* EPA calculated the risks to agricultural applicators, mixer/loaders and field workers. The lifetime oncogenic risk to applicators ranged from to 10^{-5}. Mixer/loader risk estimates ranged from 10^{-6} to 10^{-5} except for treatment of citrus which ranged from 10^{-7} to 10^{-6}. The risk estimates for field workers were calculated using exposure data on strawberries (Ref. 1). In three studies performed in California, risks from exposure to strawberry pickers were estimated at 10^{-5}. One of these studies also estimated the risk for weeders at 10^{-5}. Later studies, also in California, showed the risk from exposure to pickers as 10^{-5} to 10^{-4} (Ref. 62) and 10^{-5} (Ref. 38). A study of strawberry pickers in Oregon showed the risk from exposure to captan as 10^{-6} (Ref. 60).

a. *Body weight estimates.* A registrant, Stauffer, questioned the apparent inconsistency of assuming that

agricultural workers weigh 70 kg while assuming that non-agricultural users weigh only 60 kg.

EPA response: This is not an inconsistency. EPA assumes that the agricultural worker is an adult male with an average standard weight of 70 kg. The average non-agricultural user of captan products is assumed to be either an adult male, adult female, or non-adult. The average weight for these individuals is assumed to be 60 kg.

b. *Exposure and risk estimates for mixer/loaders and applicators.* i. Stauffer commented that inconsistencies in calculation methods have led to erroneous estimates of upper bound risks to mixer/loaders and applicators. For example, they believe that exposure estimates are 10 to 15 times too high for air-blast applications.

EPA response: (a) *Mixer/loaders.* In estimating mixer/loader exposure to captan EPA assumed mixer/loaders wearing no gloves or protective clothing would receive an exposure of 180 mg/hr. This assumption was based on a study conducted by a registrant using captan. EPA has reviewed a surrogate study that, under similar use conditions, predicted an exposure of 47 mg/hr at a 1.0 lb a.i./acre application rate (Ref. 31). At the 2.0 lbs a.i./acre captan rate used in the PD 2/3, the Maitlen estimate would be 94 mg/hr. The two fold difference between the Maitlen based estimate of 94 mg/hr and the estimate of 180 mg/hr used in the PD 2/3 is minimal and within the range of variability observed with exposure studies. EPA finds these estimates appropriate for fruit crops (foliage and preharvest uses), vegetable crops and ornamentals. The mixer/loader exposure expressed as mg/hr would be expected to be the same for any open pour function where the application rates are the same.

(b) *Mixer/loader—Nut crops (Almonds).* In calculating exposure to mixer/loaders of captan used on nut crops, EPA relied on an exposure study (Ref. 12) which estimated exposure to mixer/loaders handling benomyl wettable powder. EPA still supports this estimate of 1.1 mg/lb (a.i.).

(c) *Airblast applicators.* The airblast applicator exposure was estimated for the PD 2/3 using the linear regression equation $y = 4.8x + 16$ where "y" is exposure in mg/hr and "x" is the application rate. This regression equation is still used by EPA and has been determined to accurately predict exposure at the application rates between 1.0 and 7.0 lbs (a.i)/acre used in the studies whose data comprise the regression equation.

(d) *Ground boom applicators.* In the PD 2/3, ground boom applicator exposure was estimated to be 24 mg/hr based on surrogate studies in which the application rates ranged from 0.23 to 3.2 lbs a.i./acre. The current generic data base used by EPA would use an exposure estimate of 9.2 to 18 mg/hr for the mean based on the application rates of 2 to 4 lbs a.i./acre used in the PD 2/3. There is no meaningful difference between the estimate of 24 mg/hr used in the PD 2/3 and the 9.2 to 18 mg/hr exposure rate estimated from the current data base especially when considering the two orders of magnitude variation in exposure observed with ground boom application. Great variability in exposure is expected due to differences in equipment used, weather conditions, and personal work habits that occur both between applications and applicators.

(e) *Pilot exposure.* In the PD 2/3, pilot exposure was estimated to be 2.3 mg/hr based on application rates of 2.5 to 6.0 lbs a.i./acre (Ref. 26). Using its current generic data base EPA estimated pilot exposure to be 0.58 mg/hr at an application rate of 1.0 lb a.i./acre.

At the higher application rates of 2.5 to 6.0 lbs a.i./acre used in the earlier study, the estimated exposure would be 1.5 to 3.5 mg/hr. This figure encompasses the estimate used in the PD 2/3 which is still supported by EPA. EPA also supports its previous estimate that the risk to pilots applying captan to almonds is 10^{-7}.

ii. A registrant, Chevron Chemical Company, while agreeing with EPA's position that it is prudent for those mixer/loaders in contact with captan to wear a dust mask and gloves, commented that inhalation exposure during application of captan is 100 times less than that during mixing and loading. They stated that EPA's suggested requirement that a dust mask be worn during application would not significantly reduce exposure particularly since captan in not applied as a dust.

EPA response: Since the PD 2/3 was issued in June, 1985, EPA has modified the protective clothing requirements for persons exposed to captan. Dust masks were not specified in the Registration Standard since inhalation exposure is negligible compared to dermal exposure. EPA still recommends, in accordance with good industry practices, the use of dust masks for mixer/loaders handling dusty formulations. All mixer/loaders and applicators should wear coveralls, goggles or face shield, chemical resistant gloves, and boots or overshoes. In addition, a chemical resistant apron should be worn during mixing/loading. A hat or other appropriate head covering should be used for overhead application in which spray is expected to fall down toward the head.

Chevron also disagreed with EPA's assessment that mixer/loaders and those who apply captan to cranberries face an inhalation hazard that is not typical of other crops.

EPA response: Tables 10 and 11 in the PD 2/3 on captan show the dermal and inhalation exposure estimates used in calculating risks to mixer/loaders and applicators respectively. The inhalation exposure estimates for cranberries are the same as those for almost all fruits. EPA acknowledges that the use of cranberries alone as an example of a site involving both dermal and inhalation exposure to captan was confusing (PD 2/3 II–94).

iii. The University of Hawaii at Manoa submitted comments on the use of captan on wetland taro. They noted that worker exposure, if of concern, would only be relevant to the actual applicator, and could be minimized, if necessary, by revised directions for use. They stated that since the application of captan in made only once per growth cycle, which is 12 to 15 months from planting to harvest, with the application being a direct soil application with incorporation, and since the average taro farm is 2.38 acres with a State total of 370 acres (1983), even applicator exposure poses minimum risk.

EPA response: EPA agrees that workers applying captan to taro have comparatively little exposure to captan compared, for example, to applicators making foliar applications to other crops. However, although only a low level of exposure is involved in this captan use, EPA believes that all applicators should use chemical resistant gloves and coveralls, as specified in the Registration Standard, since they provide an important minimal level of protection for all applicators for agricultural uses of captan.

c. *Field worker and harvester exposure and risk estimates.* i. The California Almond Growers Exchange and Chevron Chemical Company noted that almond culture is highly mechanized and that workers have little contact with foliage or the crop.

EPA response: EPA acknowledges that almond culture is highly mechanized and that workers have little contact with foliage or the crop. However, in the absence of adequate exposure data, EPA still supports its initial estimate of exposure during the procedures involved.

ii. The California Prune Raisin and Walnut Research organization and Chevon Chemical Company commented that the fieldworker exposure estimates

for strawberries are not applicable to prunes and raisins since applications occur several months prior to harvest, and that potential exposure during application can be reduced to acceptable levels with protective gloves and face masks.

EPA response: EPA agrees that the strawberry data are not applicable to prunes and raisins and will reevaluate fieldworker exposure to prunes and raisins when new data on tree fruit crops and grapes have been received and reviewed.

iii. The Florida Strawberry Growers Association commented that the use of water resistant gloves during harvest is impractical as they would cause damage to the fruit. They also suggested that irrigation prior to harvest would eliminate crop residues.

EPA response: EPA has reviewed a study conducted by the California Department of Food and Agriculture on the use of captan on strawberries. This study found that all of the women (but less than 5 percent of men) normally wear chemical resistant gloves to protect their hands from dirt and strawberry juice. Unless Florida varieties vary so significantly from California varieties of strawberries, EPA does not believe that gloves will be any less practical in Florida than has been demonstrated by female harvesters in California. In regard to the suggestion that irrigation prior to harvest would reduce exposure to harvesters, EPA has no evidence, and no data have been received from registrants, to show that irrigation reduces captan residues and removes the need for protective gloves.

iv. A registrant, Chevron, commented that EPA has seriously overestimated exposure to fieldworkers. They questioned the validity of EPA's use of monitoring data from field workers who were wearing cotton gloves to pick strawberries treated with captan. They referenced a study which showed that exposures obtained by using cotton gloves were approximately five times larger than those obtained by using hand rinses.

EPA response: While it is true that cotton gloves may overestimate hand exposure in some field studies, it is also possible that they may underestimate exposure in others, depending upon how long gloves are worn during the monitoring period, type of work activity, type of formulated product, chemical, etc. It has not been demonstrated for captan that cotton gloves overestimate or underestimate exposure as compared to hand rinses, which are generally believed to underestimate exposure, nor has it been demonstrated for either methodology that they accurately simulate the retentive properties of human skin. The pros and cons of hand exposure passive dosimetry are discussed in depth in Subdivision U of EPA's Applicator Exposure Monitoring Guidelines (Refs. 30 and 59).

v. Chevron also stated that they found it neither scientifically nor statistically valid to extrapolate data from strawberry weeders to all fieldworker exposures. They found the study on weeders unsound, noting that the data on exposure was gathered using four children ages 8–13 and that the range of exposures for the four subjects was extreme: from 3.91 mg/hr to 266.72 mg/hr.

EPA response: EPA agrees that it is not valid to extrapolate fieldworker exposure from strawberries to other crops. EPA will reevaluate fieldworker exposure once the additional data are received.

d. *Seed Treatments.* The National Cotton Council commented that captan is applied to cotton almost exclusively by commercial seed treating companies. They expressed the view that protective gloves should be required for those handling seed, and not for harvesters or field workers.

EPA response: EPA agrees that chemical resistant gloves should be worn by workers involved in handling treated seed (commercial/bulk manual mixing of captan during seed treatment and hopper filling). Reentry intervals and protective clothing requirements would not be imposed for cotton field workers or harvesters when captan is only used as a preplant treatment on cotton seed because EPA believes there would be very little, if any, residues on the plant. Consequently, exposure would be minimal and a reentry interval would be unnecessary.

e. *Home garden uses.* In regard to the estimates of risk from home use of captan, EPA received one comment from Security Lawn and Garden Products that EPA has overestimated exposure to the home user when captan is used for spraying trees. In their estimate, it takes only 45 minutes per 6 trees using a hose-end applicator to mix, apply, and clean up.

EPA response: EPA estimate was that the home user would be exposed for 1.25 hours. EPA finds that even if the lower estimate suggested by Security Lawn and Garden were used, it does not make an appreciable difference to the risk from this use of captan. The estimated risk using the higher exposure estimate is 10^{-7}.

2. *Comments and Agency response regarding the non-agricultural uses of captan.* The risks for non-agricultural uses of captan were described in detail in the PD 2/3. These risks ranged from 10^{-4} to negligible. For example, the estimated risks from exposure to animal shampoos containing captan ranged from 10^{-5} to 10^{-4}. Risks for workers incorporating captan into plastics, paints and cosmetics were estimated as negligible, and as 10^{-5} for adhesives. EPA calculated that exposure to workers cutting and packaging cut flowers treated with captan results in risks of 10^{-7} to 10^{-6}.

These risks from non-dietary exposure to captan are described in detail in the Captan PD 2/3. All risks were calculated at the 95 percent confidence level and reflect the upper limit of excess cancer risk which is not likely to be exceeded.

Some estimates of exposure and risk from non-agricultural uses of captan have been evaluated in light of additional data and comments received in response to EPA's PD 2/3 on captan. These data and comments are summarized below with EPA's response.

a. *Adhesives.* Stauffer questioned the accuracy of EPA's exposure assessment for adhesives believing them to be exaggerated.

EPA response: The risk estimate for mixer/loader/applicators of captan to adhesives was estimated in the PD 2/3 to be 10^{-5}. However, EPA has since considered that because captan is added to the adhesives via a feeding system and that common industry practice is such that there is very little human exposure during this process. In light of this additional information the estimate of risk to these workers has been reduced to "negligible."

b. *Non-agricultural home uses.* i. Stauffer questioned the consistency of EPA's assumption that all of the captan available in shampoos and pet powders is 100 percent absorbed. Stauffer estimated that the absorption rate for powders would be less than 100 percent.

EPA response: The use of a 100 percent dermal absorption rate in the PD 2/3 calculations for both pet shampoos and pet powders was inconsistent. Absorption from shampoos is calculated at 100 percent because of the solvents and emollients in the shampoo. The estimated risk from exposure to pet shampoos containing captan (without chemical resistant gloves) remains at 10^{-5} to 10^{-4}. Dermal absorption for pet powders has been recalculated at 1.3 percent which reduces the risk from exposure to pet powders from 10^{-8} to 10^{-10}.

EPA's estimate of exposure to captan in pet shampoos remains at 100 percent because exposure is to an oil/water emulsion, with glycerine, or triethanolamine stearic acid soap. EPA's

estimate of risk from exposure to captan in pet shampoo is 10^{-5} to 10^{-4} without gloves. The use of chemical resistant gloves specified in the Registration Standard, and subsequent amendments, would reduce the estimated risk from captan in pet shampoos to 10^{-6} to 10^{-5}. The registrant for the remaining registration for pet shampoo containing captan requested a voluntary cancellation of this product in January, 1988.

ii. A comment was received from the Natural Resources Defense Council and California Rural Legal Assistance Foundation (NRDC/CRLAF) in response to the PD 2/3 regarding cosmetics. NRDC/CRLAF expressed the view that EPA had not demonstrated sufficient concern regarding the potential risk posed by the use of captan in these products; that EPA had not informed the Food and Drug Administration (FDA) of the risk in a timely manner; and that EPA had not requested that the FDA notify consumers of all cosmetic products containing captan.

EPA response: EPA agrees that it is important that EPA should release information to other agencies in a timely manner when risk data on ingredients which are also regulated by other agencies becomes available. EPA did forward to FDA the information available regarding the risk from exposure to captan in cosmetics, even though EPA did not have sufficient data to warrant a recommendation to the FDA that the public be notified immediately of the potential risk posed by captan.

Since the PD 2/3 was issued, the FDA has continued to evaluate the potential risk from exposure to captan which is used as a bacteriostat in cosmetics and as an active ingredient in medicated shampoos. A recent report prepared for FDA by the Expert Panel of the Cosmetic Ingredient Review concluded that the available data are insufficient for the FDA to determine whether captan, under each relevant condition of cosmetic use, is either safe or not safe and recommended that the FDA undertake the collection of additional data on the potential for skin carcinogenicity (Ref. 11).

3. *Other comments and EPA's response on the preliminary determination on non-dietary exposure and risk*—a. *Teratogenic and reproductive effects.* NRDC/CRLAF expressed their concern that the teratogenic and reproductive toxicity for workers was neither discussed nor calculated in the PD 2/3. They expressed their concern that workers are more likely to be at teratogenic risk than consumers of captan treated food.

EPA response: EPA has received additional data on the teratogenic and reproductive effects of captan and these effects are no longer considered to be at a level of concern. These issues are discussed in Unit II of this Notice.

b. *Use of surrogate data.* The NRDC/CRLAF commented that for several use sites, EPA relied on exposure studies conducted for other chemicals in determining captan exposure without providing any justification for reliance on this surrogate data. For example, for not crops, an exposure study for benomyl was used as a surrogate for exposure to captan.

EPA response: EPA believes that the use of surrogate data to estimate the exposure to individuals handling a pesticide has become an accepted procedure in the scientific community. As one would expect, a large array of variables affect the exposure received by a mixer/loader or applicator. The factors that impart the greatest impact to which the data can be normalized are formulation type, application rate, acreage treated, clothing and equipment used. Other factors that have an impact on exposure, for which standardization of variation is difficult, are environmental conditions and personal work habits. Chemical specificity is very important in determining dosage, which depends on the ability of the specific pesticide and formulation to penetrate the skin. EPA's Pesticide Assessment Guidelines, Subdivision U, discusses the issue of surrogate data in more detail. Current Agency policy is to use appropriate surrogate data in estimating exposure when adequate chemical specific data are not available; when chemical specific data become available, they are incorporated into the data base. A large data base is more important in that it assists EPA in estimating the wide range of possible exposures believed likely to occur for a pesticide during its use on any given use site.

c. *Use of protective clothing.* The NRDC/CRLAF expressed concern that EPA consistently estimates that protective clothing and rubber gloves will reduce exposure to pesticides by about 80 percent. They stated that the assumption was made throughout the PD 2/3 that there would be a reduction in dermal exposure to captan resulting from the use of protective clothing but that this assumption was not documented. They asked if any captan exposure studies had been conducted to support these percentage reductions and challenged the validity of these estimates in the absence of chemical-specific data.

EPA response: EPA's Applicator Exposure Monitoring Guidelines, Subdivision U (NTIS Document No. PB87–133286), discusses estimating the protective value of clothing. There is not sufficient data available to identify a single statistically valid value for clothing penetration. In EPA's surrogate data base, there is a clustering of values in the 5 to 10 percent range, which suggests that level may be typical. Thus, for a chronic exposure, where average exposure is important, a 10 percent penetration (or 90 percent protection) estimate is appropriate. However, in the surrogate data base, there are sufficient excursions above the 5 to 10 percent level to demonstrate that, on occasion, exposures are much higher. For an acute effect, it is important to consider exposure which could occur on any given day. Thus, EPA saw the need to create a safety factor above the 10 percent penetration estimate for acute effects. A 50 percent estimate was chosen because it incorporates an ample safety factor over the 5 to 10 percent estimate and includes many of the outlying excursions representing higher penetrations as well. Because captan's toxicological concern is based on chronic exposure rather than single dose (acute) exposure, the 10 percent penetration, or 90 percent protection, estimate was used.

d. *Home uses of captan.* NRDC/CRLAF were critical of EPA for not stating its position regarding home use of captan. They urged EPA to immediately suspend home use of captan given the oncogenic, reproductive, and possible teratogenic and mutagenic concerns associated with this chemical. They expressed the opinion that although EPA could argue that protective clothing would substantially reduce the risks from inhalation and dermal exposure, it was unlikely that home gardeners would adhere to such label precautions or that they would have proper protective clothing available. NRDC also requested that subsequent Agency Special Review documents on captan, or any other chemical, contain a distinct section identifying the risks and benefits of the home uses and the regulatory decisions on such uses.

EPA response: The oncogenic risks for home uses of captan on plants and gardens were estimated in the PD 2/3 to be 10^{-7}. This estimate is confirmed by a study in which home user application was measured directly. The exposure estimate assumes that a short-sleeved shirt and long pants are worn; it does not assume the use of any protective equipment, including gloves (Ref. 27).

EPA has recommended the use of protective gloves and that labels of captan products for home use list simple instructions geared towards the home uses that would result in a further reduction in exposure if they were followed. EPA agrees with NRDC/CRLAF that position documents on pesticides which are labelled for home use should clearly describe the risks and benefits of these uses.

4. *Summary of EPA's assessment of the risks from non-dietary exposure to captan.* Based on the review of the available data and the comments received in response to the PD 2/3 regarding risks from non-dietary exposure to captan, EPA has determined that the exposure and risk estimates for mixer/loaders and applicators have not changed substantially (Table 3). The highest risks remain in the range of 10^{-6} to 10^{-5}.

TABLE 3—PD 2/3 RISK ESTIMATES (WITHOUT PROTECTIVE CLOTHING) [1]

Agricultural uses	Mixer/loader	Applicators
Fruit/nut crops:		
Almonds	10^{-6} to 10^{-5}	10^{-3} (pilot)
Apples:		
Preharvest	10^{-5}	10^{-6} to 10^{-5}
Postharvest	10^{-6}	
Apricots	10^{-6}	10^{-6}
Avocado	10^{-6}	10^{-6}
Blackberry	10^{-6}	10^{-6}
Blueberry	10^{-6} to 10^{-5}	10^{-6}
Cherries:		
Preharvest	10^{-6} to 10^{-5}	10^{-6} to 10^{-5}
Citrus	10^{-7} to 10^{-6}	10^{-7} to 10^{-6}
Cranberry	10^{-6}	10^{-6}
Grapes	10^{-6}	10^{-5}
Mangos	10^{-6} to 10^{-5}	10^{-6} to 10^{-5}
Nectarines	10^{-6}	10^{-6}
Peaches	10^{-6}	10^{-5}
Pears	10^{-6}	10^{-7} to 10^{-6}
Plums	10^{-6}	10^{-6}
Pineapple	10^{-6}	10^{-6} to 10^{-5}
Strawberry	10^{-6}	
Vegetable crops:		
Beans	10^{-6}	10^{-6}
Beets	10^{-6}	10^{-6}
Carrots	10^{-6}	10^{-5}
Celery	10^{-6} to 10^{-5}	10^{-6} to 10^{-5}
Cucurbits	10^{-6} to 10^{-5}	10^{-6} to 10^{-5}
Eggplant	10^{-6} to 10^{-5}	10^{-6} to 10^{-5}
Lettuce	10^{-6}	10^{-6}
Peppers	10^{-6} to 10^{-5}	10^{-6} to 10^{-5}
Potatoes:		
Foliar	10^{-6} to 10^{-5}	10^{-6} to 10^{-5}
Seed treatment.	10^{-7} to 10^{-6}	10^{-7}
Rhubarb	10^{-6} to 10^{-5}	10^{-7} to 10^{-6}
Soybeans:		
Seed treatment.	10^{-7} to $^{-6}$	10^{-7} to 10^{-6}
Spinach	10^{-6}	10^{-6}
Sweetcorn	10^{-6} to 10^{-5}	10^{-6} to 10^{-5}
Taro		
Tomatoes	10^{-6} to 10^{-5}	10^{-6} to 10^{-5}

[1] These risk estimates are summarized from the exposure and risk estimates presented and discussed in Unit II. of the PD 2/3. This PD 4 supports the same risk conclusions.

[2] The Agency estimates that the risks for mixer/loaders and applicators are reduced by between 80 and 90 percent when protective clothing is used. Typically risks are reduced by an order of magnitude, for example, from 10^{-7} to 10^{-6}. (See text in Unit III. for more details.)

EPA believes it is appropriate to assume, for chemicals with chronic concerns including oncogenicity, that the type of protective clothing proposed in the Captan PD 2/3 and contained in the Captan Registration Standard and amendments protects covered areas by reducing exposure to this area by 90 percent.

The estimate of risk for applicators from exposure to captan incorporated in adhesives has been reduced from 10^{-5} to "negligible". The home user's risk from exposure to captan in products used on plants and gardens is 10^{-7}.

EPA has not changed its earlier estimates of fieldworker/ harvester risks from non-dietary exposure to captan. Risks were calculated to be at 10^{-5}. Additional data on fieldworker/ harvester exposure have recently been submitted to EPA as part of the data required by the Registration Standard. When these data submissions have been completed and reviewed EPA will reevaluate the risks to fieldworkers/ harvesters from exposure to captan and establish appropriate reentry periods.

In EPA's PD 2/3 on captan, EPA proposed certain protective clothing requirements which it was anticipated would reduce the non-dietary exposure to captan for mixer/loaders, applicators, fieldworkers, and home users. For agricultural uses of captan, a reentry interval of four days was specified replacing the former requirement that workers must not enter captan treated fields until after sprays had dried. These measures were also specified in the Captan Registration Standard and subsequent amendments and included labelling changes reflecting EPA's policies regarding protective clothing and other precautionary measures. Unit VI of this Notice states EPA's conclusions regarding the worker risks from the use of captan.

IV. Summary of Benefits Assessment and Agency Evaluation of Comments and Additional Data Received

In its PD 2/3, EPA presented an analysis of the benefits associated with the continued use of the fungicide captan, and presented a crop by crop evaluation of the benefit considerations in an accompanying Technical Support Document. The benefits of captan were assessed in terms of the economic impacts which would result for producers and consumers if the chemical were no longer available due to cancellation. The main factors considered in the impact analysis were changes in production costs and crop yields.

An assessment of the effects of cancelling captan provides a baseline estimate of the value of captan products to the agricultural community and society, and illustrates the effects that would follow if captan users had to switch to alternative fungicides.

In issuing the PD 2/3 EPA expressed its concern not only with risks from the use of captan but with the risks associated with fungicides as a group. EPA was aware that the proposed cancellation of the food uses of captan might result in growers shifting to alternative chemicals that also had toxicological concerns. While proposing to examine each of the alternative fungicides through the Registration Standard or Special Review process, EPA encouraged registrants to generate data on safer and less toxic chemicals and alternative methods of controlling fungi. EPA's current assessment of the likely shifts in usage for various cancellation scenarios involving captan, chlorothalonil and the EBDCs is discussed in Unit VI of this Notice.

The importance EPA has placed on considering the fungicides as a group is also based on its concern that estimates of the benefits of any one fungicide need to take into consideration the problem of resistance. Research on the efficacy of various fungicides shows that resistant strains of fungi may develop when only one, or in some cases when a limited number of different fungicides is used. If resistance develops and no alternatives are available, major economic losses could occur if control of the pest or pathogen is essential to crop production. It is difficult to predict if and when resistance will develop for every use site due to variability in fungal populations, climatic variations in different regions, and variations in the combination of fungicides used by different growers. Resistance is more likely to develop when there is heavy disease pressure over an extended portion of the growing season. EPA has taken this problem of resistance into consideration in its benefits analysis for each of the registered uses of captan.

In the PD 2/3 and the Technical Support Document for captan, EPA estimated that the proposed cancellation of captan on all food crops would result in total first year losses to farmers of $20 to $44 million (including seed treatments), which represents the increased costs of using, in some cases, more expensive alternative fungicides and the decreased value of production (decreased yields). It was estimated that the burden would be borne largely by

the consumer for fruit and vegetables, by the farmer for seed treatments and by the grower for ornamentals. EPA did not propose cancellation of the non-food or nonagricultural uses of captan. Seed treatments were considered a food use, but were not proposed for cancellation in the PD 2/3.

In response to the PD 2/3 issued in June, 1985, EPA received numerous comments relating to its assessment of the benefits of captan and the potential economic impacts of its cancellation.

The following registrants submitted preliminary comments including benefits and usage information to EPA in August, 1985: Chevron Chemical Company, Inc., Stauffer Chemical Company, Inc., and Makhteshim-Agan (America), Inc. A more extensive benefits summary of apples, strawberries, stone fruits and seed treatments was conducted for the registrants by SRI International and submitted to EPA in March, 1986. In October, 1988, the industry's Captan Task Force, now under the direction of ICI Americas, Inc., submitted a draft of their most recent captan benefit assessment (Ref. 21). This assessment addressed the use of captan on the following crops: almonds, apples, apricots, blueberries, caneberries, cantaloupes, cherries, cucumbers, grapes, nectarines, peaches, tomatoes, pears, plums, prunes, strawberries; the post-harvest treatment of apples, cherries and pears; and a number of seed treatments. The Task Force has submitted the required residue data in support of the continued registration of the following food uses of captan: almonds, apples, apricots, cantaloupe, cherries, cucumbers, grapes, nectarines, peaches, pears, plums/prunes, strawberries and tomatoes.

The U.S. Department of Agriculture (USDA) submitted comments in response to EPA's Preliminary Determination on captan. The USDA is conducting an in depth assessment of all chemical fungicides, including captan. They believe that there are significant benefits to having captan available for some minor uses which registrants have not supported, and may undertake to gather data for some of these uses. It is anticipated that the results of their fungicide assessment will become available in 1990. The USDA comments appear in their entirety in Unit V of this document.

Comments on the benefits of captan were also received from 9 individual growers or processors, from 12 grower associations, and from Cooperative Extension Services or university research facilities in California, Georgia, Louisiana, Ohio and Washington.

Many responses stressed the established record of effective captan use including low cost, relative ease of use and low phytotoxicity. It was also emphasized that captan is effective against a broader spectrum of diseases than many of its alternatives. Many rebuttals to EPA's proposed cancellation of the food uses of captan expressed the opinion that its removal from the marketplace would have a detrimental effect on the production of fruit crops and almonds, and on the post-harvest treatment of tree fruits. It should be noted that very few of the rebuttals included any new field data, technical literature, or experimental data to substantiate the various benefits statements submitted.

A. Food Uses of Captan

As a result of concerns raised by commenters and the additional data that have become available, EPA has revised its estimates of the economic impacts relating to the use of captan on a number of food crops. For example, EPA now estimates that if captan were not available as a post-harvest treatment on cherries or pears, annual losses would amount to $4.6 and $16.3 million respectively.

In the PD 2/3, the total estimated benefits for the registered food uses of captan (excluding seed treatments) were between $11.3 and $23.7 million per year. EPA agrees with Extension Service and state recommendations that on some crops there are no viable alternatives to captan when certain diseases are present and also finds that captan is important in slowing the development of resistance to its alternatives. These are important although unquantified benefits of having captan available. EPA now estimates the quantifiable economic benefits of having captan available for the food uses of captan (excluding seed treatments) to be at least between $67.8 and $75.1 million dollars annually.

The following sections give EPA's estimate of the likely impacts that would result from the loss of captan's availability for disease control on each of the crops for which it is currently registered.

1. *Almonds.* In EPA's preliminary determination on the benefits of retaining the use of captan on almonds, it was estimated that captan was used on about 188,000 acres of almonds, representing about 59 percent of U.S. almond acreage with annual benefits of about $1.4 million. Comments from the Almond Board of California in 1985 indicated that EPA's 1979 data underestimated the total almond bearing acreage, and that 59 percent of the total acreage is 233,000 acres. Information from industry's Captan Task Force in October, 1988 noted that extension experts estimate that between 75 and 100 percent of all almond acreage is treated with captan.

Comments received about the efficacy of captan in treating diseases on almonds include the California Almond Growers Exchange's assessment that captan is the most useful protectant fungicide for almonds because it is effective against the four major diseases attacking blossoms, leaves and buds. Also, in the San Joaquin Valley where most of California's almond production occurs, dry conditions make it possible for growers to control both brown rot and shot-hole with a single fungicide application. Captan's broad spectrum of efficacy makes it particularly useful for this kind of application. Knowledge of the brown rot benomyl resistance on peaches can be used effectively in directing the use of broad spectrum alternatives to delay similar resistance problems in other crops. Captan would provide a valuable alternative to benomyl in the event that almond brown rot became resistant to this chemical.

Conclusion: EPA agrees that total almond bearing acreage has increased significantly since 1979 and that captan use has also increased. However, EPA maintains its position that about 60 percent of the almond acreage is treated with captan. Captan's use is important in slowing the development of resistance. Some resistance to the alternatives benomyl and iprodione which are used in treating brown rot has already been reported. Captan and ziram are the only two products that currently give effective control of shot-hole which is another major disease on almonds. Captan is preferred to ziram because it also controls brown rot, leaf blight and scab, resulting in fewer applications and reduced treatment costs.

EPA agrees that captan is the only registered fungicide which controls all the major almond diseases and thus does not require two or more fungicides to cover the entire spectrum of diseases. Its broad spectrum activity also makes it the preferred pesticide to be used in combination with benzimidazoles (benomyl and thiophanate-methyl), and with the new sterol biosynthesis-inhibiting fungicides where it is used to prevent or ameliorate resistance build-up in pathogenic fungi. Benefits have increased by at least the 24 percent increase in acres to about $1.7 million per year.

2. *Apples.* The use of captan is registered both as a pre- and post-

harvest treatment on apples. In the PD 2/3, EPA estimated the loss in net revenues to farmers if the pre-harvest uses of captan on apples were cancelled. The effect of cancellation of the post-harvest use on apples was not estimated. Average annual per acre losses ranged from approximately $530 in the Northeast to $150 in the Southeast. It was also anticipated that the loss of captan would result in the diversion of about 40 million pounds of fresh fruit annually to the processed market because of the likely increase in disease damage when alternatives to captan were used.

EPA's position was that although none of the captan alternatives were registered for control of all the apple diseases that can be controlled by captan, there were viable alternative fungicides. Dikar®, containing mancozeb and dinocap, was mentioned as one of the most effective alternatives to captan. Others included metiram, captafol and folpet. Two of these alternatives: folpet and captafol, have since been 100 cancelled. Mancozeb and metiram (EBDCs) are currently in Special Review.

A plant pathologist with the Cooperative Extension Service at the University of Georgia commented that captan has been a major fungicide for controlling fruit disease, particularly on apples, for about 25 years and that fruit growers in Georgia would lose millions of dollars if captan were not available to control the summer rots that affect apples.

Comments received from the Cooperative Extension Service, Washington State University, stressed the importance of the post-harvest treatment of apples. The Captan Task Force also addressed the need for captan in post-harvest treatment of apple diseases. They estimate that in the Northwest as much as 50 percent of the apple production (almost 430,000 tons of apples) that is currently treated with captan would be lost.

In Washington State, a 17 percent loss would result in a loss of about $54 million. This estimate is based on the inability of the benzimidazoles and other non-EBDC alternatives to captan to control the same broad spectrum of pathogens. The Captan Task Force predicted similar losses in Wisconsin due to resistant Penicillium blue mold strains which would result in annual losses estimated at about one-quarter of a million dollars.

In New York, an estimated 10 percent of the apple crop would be lost without captan. Extension experts indicate that packing houses would use a combination of diphenylamine, which is more expensive than captan, and a benzimidazole. Losses in this state could total $8 million annually.

Virginia packing houses are not expected to use diphenylamine as it has been found to cause injury to Golden Delicious apples in field trials. It is estimated that up to 25 percent of the Virginia apple crop would be destroyed without captan due to resistant strains of Botrytis and Penicillium, resulting in an annual loss of almost $5 million. The Captan Task Force stated that without captan, the total loss to apple producing states would be approximately $72 million per year.

The most recent information received from registrants through the Captan Task Force (October, 1988) includes their estimate that approximately 50 percent of all apple acreage is treated with captan which is somewhat higher than the original Agency estimate of 36 percent.

Conclusion: Comments received indicate that about 50 percent of the apple acreage may be treated with captan; however, data were not submitted to support this claim. Therefore, EPA retains its estimate of the net impacts due to the loss of captan for pre-harvest uses as discussed in the documents supporting the PD 2/3. EPA recognizes that particular regions may experience high losses if captan were not available.

Although EPA did not estimate the impact of the loss of captan as a post-harvest treatment in its PD 2/3, EPA agrees with estimates received in comments that about 25 percent of the apple crop is treated with captan post-harvest. While EPA has not put a specific dollar estimate on the magnitude of benefits of post-harvest captan treatments, the loss of captan could result in losses in excess of $25 million if only 5 percent of the apples in storage were lost due to storage rots.

3. *Apricots.* In its PD 2/3, EPA stated that there was unlikely to be widespread decreased disease control if captan were not available. It was estimated that about 15 percent of apricot acreage is treated and that the economic impact of the loss of captan was estimated to range from a decrease in control costs of $434,000 to an increase of $700,000 depending on the alternative selected. It appeared that the most likely alternatives to captan were thiophanate methyl, triforine, maneb, benomyl, and sulfur.

EPA's current estimate is that approximately 60 percent of the apricot crop in the United States is treated with captan. The recommended alternatives to captan include ziram, maneb, zineb, benomyl, iprodione, triforine, sulfur and thiophanatemethyl.

The Captan Task Force summary of the economic impact of captan on this crop indicates that ziram is the only alternative and that ziram is both more expensive and less effective than captan. As with other crops, there is concern by growers that more than one chemical should be available so that the problem of fungal resistance can be minimized.

Conclusion: Although EPA believes there are other alternatives to captan besides ziram for some diseases, EPA agrees with the Task Force summary in reference to the resistance problem. The EBDCs are in Special Review and if their use on apricots were cancelled captan would be even more important for deterring the build-up of resistance with the newer biochemically selective fungicides.

4. *Caneberries/blueberries.* In 1985, EPA estimated that captan was used for disease control on about 26 to 33 percent of caneberries (blackberries, dewberries, and raspberries), blueberries and cranberries. It was believed that major losses of $3.5 to $4 million would occur for those producers using captan due to increased treatment costs of $200,000 to $300,000 and production losses of $3.3 to $3.7 million.

The North American Blueberry Council is gathering residue data in support of the continued registration of captan on blueberries. In telephone communication with EPA, they indicated that captan is used to treat 90 percent of the 14,000 acres that are currently in production in Michigan where it is applied two or three times a year. New Jersey has 9,500 acres of blueberries which are treated with captan twice a year. Captan is used in mixes or alternated with sterol inhibitors (e.g. triforine) as an anti-resistance measure. The Council expressed their concern that the loss of captan would have a major impact on producers and consumers of this crop.

EPA also received information from the USDA which indicates that blueberry acreage in Illinois, Massachusetts and Washington is also treated with captan.

The Captan Task Force submitted some information on blueberries which indicated that no effective alternatives exist to control most of the diseases on this crop. Captafol is no longer registered, and resistance to benomyl has made it ineffective for Botrytis control. The Task Force estimates that by the second or third year that captan is unavailable, growers would lose

anywhere between 20 and 40 percent of their fruit revenues.

The Captan Task Force commented that approximately 40 percent of all caneberry acreage is treated with captan and that if this fungicide were not available the cost of disease protection would increase significantly because of the higher cost of the alternatives. The most likely alternative treatments would be three applications of an iprodione and benomyl combination followed by one or two applications of benomyl alone. They note that some resistance to these alternative chemicals has already occurred.

Several comments were received from caneberry growers and processors and their associations. They indicated that captan is effective against Botrytis and fruit rot to which small fruits are susceptible particularly during a rainy season and noted that Botrytis has shown no resistance to this fungicide.

A member of the Department of Plant Pathology at Ohio State University also expressed concern about EPA's proposed cancellation of captan. He described captan as the most commonly used and effective fungicide on small fruits and that there are not sufficient alternative fungicides to replace the use of captan in small fruit production.

One estimate of the use of captan on dewberries is that 40 percent of the crop is treated annually. Texas also recommends captan for control of anthracnose, fruit rot and Phomopsis on these small berries. The alternatives are copper hydroxide, or combinations of maneb and zinc or copper sulfate, sulfur, zineb and maneb.

Conclusion: While it remains difficult to get information on all of the minor berry crops, EPA believes that between 25 and 40 percent of blueberries and caneberries are treated with captan. While the various comments received claim losses for specific problems, none of the responses received aggregate the impacts to provide any information which would indicate that EPA's initial benefit estimates were incorrect. Therefore, EPA is not changing its position that annual losses of $3.5 to $4 million will occur if captan uses were cancelled on these sites.

5. *Cantaloupe/Muskmelons.* In the PD 2/3, EPA did not discuss the use of captan on cantaloupe/muskmelons and had no information available to indicate that captan was important for disease control on this crop. Since the PD 2/3, industry's Captan Task Force has submitted information indicating that there is very little use of captan on cantaloupe/muskmelons and that there are more efficacious alternatives available.

Conclusion: EPA believes that less than 10 percent of cantaloupe/muskmelons are treated with captan and that there are adequate and probably more efficacious alternatives to captan for this crop including triadimefon, benomyl, chlorothalonil, mancozeb, maneb and zineb.

6. *Celery.* EPA did not directly address the benefits of captan use on celery in the PD 2/3 but instead addressed vegetables as a group since EPA had little data and no indication that captan had important benefits on these crops.

Comments received provided conflicting information on the percent of celery which is treated with captan. One estimate indicates that 70 percent of this crop is treated with captan, while other estimates state that 1 percent or less is treated annually. Florida recommends captan as a plant bed drench or spray to control damping-off and this appears to be a use for which few, if any, alternatives are available. The alternatives for foliar treatment of celery diseases appear to be adequate and include benomyl, chlorothalonil, coppers, mancozeb, metiram, maneb, thiophanate-methyl, DCNA and thiram.

Conclusion: EPA concludes that captan is not important as a foliar treatment for celery. However, it agrees that the plantbed treatment for Florida celery represents an important use in that state and that the loss of this treatment could result in a total loss of the crop when damping-off presents a problem. EPA estimates that a loss of 10 percent of the crop in Florida would result in losses of about $4.6 million.

7. *Cherries.* In the PD 2/3, there was insufficient information available to estimate the benefits impact of the cancellation of captan uses on cherries; however, EPA had no reason to believe that producers would experience major losses.

Comments submitted to EPA by the Ortho-Chevron Chemical Company in 1985 stated that resistance to alternatives such as thiophanate-methyl had already occurred on sweet cherries. In addition, the Captan Task Force's 1988 assessment of captan usage on this crop states that although the efficacy and comparative performance of alternatives is estimated to be equal to captan, without captan the costs of disease management would increase significantly. Alternatives include: Iprodione, vinclozolin and chlorothalonil for brown rot: Iprodione for Botrytis; dodine on tart cherries and ferbam on sweet cherries for leaf spot. The Task Force estimates that approximately 80 percent of sweet and 5 to 10 percent of tart cherry acreage is treated with captan annually. Three of the five chemicals listed as alternatives to captan should be used alternately or in combination with captan or another broad spectrum fungicide to inhibit resistance development. The only other broad spectrum fungicide registered on cherries is chlorothalonil.

Registrants also regard captan as an important post-harvest treatment on sweet cherries. The Captan Task Force estimates that the total loss of revenue on this crop would be almost $16 million if captan were not available. Washington ($7 million) and Oregon ($8 million) would be the most affected. Alternatives to captan include the benzimidazoles. However these alternatives are considered less effective overall because of resistance by certain strains of Botrytis, Penicillium and Monilinia, and because control of Rhizopus, Alternaria or Mucor is not claimed by other pesticides labeled for this site. Some packing houses in the Northwest treat harvested cherries with a chlorine bath before the fungicide drench. This treatment is only registered to reduce fungus spores and is not as effective as captan against post-harvest diseases. In addition, because the fruit must be dried between the two processes, it is a more expensive and time-consuming process.

Conclusion: EPA believes that about 85 percent of cherries receive either pre- or post-harvest treatments with captan. EPA agrees with the comments received that resistance to some captan alternatives on cherries has been demonstrated, and that with some alternatives there are both limitations on the time of application and lessened efficacy. EPA also agrees that the benefits of pre-harvest and post-harvest uses of captan are larger than were initially estimated and now estimates the benefits of captan's pre- and post-harvest uses on this crop to be at least $4.6 million annually.

8. *Cranberries.* The PD 2/3 did not address the benefits resulting from the use of captan on cranberries specifically, but rather as part of the small berries. Since then, EPA has received information that there is very little use of captan on this crop: about 1 percent nationwide and up to 5 percent in the western areas of the United States.

Conclusion: EPA believes that while captan can be beneficial to some cranberry growers, it is not widely used and is not regarded as important for disease control on this crop.

9. *Cucumbers.* Prior to issuing the captan PD 2/3, EPA had no information available on the percent of cucumber acreage treated with captan. This crop was grouped in EPA's estimate of the benefits of captan's use on vegetables, and EPA considered it unlikely that there would be any negative impact on producers or consumers if captan were not available on this site.

Information received from the Captan Task Force on cucumbers indicates that there is very little post-plant use of captan on this crop. The Task Force reported that the alternatives to captan: chlorothalonil, maneb and metalaxyl are more efficacious.

Conclusion: EPA maintains its position in the PD 2/3 that there is little use of captan on cucumbers and estimates that less than 1 percent of this crop is treated with captan nationwide. EPA agrees that adequate alternatives to captan are available for both commercial and home use.

10. *Eggplant.* The PD 2/3 did not address the use of captan specifically on eggplant.

Conclusion: EPA has since evaluated the use of captan on eggplant and has concluded that captan is used for disease control as a plant-bed or flat treatment and for this use there are no alternatives. Alabama, New Jersey, New York and Georgia recommend this use and they (together) account for a substantial portion of the total U.S. eggplant acreage. Thus, the loss of captan would be a major loss to the eggplant growers of these states. There is little use of captan as a foliar treatment for which there are several alternatives including maneb, zineb, fixed coppers and ziram.

11. *Grapes.* In the PD 2/3, EPA had limited data available to estimate the impact of the cancellation of captan on grapes although it was believed unlikely that the loss of captan would have a major impact. The Captan Task Force claims that the chemical costs to growers would increase significantly if captan were not available for use on grapes.

The Task Force estimates that about 20 percent of California grapes are treated with captan. Their research shows that the efficacy and comparative performance of some of the alternative chemicals generally would be about the same as captan. However, without captan, more than one chemical would be needed to control the five major diseases on muscadine grapes. The Captan Task Force estimates that between 50 and 80 percent of all muscadine grape acreage is treated with captan and approximately 10 percent of that acreage is treated eight times each season. There are no alternatives to control either ripe rot or bitter rot on these grapes, and the only alternative for Macrophoma rot is benomyl which is only used in combination with captan because of the resistance problem. For Botrytis, iprodione and vinclozolin are potential chemical alternatives to captan and Botrytis may also be controlled by removing the leaves from around clusters. This latter measure is very labor intensive (approximately $200 per acre) and the Task Force believes that it would only be economically viable in premium wine growing areas.

Conclusion: Since the voluntary cancellation of folpet on food crops and the emergency suspension of dinoseb, only captan and mancozeb have full Federal registration for control of Phomopsis cane and leaf spot. Mancozeb is in Special Review with the other EBDC fungicides. Sodium arsenite is registered for use in California but some wineries will not accept grapes treated with this chemical. Sodium arsenite is currently in Special Review and the State of California is also reviewing the use of this chemical under its Birth Defects Prevention Act.

EPA agrees that there are major benefits from using captan on grapes since its broad spectrum activity prevents resistance to other fungicides and it protects against diseases for which good alternatives are not available. EPA estimates the benefit of having captan available for use on grapes at $1.2 million per year.

12. *Lettuce.* In the PD 2/3, EPA addressed the likely benefit of having captan available for use on lettuce as part of its assessment of a number of vegetable and fruit crops. No data were available to make a specific estimate of the importance of captan on lettuce although EPA believed that the cancellation of captan on this crop would not have a major economic impact.

The Cooperative Extension Service, University of California commented that there are significant benefits to the use of captan on lettuce and has recently indicated its willingness to generate residue data to support continued registration of the use.

Conclusion: EPA now estimates that up to 5 percent of lettuce produced in the United States is treated with captan. Although captan gives only fair control on downy mildew, a broad spectrum fungicide is necessary to use with metalaxyl or benzimidazole fungicides because of the resistance problem. The current alternatives to captan include maneb, maneb and metalaxyl, maneb and zinc, zineb, and for seed beds only: coppers and lime. Maneb and zineb are in Special Review. The economic impact of the loss of captan is estimated to be $2.2 million.

13. *Mangoes.* The PD 2/3 did not address the use of Captan on mangoes. However, after investigating the benefits of this use, EPA now believes that captan is of major importance to this minor crop as a broad spectrum fungicide to be mixed or alternated with triadimefon and benomyl. Without captan there would be a build-up of resistance to these alternatives. Captan effectively controls Cercospora leaf blotch or spot, post-harvest molds, and storage rots including Botrytis, Gleosporium and Rhizopus.

14. *Onions.* The PD 2/3 addressed vegetable uses as a group, including the use of captan on onions. The available data indicated that captan is not used extensively on onions. Comments received since the PD 2/3 from the Cooperative Extension Service at the University of California indicate that there are significant benefits for the use of captan on green onions. Captan is effective for Botrytis control on green onions and the only alternative is chlorothalonil.

EPA has not received any comments regarding the benefits of captan for disease control on dry bulb onions. EPA estimates that less than 1 percent of onions (dry bulb and green) produced in the United States are treated with captan. Alternatives to captan for disease control on dry bulb onions include a combination of metalaxyl and chlorothalonil, mancozeb, and combinations of zineb, iprodione and chlorothalonil.

Conclusion: EPA agrees that there are viable alternatives to captan for disease control for dry bulb onions but that captan is important for the production of green onions as chlorothalonil is the only available alternative.

15. *Peaches and Nectarines.* In 1985, EPA's assessment was that the loss of captan on peaches would result in annual losses to growers ranging from $2.3 million to $5 million due to increased disease control costs and lost peach production. The loss of captan on nectarines was estimated to result in losses of up to $650,000 per year. It was thought likely that these costs would be passed on to the consumer.

Industry's Captan Task Force expressed concern about the potential loss of captan on peaches. They estimated that between 90 and 100 percent of peach acreage is treated at least once with captan and that it is important to growers because of its low price and because it is not subject to

resistance build-up. Captan can be used in combination with many products including benomyl, dodine and thiophanate-methyl. In California, labelling requirements prohibit the use of benomyl alone on peaches and nectarines. They believe that cancellation of captan would leave them without an affordable, effective brown rot control agent. The only non-chemical control mentioned by the Captan Task Force was for anthracnose, on both peaches and nectarines. They suggest that nurseries should be cleaned before trees are sold in order to reduce inoculum, and suggest increased mowing and herbicide use to control vegetation.

The South Carolina Peach Council and Promotion Board commented that captan is invaluable in the control of bacterial spot, brown rot, blossom blight and scab which all occur frequently in the state's damp and humid climate. EPA also received comments from the North Carolina Peach Grower's Society, Inc. expressing its members' concern over the proposed cancellation of captan. In their view, captan has been more effective than sulfur which they regard as the only available alternative.

The Louisiana Cooperative Extension Service expressed their concern about the proposed cancellation of captan on peaches. Its alternatives were described as including chlorothalonil, benomyl and triforine. Captan has been used for 20 to 25 years on this crop at an estimated rate of 5,000 pounds of active ingredient per year.

Conclusion: EPA estimates that about 60 percent of peaches and 60 percent of nectarines are treated with captan. EPA's current estimate of the impact of cancelling the registered use of captan on peaches is that it would result in a $30.00 per acre increase in treatment costs annually of up to $5 million per year overall. There were no benefits data submitted on nectarines to suggest that EPA should change its earlier benefit assessment of this captan use. EPA maintains its position that the loss of captan on nectarines would result in increased disease control costs of up to $650,000 annually. As stated in the PD 2/3, while the consumer would probably not experience price increases initially if the use of captan is not available on peaches and nectarines, the costs resulting from the unavailability of captan may be passed on if fungicidal resistance continues to develop.

16. *Pears.* EPA's PD 2/3 assessment of the benefits of captan on pears was that its use on this crop was not significant.

Currently available data indicate that most pears produced in the United States are grown on the West Coast. California and Washington each account for about 36 percent, and Oregon produces about 24 percent of this crop. Industry's Captan Task Force reports that there is little pre-harvest use of captan on pears. The major disease that is controlled by pre-harvest treatment with captan: pear scab, is rare and geographically concentrated and that there are viable alternatives to captan.

The Task Force also reports that captan is not used as a post-harvest treatment in California which has a dry growing season. However, industry data indicate there are significant benefits associated with the post-harvest use of captan on pears in Washington and Oregon. Approximately 60 percent of the packing houses in Washington and about one-third of those in Oregon, where there are cool, wet periods, use a combination of captan and benomyl as a post-harvest treatment. The Task Force estimates that half of the 188,000 tons of pears currently treated with captan would be lost if captan were not available because the benzimidazoles are not registered, or not effective for controlling Mucor molds or shot-hole in pears. The economic impact of this loss has been estimated by the Washington Tree Fruit Research and Extension Center to be approximately $18 million in Washington and by the Hood River Experiment Station, Oregon State University to be $7 million in Oregon (References 10 and 19 in the Task Force submission).

Conclusion: EPA concludes that captan is not important as a pre-harvest treatment on pears but estimates that about 35 percent of pears are treated post-harvest with captan. While EPA may not agree with the comments received as to the exact magnitude of the estimated benefits, it agrees that there are significant benefits of at least $16.3 million annually from the post-harvest use of captan on pears.

17. *Peppers and pimentos.* The PD 2/3 did not address the use of captan on peppers and pimentos specifically but considered this use with other vegetable uses of captan as a group. EPA had no information to suggest that captan is important for disease control on this crop.

Information received since the PD 2/3 indicates that captan is important as a plant-bed treatment for peppers and pimentos. Captan is important in slowing the build-up of resistance to metalaxyl which is the only alternative for plant-bed treatments for these crops. EPA believes that there is little use of captan as a foliar treatment for which the alternatives are a combination of fixed copper and maneb, zineb, ziram and metalaxyl.

Conclusion: In its current assessment, EPA believes that captan is important for disease control as a plant bed or flat treatment but not as a foliar treatment for peppers and pimentos.

18. *Plums/Prunes.* In EPA's PD 2/3 on captan in 1985, only limited data were available on the use of captan on plums/prunes and no economic assessment was provided. Comments received from the Captan Task Force indicate that plums are rarely infested with disease and that very little plum acreage is treated with captan. Their data show that the alternatives to captan including triforine and iprodione provide equal or better control for brown rot.

However, information provided by the Captan Task Force indicates that captan is used on most prune acreage. It is the only chemical available for the control of russet scab and is highly effective in controlling brown rot. The Task Force predict substantial increases in disease control costs if captan were not available for this use.

California Prune, Raisin and Walnut Research of Fresno, California commented that one advantage of captan for prune and raisin growers is that it protects the crops from a fairly broad spectrum of organisms at a reasonable cost. Another perceived advantage of captan is that it fits better than its alternatives into an Integrated Pest Management program because it does not evoke resistance and does not affect beneficial non-target organisms such as mites.

Conclusion: EPA now estimates that about 85 percent of prunes are treated with captan by foliar application and believes there are significant benefits from this use of captan. EPA agrees with the Task Force that there is probably minimal use of captan on plums other than prunes.

19. *Spinach.* In the PD 2/3 EPA had no information available on the benefit of having captan available for use on spinach. Current information shows that captan is recommended for damping-off control as a pre-plant soil treatment in New York. The alternative to captan for plant-bed treatment is metalaxyl. Captan is not registered for foliar use on spinach.

Conclusion: EPA estimates that less than 5 percent of U.S. spinach acreage is treated with captan; however the only alternative to captan for plant-bed treatment is metalaxyl and captan is beneficial in slowing the build-up of resistance to this alternative. EPA now believes that in some areas the use of

captan as a plant-bed treatment for spinach has substantial benefits.

20. *Strawberries.* In 1985 EPA expected major losses to occur for producers if captan were not available for use on strawberries. It was estimated that without captan, growers would use some combination of thiram and vinclozolin which would increase annual treatment costs by about $5.9 million. EPA anticipated that producers would pass on these increased costs of about $200 per acre to the consumer which would result in only a small change in typical fresh fruit expenditures.

Comments received from a registrant disagreed with EPA's assessment that there would be only a small consumer impact if captan were cancelled. They expressed their concern about the problem of resistance to captan's alternatives and their position that the build-up of resistance was being delayed by an alternating treatment schedule using vinclozolin and a combination of captan and benomyl.

The Captan Task Force's recent assessment of the resistance problem is that without captan, chemical costs to growers would increase significantly if they attempted other methods of disease control and that it is likely that many growers would stop producing this crop. The Task Force estimates that 12 to 20 alternating applications of vinclozolin and benomyl would be necessary without captan which has a broader spectrum of control and has not shown resistance problems.

Comments received from the Florida Strawberry Growers Association in support of the continued availability of captan noted that Florida's temperature and humidity make the systematic application of captan essential for disease control. They asked that any data being considered in the decision to cancel captan should include data specific to Florida where all of the 4,900 acres producing strawberries are treated with captan.

A plant pathologist from the Louisiana Cooperative Extension Service, Louisiana State University Agricultural Center also supported the continued availability of captan, particularly on strawberries, noting that there are very few alternatives to captan on this crop.

Information received from USDA indicates that captan is widely used on strawberries with 60 to almost 100 percent of the crop treated depending on the state.

Conclusion: EPA agrees that a high percentage of the U.S. strawberry crop is treated with captan: approximately 85 percent nationwide, and continues to believe that without the use of captan, producers of strawberries would have significant cost increases estimated at about $5.9 million per year. In addition, EPA agrees that captan may provide a deterrent to the development of fungal resistance.

21. *Taro.* In the PD 2/3, taro was grouped with other vegetables for which EPA had no information indicating that there were significant benefits from the use of captan. Current information indicates that captan is the only remaining fungicide for use on taro. It is used as a pre-plant soil treatment to prevent Pythium soft rot of corms.

Conclusion: EPA's assessment is that this use of captan has significant benefits even though less than 10 percent of this crop is treated with captan.

22. *Tomatoes.* There was no information available to EPA on captan's use on tomatoes and the PD 2/3 did not address this use specifically; however, EPA did not believe that there were major benefits from the use of captan on vegetable crops.

Industry's Captan Task Force submitted information showing that there is little use of captan on tomatoes and, in their assessment, little if any benefit is derived from this use.

EPA estimates that less than 1 percent of tomatoes are treated with captan nationwide. However, information has been submitted by the USDA claiming that captan is used on 100 percent of the Tennessee tomato crop as a plant-bed drench. In addition, information received from a University of Tennessee plant pathologist, indicates that there are no effective alternatives to captan for this use. EPA has not received any information showing benefits from foliar uses of captan on tomatoes.

Conclusion: EPA agrees that captan can be important for use on tomatoes as a plant-bed treatment in certain areas but not as a foliar treatment.

23. *Other fruits and vegetables.* In the PD 2/3, EPA assessed the impact of the cancellation of captan for a group of fruit and vegetable crops (including cherries, citrus, grapes, papaya, pears, plums, prunes and taro) as between $1.2 and $3 million. At that time, data were not available to make more specific estimates although EPA believed that it was unlikely that individual producers would be faced with major losses.

24. *Seed Treatments.* In the PD 2/3, EPA assessed the impacts of cancelling the use of captan as a seed treatment. The use of captan on the following seed was discussed: corn, cotton, sorghum, soybeans, peanuts, rice, small grains, potatoes, and vegetables. EPA estimated that approximately $9 million in benefits may be realized from the availability of captan as a seed treatment. No additional information was submitted to EPA which would require this estimate to be revised.

Some of the sites for which EPA did not have data previously have already been described in Unit IV.A 1 through 24 of this Notice. Based on information received since the PD 2/3, EPA maintains its position that there are benefits in having captan available for some of these crops (e.g., cherries, grapes, plums/prunes and taro). After evaluating the data and comments received on other fruit and vegetable crops (e.g., citrus and many vegetable crops), EPA believes that there are minimal, if any, benefits in having captan available for use on these sites.

Listed in the following Table 4 are the registered food uses of captan that are not discussed in Unit IV.A 1 through 24. For most of the sites listed, captan is used on less than one percent of the crop nationwide and viable economic alternatives to captan are available. Also listed are a few of the registered uses of captan for which EPA has no indication of use.

TABLE 4—SUMMARY OF OTHER CROPS WITH MINIMAL USE AND ADEQUATE VIABLE ALTERNATIVES OR WITH NO INDICATION OF USE

Use	Percent of site treated	Economic alternatives
Avocado	<1	benomyl, fixed coppers.
Beans [1]	<1	metalaxyl, sulfur, zineb.
Beets	<10	fixed coppers, zineb.
Broccoli	<1	thiram, benomyl, hot water treatment.
Brussels sprouts.	<1	thiram, benomyl, hot water treatment.
Cabbage	<1	thiram, benomyl, hot water treatment.
Carrots	<5	chlorothalonil, mancozeb, maneb, zineb, triphenyltin hydroxide.
Cauliflower	<1	thiram, benomyl, hot water treatment.
Citrus	<1	coppers, benomyl, imazalil, Biphenyl, sodium ortho-phenylphate, thiabendazole.
Collards	<1	thiram, benomyl, hot water treatment.
Cotton		etridiazole (Terrazole®), PCNB, 2-(thiocyanomethylthio), benzothiazole (TCMTB), thiram + carboxin/ + chloroneb/ + fenaminosulf.
Crabapple [2]		
Kale	<1	thiram, benomyl, hot water treatment.

TABLE 4—SUMMARY OF OTHER CROPS WITH MINIMAL USE AND ADEQUATE VIABLE ALTERNATIVES OR WITH NO INDICATION OF USE—Continued

Use	Percent of site treated	Economic alternatives
Leeks [2]		
Mustard greens.	<1	thiram, benomyl, hot water treatment.
Peas	<1	metalaxyl, zineb, fixed coppers.
Pineapple	<1	benomyl, fosetyl-Al (Aliette®).
Potatoes	<1	metalaxyl, maneb, mancozeb metiram, chlorothalonil, TPTH + mancozeb.
Pumpkin/ Squash.	<5	chlorothalonil, mancozeb, maneb + zinc, anilazine, ziram, metiram.
Quince [2]		lime sulfur, chlorothalonil, mancozeb, ziram.
Rhubarb [1]		dichloran (Botran®), maneb.
Rutabaga	<1	thiram, benomyl, hot water treatment.
Shallots [2]		
Soybeans	<1	maneb + zinc, chloroneb, carboxin + thiram, PCNB + Terrazole®, metalaxyl.
Sweet corn	<1	mancozeb, chlorothalonil.
Turnips [2]		thiram, benomyl, hot water treatment.
Watermelon	<10	chlorothalonil, mancozeb, maneb + zinc, anilazine, ziram, metiram.

[1] Beans: VA: 75% (6,200 acres); Broccoli: TN: 100 (100 acres); Rhubarb: MI: greenhouses.
[2] No indication of use.

B. Non-Food Uses of Captan

1. *Agricultural non-food uses*—a. *Home gardens.* In the PD 2/3 it was estimated that about 100,000 pounds of captan active ingredient is used in products marketed for use by home gardeners. Captan is used on a variety of sites including house plants, ornamentals, fruits and vegetables. There were no data available to estimate the specific benefits of captan to the home user but it was considered likely that the same alternatives could be employed as for commercial sites.

EPA has no data to indicate the economic impact to the home user if captan is not available. However, for those sites for which there are established markets, use is occurring and few alternatives are available. It is EPA's position that the marketability of this broadspectrum fungicide in the home user market is testimony to its perceived benefits.

b. *Forest nurseries.* EPA previously believed that there were adequate alternatives to captan to control damping-off in forest nurseries. In the PD 2/3 it was estimated that captan is used to treat about 8 percent of the U.S. forest nursery acreage. No comments or additional information on this use were submitted in response to the captan PD 2/3 and EPA has not revised its estimate of usage. However, the additional information received about the benefit of having captan available for plant-bed treatments of captan food uses has led EPA to revise its position that the alternatives (thiram, dazomet, TCMTB and ETCMTD plus thiophanate-methyl) are not always equivalent to captan in controlling damping-off. EPA now believes that there is some benefit to having this use of captan available.

c. *Turf.* In the PD 2/3 it was estimated that less than 1 percent of turf in the United States is treated with captan. Thiram was believed to be the only alternative which provides protection against a comparable range of diseases. EPA has received no additional information on this captan use and supports its previous finding that the use of thiram in place of captan would result in an annual increase in disease control costs of about $28,000.

d. *Ornamentals.* EPA concluded in the PD 2/3 that the principal uses of captan on ornamentals are for the control of certain disease on carnations, corm rot on gladiolus, and selected diseases on field grown roses. It was estimated that there would be cost increases for each of these sites if captan were not available. The costs of alternatives were expected to range from $40,000 on gladiolus to about $96,000 on roses.

In contrast to the relatively minor additional production costs for corms and roses, it was estimated that the loss of captan would have a major impact on the carnation cut flower industry. Losses were estimated at $6 million per year for the domestic carnation cutting producers (producing plants for flower growers) and up to $12 million in losses from loss of plantings due to increased disease pressure.

EPA has received no additional data on the uses of captan on ornamentals and supports its earlier assessment of the benefits of captan for these uses.

2. *Non-agricultural uses*—a. *Soaps/pet shampoos/pet powders.* EPA has no new information on the use of captan in sanitizing deodorant-powdered hand soap and supports its position in the PD 2/3 that there is some benefit in having captan available as an antimicrobial agent in powdered soap.

EPA's position on pet shampoos and pet powders was that there were no registered alternatives to captan for these uses and that having captan available therefore provided some benefits.

EPA supports its position in the PD 2/3 that there are some benefits to having captan registered for use in pet powders and pet shampoos.

The registrant of the only remaining registration of a pet shampoo/dip containing captan requested that it be voluntarily cancelled (January, 1989).

b. *Plastics/paints/adhesives/aerosol sprays/packing boxes.* In the PD 2/3 EPA estimated that there were some benefits to the uses of captan as a biocide incorporated in plastics, adhesives (including wallpaper pastes), oil and water based paints, fabric for mattresses and pillows, aerosol sprays and packing boxes used in transporting fruits and vegetables. EPA did not calculate the economic benefits of having captan available for each of these products but estimated that there were at least minimal benefits to these minor uses of captan.

EPA has not received any additional information regarding these products and therefore supports its previous position that there are minimal benefits from these uses.

C. Conclusions

EPA underestimated the benefits associated with the use of captan on food (excluding seed treatments) in the PD 2/3. It was estimated that these uses resulted in benefits ranging from $11.3 to $23.7 million. Based on information received subsequent to the issuance of the PD 2/3, EPA now believes these uses account for between $67.8 to $75.1 million in benefits.

No information was submitted regarding the non-food uses that would require EPA to revise its earlier assessment of benefits. EPA's revised estimate of benefits resulting from all uses of captan is now estimated to be $76.8 to $96.1 million.

V. Comments of the Scientific Advisory Panel Secretary of Agriculture

A. Comments of the Scientific Advisory Panel

EPA presented its proposed decision on captan at a public meeting of the Scientific Advisory Panel held in Arlington, Virginia, on September 26, 1985. The Panel issued its response in a written report of October 4, 1985. The Panel's report is reproduced below in its entirety.

The Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) Scientific Advisory Panel (SAP) has completed review of a set of scientific issues

associated with captan. The review was conducted in an open meeting held in Arlington, Virginia, on September 26, 1985. All Panel members were present. In addition, two new designees to the SAP, Dr. Thomas Clarkson and Dr. James Swenberg, participated in the review.

Public notice of the meeting was published in the **Federal Register** on Friday, August 30, 1985.

Oral and written statements were received from Stauffer Chemical Company and Chevron Chemical Company.

In consideration of all matters brought out during the meeting and careful review of all documents presented, the Panel unanimously submits the following report:

Report of SAP Recommendations

The Scientific Advisory Panel has reviewed the materials prepared for it on captan, and responds as follows to the issues presented to it by EPA. The four scientific questions posed to the SAP by EPA, are listed below, together with the Panel's response:

Issue: 1. Several studies have shown that captan is oncogenic in a number of species of test animals: Innes et al., 1969 (mice); National Cancer Institute, 1977 (mice and rats); Chevron, 1981 (mice); Bio/Dynamics, 1983 (mice); Stauffer/Chevron, 1982 (rats). Does the Panel agree with EPA's qualitative assessment (i.e., weight of the evidence conclusions) of the oncogenic potential of captan.

Response: One mouse study demonstrates oncogenic effects in the duodenum of mice exposed to high doses. Two other studies are less convincing, but are supportive because they indicate tumors at the same site. The rat studies are equivocal at best in indicating oncogenicity.

Issue: 2. EPA calculated the geometric mean of five oncogenicity studies to determine the potency value (Q_1^*) captan. Does the Panel agree with EPA that this approach is appropriate for estimating dietary and applicator risk.

Response: Absolutely not. The Panel does not believe this approach is useful because the five studies are not of equal value. Furthermore, the Panel has grave reservations over the procedures and assumptions that go into determination and use of Q star values. The Panel feels that Agency position documents must stress upper and lower bounds, and provide the best estimate.

Issue: 3. In the absence of acceptable field data on residues of captan in or on food crops, EPA conducted a "worst-case" calculation of dietary risk. Are the methods used for estimating human dietary exposure to captan appropriate? To what degree should EPA use FDA's Market Basket survey data?

Response: The Panel does not believe the methods used for estimating human dietary exposure to captan are appropriate. First of all, the Panel disagrees with EPA's practice of estimating human dietary exposures based on tolerances. EPA should use the best available residue data. In this case, the FDA's Market Basket Survey data should have been used to the maximum extent possible. If EPA does not wish to use Market Basket Survey data, there are alternative methods available for making estimates more realistic.

Issue: 4. Available data (Robens, 1970) suggested possible teratogenic effects in hamsters. These effects were encephaly and fused ribs and occurred only at maternally toxic levels. Additional information from a second study (Goldenthal, 1978) on the hamster demonstrated only fetotoxic effects. These effects were reduction in fetal weight at maternally toxic levels. Does the Panel concur with EPA's judgment that captan is not teratogenic in the hamster? The Panel should note that the PD 2/3 indicates current studies were inadequate and that an additional study on hamsters would be required. However, subsequently EPA has conducted a reregistration review and determined that an additional hamster study is not needed. That review is enclosed for the Panel's consideration.

Response: The Panel concurs with EPA's judgment.

For the Chairman.

Certified as an accurate report of findings:

Philip H. Gray, Jr., Executive Secretary, FIFRA Scientific Advisory Panel

Date: October 4, 1985.

EPA response: The SAP's evaluation of EPA's qualitative assessment of the oncogenic potential of captan (issue 1) and the Panel's finding that EPA's initial method of determining the potency or Q_1^* of this fungicide was inappropriate (issue 2) were taken into consideration in EPA's Second Peer Review of captan. The Second Peer Review and determination of a new Q_1^* for captan are discussed in Unit II.A.6. of this Notice.

The Panel disagreed with EPA's use of tolerances in estimating dietary exposure to captan (issue 3). In this final determination on captan, EPA has used the best available residue data which includes field monitoring data received since the PD 2/3 was issued; tolerances were only used in calculating exposure to crops for which no better data are available. Dietary exposure to captan is discussed in Unit III.A. of this Notice.

In concluding this Special Review of captan, EPA notes the SAP's concurrence with EPA's finding that captan does not cause teratogenic effects (issue 4). Teratogenicity is discussed in Unit II.C. of this Notice.

B. Comments of the Secretary of Agriculture

EPA received a preliminary response dated September 23, 1985, from the U.S. Department of Agriculture (USDA) regarding the proposed decision and Notice of Intent to Cancel and the Technical Support Document on captan issued in June, 1985. In September 1988, the Office of the Secretary was asked to submit USDA's final comments to be addressed in EPA's final decision and completion of this Special Review. USDA's, final comments appear below in their entirety.

September 15, 1988

Mr. Charles L. Smith, Coordinator, Pesticides & Pesticide Assessment, Office of the Secretary, Department of Agriculture, Washington, DC 20250

Dear Mr. Smith: EPA announced its proposed Preliminary Determination regarding captan uses on June 21, 1985 (50 FR 25884). The **Federal Register** Notice requested public comments regarding the benefits provided from captan and allowed a 45-day comment period. In your preliminary response of September 23, 1985, you deferred comment until it became clearer which uses were in jeopardy, which uses the chemical industry intended to defend, and consequently, what data needed to be generated.

The Captan Registration Standard, issued in June 1986, imposed a number of data requirements on captan registrants. Failure to commit to supply some of these data has resulted in the suspension of some of the uses of captan. Additionally, EPA has recently received written confirmation of the uses of captan which are being supported by the Captan Industry Task Force. A copy of this letter is enclosed for your information.

In light of this information, EPA again invites comments regarding its proposed preliminary determination for captan, in particular the benefits associated with its use. In order that your comments can be considered in its final determination, EPA requests that they be submitted within 60 days.

Sincerely,

Douglas D. Campt,

Director, Office of Pesticide Programs.

December 22, 1988.

Mr. Douglas D. Campt,

Director, Office of Pesticide Programs, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

Dear Mr. Campt: This is in further response to your letter of September 15 regarding the fungicide captan. In our initial response of October 12, we indicated we were pursuing an in-depth assessment of basically all chemical fungicides including captan. We are cooperating with the Biological and Economic Analysis Division in our efforts.

We would like to call your attention to the fact that we previously generated assessment reports on the ethylenebisdithiocarbamate (EBDC) fungicides (1979) and captan (1982). EPA has both of these reports on file. The preliminary data we are currently receiving from the states indicate that the uses of these fungicides are essentially the same as discussed in these earlier reports. The major difference lies in the fact that pest resistance to pesticides has become an important factor in the use of the more recently developed systemic fungicides. Because these newer fungicides are highly specific in their modes

of action, pest resistance is likely to occur relatively soon if these chemicals are used exclusively. States have developed resistance management programs that rely heavily upon the inclusion of captan and/or EBDC fungicides in concert with the highly specific newer chemicals.

If you find it imperative to make a decision before the completion of our new study on chemical disease control, we urge you to take advantage of the material already submitted.

Sincerely,

Charles L. Smith,

Coordinator, Pesticides and Pesticide Assessment.

EPA response: EPA has considered the benefits information provided by the USDA including the draft report (December 6, 1988) giving recent state estimates of captan usage. This information is referred to throughout Unit IV. of this Notice which summarizes EPA's benefits assessment and evaluation of comments and additional data received in response to the PD 2/3. EPA has also considered the problem of resistance, particularly resistance to the newer site-specific fungicides and has addressed the availability of viable alternatives to captan, including the EBDCs as part of its fungicide strategy. Both resistance problems and alternative fungicides are discussed in Units IV. and VI. of this document.

VI. Risk/Benefit Assessment and Initiation of Regulatory Actions

A. Introduction

In its PD 2/3, EPA estimated the total dietary risk from captan food uses as 10^{-4} to 10^{-3}. EPA proposed to cancel the use of captan products for all food crops but to require additional residue data to determine actual food residue levels before making a final determination. The decision to cancel all food uses of captan was based on the conclusion that the cancer risks outweighed the moderate benefits.

In the absence of more accurate data on likely residues EPA based the calculations of dietary risk on established tolerances which represent the highest residue levels which may legally be present on food crops treated with captan. EPA proposed to retain any use for which there were data showing that anticipated residues are sufficiently lower than the tolerances.

EPA further proposed to permit the use of captan as a seed or seed piece treatment but to require submission of residue data to establish tolerances for treated seed and to determine whether the residues, if detectable, are of concern. The data are to be submitted in July, 1989.

EPA also proposed to allow the continued use of captan detreated corn seed as feed for cattle and hogs. A tolerance of 100 ppm on detreated corn seed was established in November, 1981 in connection with 40 CFR 186.500 (formerly codified as 21 FR 561.65). Additional residue data necessary to support this tolerance have not been submitted and consequently EPA will be proposing to revoke this tolerance through a notice in the **Federal Register.**

The risks from non-dietary exposure to captan ranged from 10^{-5} to 10^{-4} for animal shampoos to "negligible" for uses including industrial incorporation of captan in plastics and paints. The highest and most typical risks for mixer/loaders and applicators were 10^{-6} to 10^{-5}. The risk from exposure to home garden uses of captan was calculated as 10^{-7}.

EPA proposed measures that would reduce these non-dietary exposure levels. For persons mixing or loading formulations, applying captan, harvesting or weeding in captan treated areas, incorporating captan in adhesives, paints and plastics or using products containing captan, EPA proposed to require the use of protective clothing and other safety measures. These measures included the use of dust masks and protective suits for mixer/loaders and the use of chemical resistant gloves for all uses of captan. Label changes resulting from these proposals were specified in the Registration Standard issued in March, 1986 and amendments issued in April 1986 and 1987.

B. Risk/Benefit Assessment: General

1. *Risks.* Additional data and comments were received in response to the PD 2/3 and in response to Data Call-In Notices issued under FIFRA section 3(c)(2)(B). EPA has reviewed these submissions and they are presented and discussed in the appropriate units of this Notice.

Based on all the available evidence, EPA supports its earlier classification of captan as a Group B_2 (probable human) carcinogen. The new overall Q_1^* for captan, based on the Chevron high-dose study (Ref. 7) showing tumors of the gastrointestinal tract in both male and female mice, is 3.6×10^{-3} $(mg/kg/day)^{-1}$ (geometric mean). The data do not, however, show that captan causes teratogenic, reproductive or mutagenic effects that warrant EPA concern.

The upper-bound lifetime oncogenic risk from dietary exposure to captan from all registered food uses is now estimated to be 10^{-6} to 10^{-5}. This is the sum of the risks from the more than 60 food uses of captan. There is no individual crop for which the risk is higher than 10^{-6}. As discussed in Unit III of this Notice, the dietary exposure estimates were based on the best data available to EPA. Although most of these data more accurately reflect levels likely to be consumed in the diet than those in the PD 2/3, EPA still believes that actual dietary exposure, and thus risk, is overestimated.

The risks from non-dietary exposure to captan range from 10^{-7} to 10^{-5} for mixer/loaders and applicators for agricultural uses of captan. In the PD 2/3 risks for fieldworkers/harvesters were estimated at 10^{-6} to 10^{-4} based on studies on exposure to captan on strawberries. EPA will reevaluate these risks when additional data, recently received by EPA, have been reviewed.

The risks from home uses of products containing captan include estimates of 10^{-5} for oil-based paints and 10^{-7} for home garden products. The calculations of risks for home uses of captan do not assume that the user is wearing protective clothing and gloves. They therefore represent a conservative estimate of risk to the home user.

Protective clothing and other safety measures, some of which were proposed in the PD 2/3, have been specified through the captan Registration Standard and amendments. In general, it is anticipated that compliance with these measures will reduce the risks from non-dietary exposure to captan by one order of magnitude.

2. *Alternatives.* The PD 2/3 contained a table of the major alternatives to captan and a summary of their toxicological effects. Table 5 is an updated version of this table.

TABLE 5.—SUMMARY OF TOXIC EFFECT OF MAJOR CAPTAN ALTERNATIVES

Fungicide	ONCO	MUTA	REPRO	TERAT	Status
Anilazine (Dyrene®)	?	?	?	?	RS 12/83.
Benomyl (Benlate®) [1]	C	+	+	+	SR 82; SRR 87.
Carboxin	?	+/−	−	−	RS 8/87.

TABLE 5.—SUMMARY OF TOXIC EFFECT OF MAJOR CAPTAN ALTERNATIVES—Continued

Fungicide	ONCO	MUTA	REPRO	TERAT	Status
Chlorothalonil	B_2	−	−	−	SRR 9/88*.
Dodine	?	?	?	?	RS 2/87.
EBDCs (maneb, mancozeb, metiram, zineb)	B_2/?	+/−	−/?	−/+	SR 89.
Fosetyl-Al (Aliette®)	C	−	−	−	RS 83; SRR12/86.
Imazalil	−	−	−	−/?	
Iprodione	−	−	−	−	
Metalaxyl (Ridomil®)	E	−	−	−	SRR 3/88.
PCNB	?	−	?	?	RS 1/87.
Sodium orthophenylphate (SOPP)	+	+/−	?	?	
Sulfur	*	*	*	*	RS 1/83.
Thiabendazole	?	?	?	?	
Thiophenate-methyl [1]	?	−	−	?	SR 82; RS 86*.
Thiram	?	−/+	−	−	RS 7/84.
Triadimefon	+	−	−	−/+	
Triforine	?	−	?	−	
Vinclozolin	−	−	?	−	
Ziram	?	?	?	?	

Key to symbols and abbreviations: (+): positive finding; (−): negative finding; (*): no additional data required; (?): data gap; ONCO: oncogenic classification (A,B,C,D,E): based on Guidelines for Carcinogen Risk Assessment (51 FR 33992); MUTA: Mutagenic; REPRO: reproductive effects; TERAT: teratogenic; RS: Registration Standard (*:Draft); SR: Special Review; SRR: Second Round Review (formerly FRSTR).

[1] Benomyl and thiophanate-methyl convert to MBC, a common metabolite, which is a classified C oncogen.

Two of the major alternatives originally appearing in the table are no longer available. All captafol registrations and all folpet food use registrations were voluntarily cancelled in 1987. Of the alternatives to captan, only chlorothalonil and the EBDCs (mancozeb, maneb, metiram and zineb) are B_2 carcinogens. Available data indicate the remaining alternatives are either not oncogenic, have only limited evidence regarding carcinogenicity, or do not have adequate oncogenicity testing. While benomyl is a positive carcinogen, teratogen, and reproductive toxicant, EPA has recently evaluated the risks to benomyl (Registration Standard issued July, 1987), and has determined those risks to be acceptable. Also, due to resistance problems, benomyl would not likely increase much in market share if captan were cancelled.

Since captan is a broad spectrum fungicide, cancellation of its use on a particular site would likely result in the use of two or more of its alternatives. Only the EBDCs and chlorothalonil offer the breadth of control that captan does; consequently, although cancellation of the use of captan could result in the use of a pesticide that is a less potent carcinogen or not carcinogenic, more pesticide applications would likely be required to achieve an equivalent level of control. Additionally, captan has been found not to be teratogenic or mutagenic and there are no concerns regarding reproductive effects, whereas there are concerns for some of these effects for a number of captan's alternatives.

As part of EPA's comparative risk/benefit assessment of major fungicides, the dietary risks for various possible cancellation scenarios for the B_2 fungicides, captan, chlorothalonil and the EBDCs, were evaluated. The EBDCs are currently in Special Review and EPA's Preliminary Notice of Determination (PD2/3) on the risks and benefits from their use is scheduled to be issued shortly. Chlorothalonil has recently been re-evaluated through EPA's reregistration process. Risks from dietary exposure to this fungicide are estimated at 10^{-6} from chlorothalonil and 10^{-6} from the contaminant hexachlorobenzene (HCB), which has also been identified as a B_2 (probable human) oncogen. The risks from chlorothalonil do not meet the criteria for initiating a Special Review at this time. A draft Guidance For The Reregistration of Pesticide Products Containing Chlorothalonil was issued in September 1988.

The likely shifts in use patterns were assessed using information on which fungicides are registered for different use sites, and on EPA's assessment of the viability, in terms of efficacy and costs, of the remaining alternatives. EPA estimated the potential changes in risks from consumption of captan, EBDCs, or chlorothalonil residues if one or more of the three fungicides were cancelled. None of these cancellation scenarios caused a significant (i.e., greater than one-half an order of magnitude) increase in the overall estimated dietary risks posed by captan, chlorothalonil or the EBDCs. EPA undertook this assessment in order to determine whether the cancellation of all or some uses of these fungicides would result in unacceptable increases in risks.

3. *Benefits.* The benefits from food uses of captan are summarized in Unit IV. of this Notice. The majority of the comments received in response to EPA's PD 2/3 concerned the benefits of retaining captan for use on specific crops. Comments also addressed the problem of resistance to some of the alternative fungicides.

EPA has revised its benefits assessment as the result of these comments and other information received subsequent to the issuance of the captan PD 2/3. Benefits were assessed in terms of the economic impacts resulting from the cancellation of the use of captan and subsequent switching to alternative pest management practices. The effect of cancellation is expected to result in losses ranging from approximately $76.8 to $96.1 million dollars. These losses include $67.8 to $75.1 million in benefits from food uses and approximately $9 million from seed treatments. Losses to the ornamental industry could be as high as $12 million without the use of captan.

Other benefits are also recognized from the availability of captan although they are not quantifiable. Captan is important in preventing or delaying fungal resistance to other fungicides. For example, resistance problems with other fungicides would be expected to develop within 2 years on apples and cherries without the availability of captan.

C. Risk/Benefit Assessment: Specific

1. *Dietary Risk.* EPA has determined that the oncogenic risks resulting from dietary exposure to captan from all treated crops pose an unreasonable adverse effect and that these risks need to be reduced in order to ensure that the benefits of use outweigh the cumulative risks of use. The PD 2/3 for captan proposed cancellation of all food uses based on cumulative dietary risks

estimated to be in the 10^{-4} to 10^{-3} range. As discussed in Unit III of this Notice, EPA has calculated the dietary risks of captan in light of additional information obtained subsequent to the PD 2/3. The upper-bound oncogenic lifetime risk from dietary exposure to captan from all treated crops is estimated to be in the 10^{-6} to 10^{-5} range for the general population.

EPA considered two options for reducing these risks: cancellation of all food uses as proposed in the PD 2/3; and cancellation of some food uses to bring cumulative dietary risk from captan into balance with the benefits. In determining which food uses to cancel, EPA considered the benefits resulting from use on each individual commodity and compared those benefits to the risk posed from dietary exposure to residues of captan on the commodity. Recognizing the overall importance of captan as an agricultural fungicide in both the economic benefits it provides and the importance of its role in delaying or preventing resistance of fungal organisms to other pesticides, EPA examined ways of reducing risks to the point where the cumulative benefits from captan use outweighed its cumulative risks.

The individual dietary risk resulting from exposure to commodities containing captan residues ranges from 10^{-12} to 10^{-6}. Although many of the individual risks posed by certain food uses are very minimal, EPA believes the cumulative risk of 10^{-6} to 10^{-5} from all food uses to be unacceptable, even in light of benefits of $67.8 to $75.1 million.

The benefits of the use of captan on individual food commodities are discussed in detail in Unit IV of this Notice. In identifying the benefits of the uses of captan, EPA found that there were virtually no, or very minimal, benefits on a number of food commodities. The following Table 6 summarizes the dietary risks and benefits associated with each food crop.

TABLE 6—SUMMARY OF UPPER-BOUND LIFETIME ONCOGENIC RISKS AND BENEFITS FROM FOOD USES OF CAPTAN

Use	Risk	Estimated Benefits
1. Crops with substantial benefits:		
Almonds	10^{-11} to 10^{-10}	$1.7 million cost increase.
Apples	10^{-7}	Pre-harvest: $900,000 to $3.3 million losses. Post-harvest: $25 million losses.
Apricots	10^{-8} to 10^{-7}	$434,000 cost decrease to $700,000 cost increase.
Caneberries/blueberries		$3.5 to $4 million losses.
Blackberries	10^{-9}	
Blueberries	10^{-11}	
Dewberries	10^{-8} to 10^{-7}	
Raspberries	10^{-8}	
Celery	10^{-9}	$4.6 million losses.
Cherries	10^{-8}	$4.6 million losses.
Eggplant	10^{-11}	Plant-bed: no alternatives.
Grapes	10^{-8} to 10^{-7}	$1.2 million losses.
Lettuce	10^{-7}	$2.2 million losses.
Mangoes	10^{-8} to 10^{-7}	Slows Resistance/few alternatives.
Nectarines	10^{-10} to 10^{-9}	Up to $650,000 losses.
Onions, green	10^{-9}	Green: one alternative.
Peaches	10^{-7}	$2.3 to $5 million cost increase.
Pears	10^{-9}	Post-harvest: $16.3 million.
Peppers/pimentos	10^{-10}	Slows resistance/one alternative.
Plums/Prunes	10^{-9}	No/Few alternatives.
Spinach	10^{-8}	Plant-bed: few alternatives.
Strawberries	10^{-7}	$5.9 million cost increase.
Taro	10^{-12}	No alternatives.
Tomatoes	10^{-8}	Plant-bed: few alternatives.
2. Crops with minimal benefits:		
Avocado, beans, beets, broccoli, brussels sprouts, cabbage, carrots, cantaloupe/muskmelon, cauliflower, celery (foliar), collards, cotton, cranberries, cucumber, eggplant (foliar) grapefruit, honeydew, kale, lemons, limes, mustard greens, onions (dry bulb), oranges, pears (pre-harvest), peas, pineapple, potatoes, pumpkin, rhubarb, rutabaga, soybeans, squash, sweet corn, tangerines, tomatoes (foliar), watermelon.	10^{-12} to 10^{-8}	Minimal use; viable alternatives.
3. Crops with no indication of use:		
Crabapple, leeks, quince, shallots, turnips	10^{-11} to 11^{-8}	No indication of use; viable alternatives.
Total risk [1]	10^{-6} to 10^{-5}	
Total benefits		$67.8 to $75.1 million.

[1] Includes risk from captan residues in meat and milk.

In determining which food crops to retain, EPA first considered retention of all crops with any quantified or identifiable benefits presented an unreasonable risk. EPA calculated the cumulative risk from all 24 food uses which were identified as having such benefits. These are: Almonds, apples (pre- and post-harvest), apricots, blackberries, blueberries, celery (plant-bed), cherries (pre- and post-harvest), dewberries, eggplant (plant-bed), grapes, green onions, lettuce, mangoes, nectarines, peaches, pears (post-harvest only), plums/prunes, peppers (plant-bed), pimentos (plant-bed), raspberries, spinach (plant-bed), strawberries, taro and tomatoes (plant-bed).

The cumulative risk resulting from these uses poses an upper-bound lifetime oncogenic risk from dietary exposure to captan of 10^{-6} for the overall U.S. population. EPA believes this risk level is overstated, as discussed in Unit III, due to assumptions made regarding milk residues and the use of tolerance levels to calculate some food use risks. The cumulative economic benefits resulting from the use of captan on these commodities are estimated at $67.8 to $75.1 million. EPA believes the benefits are understated due to the unquantified value of captan in slowing or preventing the build-up of resistance to other pesticides and their utility in Integrated Pest Management (IPM) programs. EPA believes that the total quantified and unquantified benefits

from these 24 food uses outweigh the estimated risk.

The remaining uses (avocado, beans, beets, broccoli, Brussels sprouts, cabbage, carrots, cantaloupe/muskmelon, cauliflower, celery (foliar), collards, cotton, crabapple, cranberries, cucumber, eggplant (foliar), grapefruit, honeydew, kale, leeks, lemons, limes, mustard greens, onions (dry bulb), oranges, pears (pre-harvest), peas, pineapple, potatoes, pumpkin, rhubarb, rutabaga, shallots, soybeans, squash, sweet corn, tangerines, tomatoes (foliar), turnips, and watermelon) have no identifiable benefits. While none of these crops individually poses a risk of concern, collectively they result in an aggregate dietary risk from consumption of captan treated crops in the 10^{-6} range. Given that there are no offsetting benefits, EPA considers the risk from these uses to be unreasonable.

2. *Non-dietary.* EPA has also examined the risks posed from non-dietary exposure to captan. The PD 2/3 proposed certain precautionary measures in order to reduce non-dietary exposure and consequently risk. The Captan Registration Standard, and amendments to it, specified similar measures.

Many of the measures proposed in the PD 2/3 and specified in the Registration Standard contain precautionary information which should be followed when handling any pesticide. The following Table 7 shows the estimated risks to persons exposed to captan through various activities both without any particular protective clothing or measures and with the protective measures specified for captan previously in the Registration Standard.

TABLE 7.—SUMMARY OF NON-DIETARY RISKS

User	Risks (in PD 2/3) without protecttive measures	Risks with protective measures specified in Registration Standard
A. AGRICULTURAL USES		
1. Mixer/loaders:		
(a) Food uses	10^{-7} to 10^{-5}	10^{-8} to 10^{-6}.
(b) Ornamentals	10^{-6} to 10^{-5}	10^{-7} to 10^{-6}.
2. Applicators:		
(a) Food uses	10^{-7} to 10^{-5}	10^{-8} to 10^{-6}.
(b) Ornamentals	10^{-6} to 10^{-5}	10^{-7} to 10^{-6}.
3. Fieldworkers:		
(a) Food uses	10^{-6} to 10^{-4}	[1]
(b) Ornamentals	10^{-6} to 10^{-5}	[1]
4. Cut flower industry:		
(a) Mixer/loader/sprayer:		
(i) Dermal	10^{-7}	10^{-7}.
(ii) Inhalation	10^{-7}	10^{-7}.
(b) Cutting/packaging:		
(i) Dermal	10^{-7} to 10^{-6}	[2]
(ii) Inhalation	Negligible	[2]
5. Home garden uses [3]	10^{-7}	10^{-7}.
B. NON-AGRICULTURAL USES		
1. Industrial mixer/loader/applicator incorporating captan into:		
(a) Adhesives	Negligible [4]	[2]
(b) Paints/plastics/cosmetics	Negligible	[2]
2. End uses:		
(a) Adhesives:		
(i) Home uses	10^{-7} to 10^{-6}	10^{-8} to 10^{-7}.
(ii) Professional	10^{-5}	10^{-6}.
(b) Aerosol sprays	10^{-9}	[2]
(c) Mattresses/pillows	10^{-6} to 10^{-5}	[2]
(d) Packing boxes	Negligible	[2]
(e) Paints:		
(i) Oil-based	10^{-5}	[2]
(ii) Water-based	10^{-6}	[2]
(f) Pet products:		
(i) Pet powders	10^{-10} [4]	[2]
(ii) Pet shampoos	10^{-5} to 10^{-4}	No longer registered.
(g) Plastics	Negligible	[2]
(h) Powdered-hand soap	10^{-5} to 10^{-6}	[2]

[1] EPA will reevaluate estimated risks from exposure to field workers and harvesters and reentry schedules when additional data, required in the Registration Standard under § 158.140 Subdivision K, Reentry, have been received and reviewed.
[2] No additional protective clothing requirements imposed.
[3] The estimate of risks from exposure to home garden uses assumes that a short-sleeved shirt and long-legged pants are worn (Kurtz and Bode, 1985). EPA requires that product labels include protective measures for home uses but estimates risks for these uses on a worst-case basis.
[4] The risk estimates presented in the PD 2/3 were incorrect; correct risk estimates appear in this table.

a. *Protective clothing requirements for mixers/loaders and applicators.* In the PD 2/3, the risks to mixers/loaders and applicators for agricultural food and non-food uses was estimated to be 10^{-7} to 10^{-5} and 10^{-6} to 10^{-5}, respectively. The PD 2/3 proposed protective measures for agricultural non-food uses but did not for agricultural food uses since cancellation of these uses was proposed due to the dietary risk concerns. However, protective measures for mixers/loaders and applicators for agricultural food uses were specified in the Captan Registration Standard pending EPA's Final Determination. EPA estimates that the resulting risks from implementation of these protective measures are 10^{-8} to 10^{-6} for agricultural food uses and 10^{-7} to 10^{-6} for agricultural non-food uses.

The risk to persons applying captan to home gardens, yards, and/or house plants was estimated in the PD 2/3 to be 10^{-7}. These estimates assume that a short-sleeved shirt and long pants are worn. The protective measures,

including the use of chemical resistant gloves, specified in the Registration Standard and amendments would reduce exposure to these home uses of captan. However, no risk reduction is assumed in Table 7 since EPA assumed a worst case situation where these measures will not be adhered to.

The estimated risks from exposure to oil-base paint end-use products containing captan were estimated, in the PD 2/3, to be 10^{-5} for commercial applicators. The PD 2/3 proposed a requirement that persons applying oil-base paint wear chemical resistant gloves. This requirement was not included in the Registration Standard or in this Final Determination since EPA believes risks without gloves are marginally acceptable and that a requirement to wear gloves is not likely to be adhered to.

The risks to mixers/loaders and applicators applying or incorporating captan into adhesives, cosmetics, paints, and plastics was estimated to be negligible in the PD 2/3 for all uses except adhesives which was estimated to be 10^{-5}. The negligible risks for persons incorporating captan in cosmetics, paints, and plastics assumed that protective clothing, as proposed in the PD 2/3, is normally worn. The PD 2/3 estimate for adhesives should have similarly assumed that protective clothing is normally worn by mixers/loaders and applicators. Given that these protective clothing measures for mixers/loaders and applicators are already used under good industrial practices and that resulting risks are low to negligible, EPA did not specify any protective measures on these uses in the Registration Standard and is not doing so in this Final Determination.

EPA has concluded that although the risks posed to mixers/loaders and applicators are not unreasonable given the benefits of use, the protective clothing requirements would not reduce the benefits of use, are inexpensive and easily obtained, and are generally followed by persons using good agricultural and industrial practices in handling pesticides in order to reduce unnecessary exposure. These measures were specified in the Registration Standard, and most registrants have already modified their labels to comply with them. No additional action is being taken under this Final Determination.

b. *Fieldworker/harvester requirements.* Limited data available to EPA at this time indicate that there is significant dermal exposure to persons working in fields treated with captan. The PD 2/3 estimated risks to range from 10^{-6} to 10^{-4}. Additionally, significant dermal exposure can result to persons entering fields treated within 4 days if adequate protective clothing is not worn. EPA is currently evaluating data recently received which will allow a better assessment of exposure resulting to fieldworkers and harvesters.

Depending on the results of this final assessment, further regulatory action may be necessary. The protective clothing requirements specified in the Registration Standard are expected to reduce risks to 10^{-5} to 10^{-7}.

3. *Conclusions*—a. *Dietary risk.* The cumulative upperbound lifetime risk for all food uses with quantifiable or identifiable benefits is 10^{-6}. EPA believes that the significant benefits from the use of this pesticide on these crops ($67.8 to $75.1 million) outweighs this level of risk, given that this risk estimate is conservative and that some significant benefits are unquantifiable. The remaining registered food uses collectively push the cumulative dietary risk from all treated crops to the 10^{-6} to 10^{-5} level. Given that these uses result in a higher cumulative risk and contribute no offsetting benefits, EPA concludes that these uses of captan constitute an unreasonable risk.

b. *Non-dietary risk.* A number of risk reduction measures (protective clothing requirements) were identified in the PD 2/3 to reduce risks to mixers, loaders, applicators, fieldworkers, and harvesters. These requirements were subsequently specified in the Registration Standard and most registrants have amended their labels to comply with these requirements. These requirements conform with good practice and present minor, if any, cost to growers. Because these risks are not unreasonable even in the absence of protective clothing, EPA is not imposing these requirements in this Final Determination. However, EPA believes the measures constitute good practice and reduce risks and should be adhered to.

D. Cancellation of Certain Uses

Based on the information summarized and discussed elsewhere in this Notice, EPA has determined that certain uses of captan as currently registered pose unreasonable dietary risk. Therefore, all products that bear uses on food must limit use to the following:

(a) Plant-bed treatments of captan on celery, eggplant, peppers, pimentos, spinach and tomatoes.

(b) Pre-harvest uses of captan on almonds, apples, apricots, blackberries, blueberries, cherries, dewberries, grapes, green onions, lettuce, mangoes, nectarines, peaches, plums/prunes, raspberries, strawberries and taro.

(c) Post-harvest uses of captan on apples, cherries and pears.

(d) Seed treatment uses of captan.

E. Tolerance Reductions/Revocations

As a result of the actions required by this Notice and in response to additional residue data submitted in support of the continued registration of captan on certain food commodities, EPA will be proposing to reduce or revoke tolerances for a number of food commodities. Reductions in tolerance levels will be proposed within the next 6 months for the following raw agricultural commodities: apricots, cherries, nectarines, peaches, plums (fresh prunes), and tomatoes. These reductions reflect lower residues from currently labelled application rates, as evidenced in the recently submitted field trial residue studies.

Additionally, EPA will propose that tolerances on many of the following raw agricultural commodities be revoked since the accompanying registrations on uses (other than seed treatments) are being cancelled: avocados, beans (dry and succulent), beets, broccoli, Brussels sprouts, cabbage, cantaloupe, carrots, cauliflower, collards, cotton seed, crabapples, cranberries, cucumbers, garlic, grapefruit, kale, leeks, lemons, limes, muskmelon, mustard greens, onions (dry bulb), oranges, peas, pineapple, potatoes, pumpkins, quince, rhubarb, rutabaga (roots), shallots, soybeans (dry and succulent), squash (summer and winter), sweet corn, tangerine/tangelos, turnips (roots and greens), and watermelon.

As discussed previously, EPA will also be proposing to revoke the tolerance for residues of captan on detreated corn seed. For many of these crops, registrations also include use on seed. Seed treatment registrations are not affected by this regulatory decision. Residue data reflecting the use of captan resulting from seed treatments are not due to be submitted until July, 1989. At that time, some of these tolerances may be reduced rather than revoked to reflect continuing use as seed treatments. EPA intends to review the data submitted in July, reach a regulatory decision on appropriate tolerance levels, and propose these tolerance revocation or reduction actions prior to the end of the year.

F. Provisions Governing Sale and Use of Nonconforming Stocks

This section sets forth requirements concerning stocks of captan products subject to this Notice that do not bear an approved amended label conforming to the requirements of Unit VI.D. of this

Notice. Specifically, captan products that bear food uses must limit the food uses to the following:

(a) Plant-bed treatments of captan on celery, eggplant, peppers, pimentos, spinach and tomatoes.

(b) Pre-harvest uses of captan on almonds, apples, apricots, blackberries, blueberries, cherries, dewberries, grapes, green onions, lettuce, mangoes, nectarines, peaches, plums/prunes, raspberries, strawberries and taro.

(c) Post-harvest uses of captan on apples, cherries and pears.

(d) Seed treatment uses of captan. Non-food uses of captan are not affected by this Notice. These requirements will apply to all nonconforming stocks including existing stocks of products that are cancelled pursuant to this Notice and to stocks of products that amend their registrations pursuant to the requirements of this Notice. In both cases, this Notice requires that nonconforming stocks be relabeled according to specified time frames, and it prohibits use of all captan products for certain food uses after 1 year from the date of publication of this Notice in the Federal Register.

For purposes of this Notice, existing stocks are defined as any quantity of captan product subject to this Notice that has been formulated, packaged, and labeled for use prior to the date by which the registration of the product is cancelled pursuant to this Notice. Pursuant to FIFRA section 6(a)(1), the Administrator may permit the continued sale and use of existing stocks of a pesticide whose registration (is cancelled pursuant to this Notice) to such extent, under such conditions, and for such cases as he may specify, if he determines that such sale or use is not inconsistent with the purposes of (FIFRA) and will not have unreasonable adverse effects on the environment. EPA has determined that limited sale and use of certain existing stocks of captan is not inconsistent with the purposes of FIFRA and will not cause unreasonable adverse effects on the environment. This determination was made after weighing the incremental increase in risks resulting from 1 additional year of exposure when captan is not used in accordance with the requirements of this Notice against the incremental benefits of such use and the costs associated with relabeling or disposal. Accordingly, under the authority of FIFRA section 6(a)(1), EPA will permit the continued sale and use of existing stocks of captan products for 1 year from the date of publication of this Notice, provided that such sale and use is otherwise consistent with the previously approved labeling of the product and subject to the following conditions and limitations:

Two months from the date of publication of this Notice, registrants must affix revised labeling to existing stocks in their possession. Such revised labeling must indicate that the product may not be sold after the date which is 1 year after the date of publication of this Notice, and may be used after that date only on the food uses identified above.

After 2 months from the date of publication of this Notice, registrants may not sell or distribute existing stocks unless those stocks bear this revised labeling.

Registrants are required to contact their distributors of captan products within 6 months of the date of publication of this Notice and inform the distributors of the time limitations being placed on sale and use of captan existing stocks. Registrants must also provide distributors with revised labeling indicating that existing stocks may not be sold after 1 year after the date of publication of this Notice, and may be used after that date only on the food uses identified above.

After 6 months from the date of publication of this Notice, no person may sell or distribute existing stocks unless those stocks bear revised labeling.

After 1 year from the date of publication of this Notice, it will be unlawful to use existing stocks of captan except for the food uses identified above.

Similar limitations apply to stocks of captan products whose registrations are amended pursuant to the terms of this Notice. As a condition of the amended registration, registrants must affix an approved label modified in accordance with the requirements of this Notice to all end use products released for shipment 1 year after the date of publication of this Notice. Further, as a condition of the amended registration, products not bearing this approved label (i.e., products released for shipment prior to adoption of the approved label) may only be sold and used subject to the following conditions and limitations:

Two months from the date of publication of this Notice, registrants must affix revised labeling to stocks in their possession not bearing approved labeling. Such revised labeling must indicate that the product may not be sold after the date 1 year after publication of this Notice, and may be used after that date only on the food uses identified above.

After 2 months from the date of publication of this Notice, registrants may not sell or distribute stocks not bearing approved labeling unless those stocks bear this revised labeling.

Registrants are required to contact their distributors of captan products within 6 months of the date of publication of this Notice and inform the distributors of the time limitations being placed on sale and use of captan stocks not bearing approved labeling. Registrants must also provide distributors with revised labeling indicating that stocks not bearing approved labeling may not be sold after 1 year after the date of publication of this Notice, and may be used after that date only on the food uses identified above.

After 6 months from the date of publication of this Notice, no person may sell or distribute stocks not bearing approved labeling unless those stocks bear revised labeling. After 1 year from the date of publication of this Notice, it will be unlawful to use stocks of captan not bearing approved labeling except for the food uses identified above.

Any disposal of nonconforming stocks must be in accordance with the requirements of all applicable Federal, State, and local laws, including the Resource Conservation and Recovery Act.

VII. Procedural Matters

This Notice announces EPA's final decision to cancel all registrations and to deny all applications for registration of products containing captan which do not comply with the modified terms and conditions of registration set forth in this Notice. This action is being taken pursuant to authority granted by section 6(b) of FIFRA. Under FIFRA sections 6(b)(1) and 3(c)(6), applicants, registrants and certain other adversely affected parties may request a hearing on the cancellation or denial actions that this Notice initiates. Any hearing concerning cancellation or denial of registration for any pesticide product containing captan will be held in accordance with FIFRA section 6(d). Alternatively, registrants/applicants may apply to amend the product registrations/applications to remove the uses cancelled by this Notice within 30 days of publication of 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 request a hearing or amend their registrations in accordance with the procedures specified in this Notice, and the consequences of requesting or

failing to request a hearing or submit an amended registration or application.

A. Procedures for Requesting a Hearing

To contest the regulatory action initiated by this Notice, registrants, or any applicant for registration whose application for 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 date of 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.

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 EPA'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 EPA's Rules of Practice Governing Hearings under FIFRA section 6 (40 CFR Part 164). All hearings will be held in Washington, DC. 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 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 captan product subject to this Notice is not requested in a timely and effective manner by the end of the applicable 30-day period, registration of that product will be cancelled or the denial will be effective.

B. Amendment of Registration or Application

Registrants of captan products who are affected by this Notice of Intent to Cancel (NOIC) may avoid cancellation of their registrations without requesting a hearing by filing an application for an amended registration to amend product labeling to comply with the labeling requirements described in Unit VI. of this NOIC. Applications containing the label modifications required by this Notice must include 3 copies of the revised label. The approved label must be affixed to all end use products released for shipment 1 year after publication of this Notice. All registrations or applications for registration must be filed within 30 days of receipt of this Notice, or within 30 days of the date of publication of the final notice whichever occurs later. Similarly applicants for a registration that is subject to this NOIC must file an amended application for registration within the applicable 30-day period to avoid denial of the application. The failure to file an amendment on time or the timely filing of an inadequate amendment will result in automatic cancellation pursuant to FIFRA section 6(b).

Registrants whose registrations become cancelled but who wish to use the existing stocks provisions provided above must submit revised labeling, including time limitations on use, for EPA acceptance prior to the sale and distribution of such existing stocks. All applications must be addressed to: Eugene Wilson, Assistant Product Manager Number 21, Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

C. Separation of Functions

EPA'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 EPA 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 communications with the trial staff or any other interested person not employed by EPA on the merits of any of the issues involved in these proceedings, without fully complying with the applicable regulations.

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All but the published references concerning this Final Determination on Captan are available for inspection from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays in the Public Docket and Freedom of Information Section, Field Operations Division (TS–787C), Office of Pesticide Programs, Environmental Protection Agency, Room 240, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA 22202. Telephone: 703/557–2805.

Dated: February 16, 1989.

John A. Moore,

Acting Administrator.

[FR Doc. 89–4295 Filed 2–23–89; 8:45 am]

BILLING CODE 6560–50–M

federal register

Friday
February 24, 1989

Part VII

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for Chimpanzee and Pygmy Chimpanzee; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for Chimpanzee and Pygmy Chimpanzee

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Fish and Wildlife Service (Service) proposes to reclassify wild populations of the chimpanzee and all populations of the pygmy chimpanzee from threatened to endangered status. Both species have declined through such problems as massive habitat destruction, excessive hunting and capture by people, and lack of effective national and international controls. This proposal, if made final, would enhance the protection of the Endangered Species Act of 1973, as amended, for these species. Captive populations of the chimpanzee would continue to be classified as threatened, and individuals of that species in the United States would continue to be covered by a special regulation allowing activities otherwise prohibited. The Service seeks relevant data and comments from the public.

DATES: Comments must be received by April 25, 1989. Public hearing requests must be received by April 10, 1989.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Chief, Office of Scientific Authority, U.S. Fish and Wildlife Service, Washington, DC 20240. Comments and materials received will be available for public inspection, by appointment, from 8:00 a.m. to 4:00 p.m., Monday through Friday, in Room 750, 4401 Fairfax Drive, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Dr. Charles W. Dane, Chief, Office of Scientific Authority, at the above address (703–358–1708 or FTS 358–1708).

SUPPLEMENTARY INFORMATION:

Background

The genus *Pan* contains two species: the chimpanzee (*P. troglodytes*) and the pygmy chimpanzee (*P. paniscus*). There actually is little over-all difference in size between the two species, both weighing up to about 100 pounds (45 kilograms) in the wild. However, *P. paniscus* has relatively larger lower limbs and a narrower chest than does *P. troglodytes*. The chimpanzee is known to have occurred originally in 25 countries of equatorial Africa, from Senegal in the west to Tanzania in the east. The pygmy chimpanzee is found only in the nation of Zaire, and only to the south of the Zaire River. The ranges of the two species are not known to overlap.

In the Federal Register of October 19, 1976 (41 FR 45993), the Service classified both the chimpanzee and pygmy chimpanzee as threatened species, pursuant to the Endangered Species Act of 1973 (Act) (16 U.S.C. 1531 *et seq.*). Cited problems included human destruction of natural habitat, capture and export for research laboratories and zoos, the spread of disease from people to chimpanzees, and ineffectiveness of existing regulatory mechanisms. Simultaneously, the Service issued a special regulation providing that the prohibitions, which generally cover all threatened species, would not apply to live *P. troglodytes* and *P. paniscus* held in captivity in the United States on the effective date of the rule, or to the progeny of such animals, or to the progeny of chimpanzees legally imported into the United States after the effective date of the rule. This exemption was intended to facilitate legitimate activities of American research institutions, zoos, and entertainment operations, without affecting wild chimpanzee populations.

Within the last decade there have been increasing indications that the status of wild chimpanzees is deteriorating and that most populations are continuing to decline. On November 4, 1987, the Service received a petition from the Humane Society of the United States, World Wildlife Fund, and Jane Goodall Institute, requesting that *P. troglodytes* be legally reclassified from threatened to endangered. The petition was accompanied by a detailed report from the Committee for Conservation and Care of Chimpanzees (Teleki 1987). This report cites practically all pertinent recent literature on the status of the chimpanzee in the wild, and was prepared with the assistance of numerous field research workers. It points out that the chimpanzee has declined drastically because of such problems as massive habitat destruction, population fragmentation, excessive local hunting, and international trade. On February 4, 1988, the Service made a finding, in accordance with section 4(b)(3)(A) of the Act, that the petition had presented substantial information indicating that the requested reclassification may be warranted. In the Federal Register of March 23, 1988 (56 FR 9460), the Service published this finding and announced a status review of both *P. troglodytes* and *P. paniscus*. The comment period for the review ended on July 21, 1988.

During the review period, the Service received 40 comments from major authorities and organizations, and from governments of nations with wild chimpanzee populations, all of which agreed with the petition and/or provided additional information lending support. Of these, 17 were from parties who actually have studied chimpanzees in the wild. In addition, during the review period, 54,212 supporting letters and postcards were received from the public. Since the end of the review period, several thousand more supporting comments have arrived.

The Service received six comments opposing reclassification during the review period, and several more afterward. None of these comments provided information about the status of chimpanzees in the wild, but they did make three general points: (1) The petition and accompanying report do not present a complete or accurate picture, and contain errors; (2) any plans for reclassification should await the results of a prospective National Institutes of Health Survey of chimpanzees and other primates in Africa; and (3) chimpanzees are important in biomedical research, no animals have been imported to the United States for such purposes in the last decade, and reclassification to endangered would interfere with study, transportation, and propagation of animals already here.

With respect to the first point, the Service is satisfied that the report by the Committee for Conservation and Care of Chimpanzees is reliable and contains much valuable information derived in large part from parties who have observed first hand the situation in the wild. Its over-all assessment corresponds closely with that found in a new International Union for Conservation of Nature (IUCN) Red Data Book, *Threatened Primates of Africa* (Lee, Thornback, and Bennett 1988), which became available to the Service following the review period. The indicated errors seem to be mostly minor typographical ones. The report acknowledges that data are limited for some areas and that additional survey work is urgently needed. However, and with respect to the second point above, major new field surveys would take years to complete, and the Act requires that classification be based on the best data available and that decisions on petitions be made within 12 months of receipt. The report, the IUCN Red Data Book, and other currently available information provide a sufficiently comprehensive picture of the

chimpanzee's status to allow assignment of legal classification.

With respect to the third point, the chimpanzee (*P. troglodytes*) is considered to be of much importance in biomedical and other kinds of research, and is also held in captivity for use by zoos, as pets, and in entertainment. The petition and supporting documents and comments dealt primarily with status in the wild, and not with the viability of captive populations. To the extent that self-sustaining breeding groups of captive *P. troglodytes* provide surplus animals for research and other purposes, there is a reduced probability that other individuals of that species will be removed from the wild. There has been no major legal importation of wild chimpanzees into the United States for about a decade, and recently passed legislation would prohibit investigators supported by Federal funds from using chimpanzees taken from the wild. At present, research work continues in the United States through the use of captive breeding groups. Without the availability of such groups, the relevant research probably would be done by others, perhaps in foreign countries and with wild-caught animals and their progeny. This line of reasoning suggests that severe restrictions on the use of captive animals in the United States could both discourage propagation efforts and lead to a decline in the population here, and possibly contribute to a greater demand for wild-caught animals elsewhere.

The management of some captive breeding groups reportedly continues to become more sophisticated and successful. A studbook for *P. troglodytes* has been developed, and proposals to establish a Species Survival Plan are being prepared by members of the American Association of Zoological Parks and Aquariums. These plans are designed to maintain the genetic diversity of the captive population. Approximately 240 *P. troglodytes* are held by the Association's member institutions. The extent of breeding among *P. troglodytes* held as private pets or for entertainment purposes is not known, and neither is the number of individuals involved, but there has been one estimate of 200.

From 1,100 to 1,450 *P. troglodytes* are held by biomedical facilities in the United States. Many of these animals have been used in various studies of infectious diseases and are not suitable for breeding programs. Furthermore, eight institutions hold most of these animals, and all but one currently provide records to the International Species Inventory System. Five of the eight are part of the National Chimpanzee Breeding Program coordinated and supported by the National Institutes of Health. This program now has about 400 animals. Its immediate goal is to augment the breeding population with half of the offspring (about 35 animals/year). In addition, the National Institutes of Health has funded research directed at increasing the breeding capability of the captive population. Finally, there have been promising findings that may enhance this population and reduce the need for additional animals, especially through development of a means to distinguish chimpanzees exposed to, but not infected with, non-A/non-B hepatitis virus.

There are also over 1,000 captive *P. troglodytes* in Europe, including about 300 in biomedical research facilities and 550 in zoos. Many of these animals are in groups that are being managed with the objective of achieving self-sustaining breeding populations. In addition, there are approximately 300 captive members of this species in Japan, including over 100 in research facilities, and about 60 more in zoos in Australia and New Zealand.

Considering the above management situation, the Service is not proposing reclassification of captive *P. troglodytes*, and those populations in the United States would still be covered by the present special regulation. The Service would monitor captive status by requesting an annual report from each major facility in the United States holding chimpanzees, relative to numbers, mortality, breeding success, and other pertinent factors. This proposal is restricted to reclassification of the species in the wild, which evidently was the primary objective of the petition. Section 4(b)(3) of the Act requires that, within 12 months of receipt of such a petition, a finding be made as to whether the requested action is warranted, not warranted, or warranted but precluded by other listing activity. In the **Federal Register** of December 28, 1988 (53 FR 52452), the Service announced its finding that reclassification of wild populations of the chimpanzee from threatened to endangered is warranted. The Service now also announces that its status review indicates that the pygmy chimpanzee should be reclassified from threatened to endangered. The latter species is represented by fewer than 100 captive individuals throughout the world.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR Part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal Lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to the chimpanzee (*Pan troglodytes*) and pygmy chimpanzee (*Pan paniscus*) are as follows (information from Lee, Thornback, and Bennett 198, and Teleki 1987, unless otherwise indicated).

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The historical range of *P. troglodytes* encompassed all or parts of at least 25 countries, from Senegal to Tanzania. This distribution corresponded closely with the tropical forest belt of equatorial Africa, and indeed the chimpanzee is usually dependent on areas of unbroken forest, though there is increasing evidence that it is not uniformly distributed throughout such areas. The species also is able to survive at lower density in secondary forests, savannahs, and other habitats, if food sources, particularly fruit trees, remain available, and human disturbance is not extensive. *P. paniscus* is found only in the forests of central Zaire, between the Zaire, Lomami, and Kasai/Sankuru Rivers, but its distribution is not continuous in this area.

Habitat destruction, with consequent access and disturbance by people, is one of the major factors in the decline of the chimpanzees. Human population increase, conversion of forests to agriculture, and commercial logging have drastically reduced available chimpanzee habitat. These processes are most prevalent in the western and eastern parts of the over-all range of *P. troglodytes*, and seem to be working towards the center. Most of the primary forests of such countries as Sierra Leone, Rwanda, and Burundi have already been eliminated, along with most of the resident chimpanzee populations.

The IUCN already classifies one of the three subspecies of *P. troglodytes* as endangered. This subspecies, *P. t. verus*, formerly ranged from Senegal to Nigeria, and may have numbered 500,000 individuals. There are now probably fewer than 17,000, mostly in small, discontinuous populations. Much of the

decline has taken place only in the last few decades. In Sierra Leone, for example, numbers crashed from about 20,000 in the 1960's to around 2,000 today. The other two subspecies of *P. troglodytes*, *P. t. troglodytes* in the central part of the range of the species, and *P. t. schweinfurthi* in the east, are together estimated to number between about 85,000 and 215,000 individuals. The latter figure is highly speculative and based on the probably incorrect assumption that many uninvestigated areas still contain suitable habitat and are occupied at potential carrying capacity (see discussion of Zaire, below).

Both the central and eastern subspecies of *P. troglodytes*, as well as the species *P. paniscus*, are classified as vulnerable, rather than endangered, by the IUCN. It must be noted, however, that the IUCN designations of endangered and vulnerable are not the precise equivalents of the terms endangered and threatened as defined in the Act. The latter term is often applied by the Service to entities in which deterioration is only potential or even in which such deterioration has been arrested. The term endangered refers to any species that is in danger of extinction throughout all or a significant portion of its range. With respect to the chimpanzees, in which major declines are ongoing and likely to accelerate, endangered is the more appropriate classification. Moreover, the IUCN designations were applied to the chimpanzee prior to availability of new information indicating that serious problems have developed in what was thought to be the safest part of the range of the species (see below).

The chimpanzee now has been entirely extirpated from 5 of the 25 countries in which it is known to have originally occurred. Its numbers have been reduced to fewer than 1,000 individuals in 10 other countries, to fewer than 5,000 in 6 others, and to fewer than 10,000 in 2 of the remaining 4 countries. There had been an assumption that the chimpanzee was relatively secure in the nation of Gabon, based on a survey in the early 1980's, which estimated numbers there at about 64,000. However, Dr. Caroline E.G. Tutin, who headed that survey, recently submitted a comment during the Service's status review, in which she stated that, because of habitat disruption and hunting, the chimpanzee had begun "to decline at an alarming rate" in Gabon. She thinks that numbers will fall by at least 20 percent by 1996, and she now favors reclassification to endangered.

The status of *P. troglodytes* is most poorly known in the nation of Zaire. Numerical estimates range up to 110,000 individuals, but such figures are based on calculations of the amount of habitat thought to be suitable, and on the assumption that all such habitat is still occupied. There are indications that much of the involved area may never have supported substantial chimpanzee populations, even under natural conditions, and that the species already has been eliminated in other parts of the area, particularly through logging and hunting. A more realistic estimate for the number of *P. troglodytes* in Zaire would be around 20,000. In other countries in the eastern part of the range of the species, populations are known to have become highly fragmented and to be declining.

Numerical estimates for *P. paniscus*, which occurs only in Zaire, also sometimes have been high, up to about 100,000–200,000. Again, however, such figures are based on the belief that distribution is continuous. Actually, according to the IUCN, the species is absent or rare in many areas of presumed suitable habitat, even under natural conditions, and is apparently not present in the central part of its range. It now remains common only in a few scattered localities, with the most reliable population estimate being about 15,000 animals. The main ongoing problem is habitat loss through increasing slash and burn cultivation, and commercial logging. Reduction and fragmentation of the already discontinuous range also has resulted from local hunting. These problems are relatively well known with respect to *P. paniscus* south of the Zaire River, and provide an idea of what may also be happening to *P. troglodytes*, found to the north. *P. paniscus* evidently is the rarer of the two species.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Chimpanzees are extensively sought by people, both alive for use in research, entertainment, and exhibitions, and dead, for local use as food and in religious rituals. Such utilization is contributing substantially to the decline of each species. The United States was once the chief importer of chimpanzees (41 FR 45993; October 19, 1976), but has experienced no major legal activity of this kind for about a decade. Commercial trade has continued elsewhere, and there has been an alarming recent trend towards killing adult females both for local use as meat and in order to secure their live offspring for export. Also, because entire family groups may have to be eliminated in order to secure one live infant, and since many of these infants perish during the process, it has been estimated that five to ten chimpanzees die for every one that is delivered alive to an overseas buyer. Many thousands of wild chimpanzees have been lost in this manner during the last several decades, with a resulting extermination or great reduction of several major populations, particularly in western Africa. There remains a substantial commercial demand for chimpanzees, especially for biomedical research, and to a lesser extent for behavioral studies.

There also is an escalating demand for local utilization of the meat of chimpanzees. Opening of forest habitat and the spread of modern weapons are helping to satisfy this demand. Mining operations attract large concentrations of people and result in intensive hunting to supply meat from the surrounding forests. Such activity is of particular concern with respect to *P. troglodytes* in eastern Zaire. Comments from several authorities (Dr. Arthur D. Horn, Dr. Geza Teleki, and Drs. Nancy Thompson-Handler and Richard K. Malenky), received by the Service during its recent status review, also indicate that *P. paniscus* has declined in numbers and distribution through local taking for use as food or pets, and in religious rituals.

C. *Disease or Predation.* Chimpanzees are susceptible to many of the same diseases that afflict people (indeed this is why chimpanzees are considered vital in biomedical research. When natural chimpanzee populations are reduced and come into increasing contact with the expanding human population, the former may be exposed to infectious diseases. In a comment in response to the Service's status review, Dr. Jane Goodall pointed out that illnesses of various types, including several major epidemics, have been among the factors preventing an increase in the chimpanzee population of Tanzania's Gombe National Park, even though that area is better protected than are most chimpanzee habitats of Africa.

D. *The inadequacy of existing regulatory mechanisms.* Both *P. troglodytes* and *P. paniscus* are on Appendix I of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (Convention), meaning essentially that export and import are prohibited by member nations, unless such activity is not detrimental to the species. In addition, domestic legislation in various non-African countries, including the United States, restricts or forbids importation of chimpanzees. Many of the African nations with wild

chimpanzee populations also have protective laws. Nonetheless, chimpanzees continue to be exported, imported, and captured and killed illegally for various uses.

Internationally, there have been problems, both because not all involved countries are parties to the Convention, and because the controls of the Convention are sometimes surreptitiously bypassed. There have been cases of chimpanzees being illegally captured in and exported from countries in Africa, and then brought into nations that are parties to the Convention. In response to inquiries by the Service during its recent status review, the governments of several African nations indicated that they have regulations protecting chimpanzees, but that enforcement is very weak because of lack of resources and expertise. The Central African Republic, for example, explained that hunting pressure by the native forest people was relatively light, but that poachers from surrounding areas, and even from outside the country, were causing increasing problems. In her response to the review, Dr. Jane Goodall stated that poaching even had become a problem in the well-protected Gombe National Park of Tanzania.

E. *Other natural or manmade factors affecting its continued existence.* Dr. Goodall's response also pointed out that the naturally slow reproductive rate of chimpanzees (very few adult females raise more than two young to maturity during their approximately 27 years of reproductive life), combined with increasing human pressures, places the chimpanzee in a precarious survival position. It is her opinion that "the continued removal of infants from wild populations (even if this does *not* involve the killing of breeding females) will, within a relatively short period of time, bring wild chimpanzees to the verge of extinction in Africa." In a separate response to an inquiry from the United States Embassy in Tanzania, made at a request from the Service during its recent review, Dr. Goodall added that the chimpanzee population of Gombe National Park had become isolated by surrounding human agricultural activity, and there were thus doubts about the long-term genetic viability of the population.

The problems indicated by Dr. Goodall are unfortunately becoming prevalent throughout the range of the chimpanzee. All populations are undergoing fragmentation into ever smaller and more isolated units. This process is most advanced in the western and eastern populations, but is underway even in Zaire. It restricts natural interbreeding and increases vulnerability to decimation by various intrinsic and extrinsic factors. Small, isolated groups of chimpanzees are more easily eliminated by human hunting, disease, or any local environmental disruption. Fragmentation and associated disturbance may also have adverse long-term effects relating to social structure and reproduction.

The decision to propose reclassification to endangered status for the chimpanzee in the wild, and for the pygmy chimpanzee in the wild and in captivity, was based on an assessment of the best available scientific information, and of past, present, and probably future threats to the two species. Wild populations of the chimpanzee have been reduced to a small fraction of their original size, and the species has disappeared entirely from a number of countries. Its status continues to deteriorate through habitat destruction, expansion of human activity, hunting, commercial exploitation, and other problems. Such deterioration is likely to continue or accelerate with respect to wild populations, though in the United States and certain other countries there are captive groups sufficiently large to be maintained independently; current efforts to enhance the care and breeding potential of these groups could reduce the demand for additional wild individuals. The pygmy chimpanzee, which evidently is rarer and more restricted in range than is the other species, has suffered from similar problems in the wild and is represented by only a few captive individuals. To retain a classification of threatened for the pygmy chimpanzee, and for the chimpanzee in the wild, would not adequately reflect the decline of these species and the multiplicity of long-term problems confronting them. Critical habitat is not being proposed, as its designation is not applicable outside of the United States.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages conservation measures by Federal, international, and private agencies, groups, and individuals.

Section 7(a) of the Act, as amended, and as implemented by regulations at 50 CFR Part 402, requires Federal agencies to evaluate their actions that are to be conducted within the United States or on the high seas, with respect to any species that is proposed or listed as endangered or threatened and with respect to its proposed or designated critical habitat (if any). Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a proposed Federal action may affect a listed species, the responsible Federal agency must enter into formal consultation with the Service. Since the chimpanzee and pygmy chimpanzee are now listed as threatened, they are already fully covered by section 7(a), and their reclassification to endangered would add no new requirements in this regard.

Section 9 of the Act, and implementing regulations found at 50 CFR 17.21, set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take, import or export, ship in interstate commerce in the course of a commercial activity, or sell or offer for sale in interstate or foreign commerce, any listed species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service. With respect to the case at hand, these prohibitions would not apply to live members of the species *Pan troglodytes* held in captivity in the United States on the effective date of the final rule, or to the progeny of such animals, or to the progeny of animals legally imported into the United States after the effective date of the final rule.

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife species, including individuals and parts and products thereof, under certain circumstances. Regulations governing permits are codified at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, to enhance propagation or survival, or for incidental take in connection with otherwise lawful activities. All such permits must also be consistent with the purposes and policy of the Act, as required by section 10(d) of the Act. Reclassification to endangered status would preclude issuance of permits to import wild-caught individuals solely for zoological exhibition or educational purposes, as is not allowed for threatened species pursuant to 50 CFR 17.32. In some instances, permits may be issued during

a specified period of time to relieve undue economic hardship that would be suffered if such relief were not available.

Revision of Special Rules

This proposal would continue the current special regulation, described above under "Background," with respect to captive individuals of the species *P. troglodytes* in the United States, but there also would be an additional provision. Since all members of that species in captivity would be classified as threatened, there could be potential for individuals to be taken from the wild and then for such individuals or their progeny to be imported into the United States pursuant to regulations covering threatened species, which are less restrictive than those covering endangered species. To assure that removal of animals from the wild is not encouraged by less restrictive regulations, which might result in a drain on wild populations, the special rules would provide that the regulations covering endangered species, which are discussed above under "Available Conservation Measures," would apply to any individual chimpanzee within the historic range of the species, regardless of whether in the wild or in captivity. This provision also would apply to any chimpanzee not within the historic range, but which originated within this range after the effective date of the new rule, and also would apply to the progeny of any such chimpanzee, other than to the progeny of animals legally imported into the United States after the effective date. This last exception is made so that a chimpanzee, born to parents already legally imported into the United States under the restrictive endangered species regulations, would not have to be tracked and treated separately from the rest of the captive population.

Public Comments Solicited

The Service intends that any final rule adopted will be accurate and as effective as possible in the conservation of endangered or threatened species. Therefore, comments and suggestions concerning any aspect of this proposed rule are hereby solicited from the public, concerned governmental agencies, and other parties. Comments are particularly sought concerning the following:

(1) Biological, commercial, or other relevant data concerning any threat (or lack thereof) to the subject species;

(2) Additional information concerning the distribution and captive status of these species; and

(3) Current or planned activities in the involved areas, and their possible effect on the subject species.

Final promulgation of the regulation on the subject species will take into consideration the comments and any additional information received by the Service, and such communications may lead to adoption of a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be filed within 45 days of the date of the proposal, should be in writing, and should be directed to the party named in the above "ADDRESSES" section.

National Environmental Policy Act

The Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act, as amended. A notice outlining the Service's reasons for this determination was published in the Federal Register of October 25, 1983 (48 FR 49244).

References Cited

Lee, P.C., J. Thornback, and E.L. Bennett. 1988. Threatened primates of Africa. The IUCN Red Data Book. International Union for Conservation of Nature, Gland, Switzerland. xx + 155 pp.

Teleki, G. 1987. Recommendations on the need to reclassify the African "common" chimpanzee (*Pan troglodytes*) from threatened to endangered under the Endangered Species Act of 1973. Committee for Conservation and Care of Chimpanzees, Washington, DC, 49 pp.

Authors

The primary authors of this proposed rule are Drs. Charles W. Dane and Ronald M. Nowak, Office of Scientific Authority, U.S. Fish and Wildlife Service, Washington, DC 20240 (703–358–1708 or FTS 358–1708).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Proposed Regulations Promulgation

Accordingly, it is hereby proposed to amend Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for Part 17 continues to read as follows:

Authority: 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; Pub. L. 100–478, 102 Stat. 2306; Pub. L. 100–653, 102 Stat. 3825 (16 U.S.C. 1531 *et seq.*); Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. It is proposed to amend § 17.11(h) by revising the entries for "Chimpanzee" and "Chimpanzee, pygmy" under "MAMMALS," in the List of Endangered and Threatened Wildlife, to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
MAMMALS							
*	*	*	*	*	*	*	
Chimpanzee	*Pan troglodytes*	Africa—see 17.40(c)(3)	Wherever found in the wild.	E	16, ____	NA	NA
Do	do	do	Wherever found in captivity.	T	16, ____	NA	17.40(c)
Chimpanzee, pygmy	*Pan paniscus*	Zaire	Entire	E	16, ____	NA	NA
*	*	*	*	*	*	*	

3. It is proposed to amend § 17.40 by revising paragraph (c)(1) and by adding, after the concluding paragraph of (c)(2), a new paragraph (c)(3) to read as follows:

§ 17.40 Special rules—mammals.

* * * * *

(C) *Primates*—(1) Except as noted in paragraphs (c)(2) and (c)(3) of this section, all provisions of § 17.31 shall apply to the lesser slow loris, *Nycticebus pygmaeus;* Philippine tarsier, *Tarsius syrichta;* white-footed tamarin, *Saquinus leucopus;* black howler monkey, *Alouatta pigra;* stump-tailed macaque, *Macaca arctoides;* gelada baboon, *Theropithecus gelada;* Formosan rock macaque, *Macaca cyclopis;* Japanese macaque, *Macaca fuscata;* Toque macaque, *Macaca sinica;* long-tailed langur, *Presbytis potenziani;* purple-faced langur, *Presbytis senex;* Tonkin snub-nosed langur, *Pygathrix* (*Rhinopithecus*) *avunculus;* and, in captivity only, chimpanzee, *Pan troglodytes.*

* * * * *

(3) The provisions of §§ 17.21, 17.22, and 17.23 shall apply to any individual chimpanzee (*Pan troglodytes*) within the historic range of the species, regardless of whether in the wild or captivity, and also shall apply to any individual chimpanzee not within this range, but which has originated within this range after the effective date of these regulations, and also shall apply to the progeny of any such chimpanzee, other than to the progeny of animals legally imported into the United States after the effective date of these regulations. For the purposes of this paragraph, the historic range of the chimpanzee shall consist of the following countries: Angola, Benin, Burkina Faso, Burundi, Cameroon, Central African Republic, Congo, Cote d'Ivoire, Equatorial Guinea, Gabon, Gambia, Ghana, Guinea, Guinea-Bissau, Liberia, Mali, Nigeria, Rwanda, Senegal, Sierra Leone, Sudan, Tanzania, Togo, Uganda, and Zaire.

* * * * *

Dated: February 10, 1989.

Becky Norton Dunlop,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 89-4362 Filed 2-23-89; 8:45 am]

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Friday
February 24, 1989

Part VIII

Department of Agriculture

Agricultural Marketing Service

7 CFR Part 955
Vidalia Onions Grown in Georgia;
Proposed Rule and Referendum Order

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 955

[Docket No. FV-AO-88-3; FV-88-108]

Vidalia Onions Grown in Georgia; Tentative Decision and Referendum Order on Proposed Marketing Agreement and Order and Opportunity to File Written Exceptions to Tentative Marketing Agreement and Order

AGENCY: Agricultural Marketing Service (AMS), USDA.

ACTION: Proposed rule and referendum order.

SUMMARY: This tentative decision proposes the issuance, on an interim basis, of a marketing agreement and order for Vidalia onions. For the purposes of this document, the term "Vidalia onions" refers to onions grown in the proposed production area, which consists of thirteen designated counties and portions of six other counties in southeastern Georgia. The order would authorize production and marketing research and promotion projects including paid advertising for Vidalia onions. The program would be administered by a nine member committee consisting of eight growers, of whom at least four must also be handlers, and a public member. The program would be financed by assessments levied on Vidalia onion handlers. A primary objective of this program would be to improve grower returns by strengthening consumer demand through various promotion activities and by reducing costs through production and marketing research. Vidalia onion producers will vote in a referendum to determine whether they favor issuance of the proposed interim marketing order.

DATES: The referendum shall be conducted from March 1–3, 1989. The representative period for the purposes of the referendum herein ordered is September 1, 1987 to August 31, 1988. Written exceptions to this tentative decision must be received by June 30, 1989.

ADDRESSES: Four copies of written exceptions should be sent to the Hearing Clerk, United States Department of Agriculture, Room 1079, South Building, Washington, DC 20250–9200. All written exceptions will be made available for public inspection at the office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: John R. Toth or William G. Pimental, Fruit and Vegetable Division, USDA, AMS, P.O. Box 2276, Winter Haven, Florida 33883, telephone 813–299–4770; or Kenneth G. Johnson, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456, telephone 202–447–2431.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding: Notice of Hearing—Issued August 19, 1988, and published in the **Federal Register** on August 23, 1988 (53 FR 32054).

This administrative action is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code, and therefore is excluded from the requirements of Executive Order 12291.

Preliminary Statement: Notice is hereby given of the filing with the Hearing Clerk of this tentative decision with respect to a proposed marketing agreement and order regulating the handling of Vidalia onions grown in Georgia. This notice is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act, and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900).

The tentative marketing agreement and order were formulated on the record of a public hearing held at the Toombs County Courthouse in Lyons, Georgia on September 20–21, 1988. The hearing was held pursuant to the provisions of the Act. About 20 witnesses, including Vidalia onion producers, handlers, University of Georgia researchers and State Agricultural officials, testified in support of the order. Proponents emphasized that Georgia Vidalia onion producers urgently need a federal marketing order to effectively compete with other onion producing areas. No one at the hearing testified in opposition to the proposed marketing agreement and order. At the close of the hearing, October 25, 1988, was established as the date post-hearing briefs were due. One brief was filed by a proponent group.

In general, the proponents testified that Georgia Vidalia onion producers, in order to remain competitive with other onion producing areas, must conduct a research and development program to reduce costs and increase sales.

Testimony indicated that voluntary research and development efforts by the Vidalia onion industry have not been successful because of the lack of a coherent research and development plan with broad-based industry support. Also, a relatively small percentage of the U.S. onion crop in produced in the specified production area in Georgia, and individual producers and handlers cannot implement an effective research and development strategy. By contrast, other onion growing areas are sufficiently large to justify private investments (e.g., by seed companies) in research and development efforts, with the result being new varieties specifically suited to those areas. Proponents believe that an industry wide program is therefore necessary to enable the pooling of resources to address common problems. A single producer or even a small group of producers cannot marshall the resources necessary to conduct effective research and marketing promotion programs.

Small Business Consideration: In accordance with the provisions of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Administrator of the Agricultural Marketing Service has determined that this action would not have a significant economic impact on a substantial number of small entities. Small agricultural producers have been defined by the Small Business Administration (SBA) (13 CFR 121.2) as those having average annual gross revenues for the last three years of less than $500,000. Small agricultural service firms, which would include handlers under this order, are defined as those with gross annual revenues of less than $3.5 million.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. The Act requires the application of uniform rules to regulated handlers. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are normally brought about through group action of essentially small entities acting on their own behalf. Thus, both the RFA and the Act are usually compatible with respect to small business entities. Interested persons were invited to present evidence at the hearing on the reporting requirements and probable economic impact that the proposed order would have on small businesses.

The record indicates that there are approximately 160 handlers of Vidalia onions. During the 1987 season, commerical shipments totalled about 738,400 50-pound bags at an average f.o.b. price of $16.75 for a total value of about $12.4 million. An undetermined volume was also sold locally at roadside stands and through mail order operations. While there is a great variance in size of individual handler

operations, the record indicates that almost all of the handlers that would be regulated under this order would qualify as small firms under SBA's definition.

The evidence also indicates that there are about 260 Vidalia onion growers in Georgia. The average acreage of onions grown is 27 acres, with the smallest farm being one-tenth of an acre and the largest farm having 600 acres of Vidalia onions. About 5 percent of the growers farm in excess of 100 acres, and almost 30 percent have less than 5 acres. The record indicates that the vast majority of these growers could be classified as small businesses.

Witnesses testified that because most of the growers and handlers of Vidalia onions are small in size, they are unable to individually finance the types of research and promotion efforts needed by the industry. A marketing order program would provide a means for these small entities to pool their resources and work together to solve their common problems. Witnesses testified that such action is necessary for this relatively small industry to remain profitable in the face of intense competition from larger industries.

The marketing order would authorize the collection of assessments from handlers of Vidalia onions grown in a designated part of Georgia. Assessment funds could be used to finance production research projects that could reduce costs by improving post-harvest handling techniques and reducing the occurrence of onion diseases. Assessment funds could also be used to strengthen demand and expand markets for Vidalia onions through market research and product promotion programs, including paid advertising. The order would be administered by a committee composed of Vidalia onion producers and a public member nominated by growers and selected by the Secretary. Daily administration of the order would be carried out by a staff hired by the committee. The order would not regulate the production of Vidalia onions and would place no restrictions on the quality or quantity of Vidalia onions that could be handled.

The principal requirement of the order which would affect handlers would be the requirement that they pay assessments on fresh market shipments of Vidalia onions to fund research and promotion programs. The amount of the assessment rate is not specified in the proposed interim order nor did witnesses indicate at the hearing what an appropriate rate might be. Any assessment rate that may be established would be recommended by the committee to the Secretary for approval.

Acreage and supplies of Vidalia onions have risen dramatically in recent years, and proponents believe that the marketing order would provide a much needed means of halting the drop in grower returns experienced in past seasons. This would be achieved by strengthening demand and developing new markets for these increasing supplies through promotion of the Vidalia onion. Also, costs could be reduced through research. Thus, the marketing order would be expected to have a positive impact on grower returns.

The order would also impose some reporting and recordkeeping requirements on handlers. Handler testimony indicated that the expected burden that would be imposed with respect to these requirements would be negligible. Most of the information that would be reported to the committee is already compiled by handlers for other uses and is readily available. In compliance with the Office of Management and Budget (OMB) regulations (5 CFR Part 1320) which implement the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) and § 3504(h) of that Act, the information collection and recordkeeping requirements that may be imposed by this order would be submitted to OMB for approval. Those requirements would not become effective prior to OMB review. Any requirements imposed would be evaluated against the potential benefits to be derived, and any added burden resulting from increased recordkeeping would not be significant when compared to those anticipated benefits.

Reporting and recordkeeping requirements issued under comparable marketing order programs impose an average annual burden on each regulated handler of about one hour. It is reasonable to expect that a comparable burden may be imposed under this marketing order on the estimated 160 handlers of Vidalia onions.

The Act requires that prior to the issuance of a marketing order, a referendum be conducted of affected producers to determine whether they favor issuance of the order. The ballot material that will be used in conducting the referendum has been submitted to and approved by OMB (OMB No. 0581–0160). It has been estimated that it will take an average of 10 minutes for each of the approximately 260 Vidalia onion growers to participate in the voluntary referendum balloting. Additionally, it has been estimated that it will take approximately five minutes for each of the 160 handlers to complete the tentative marketing agreement. In determining that the order would not have a significant economic impact on a substantial number of small entities, all of the issues discussed above were considered. The marketing order provisions have been carefully reviewed and every effort has been made to eliminate any unnecessary costs or requirements. Although the order may impose some additional costs and requirements on handlers, it is anticipated that the order would help to strengthen demand for Vidalia onions grown in Georgia. Therefore, any additional costs should be offset by the benefits derived from expanded markets and sales benefiting handlers and producers alike. Accordingly, it is determined that the marketing order would not have a significant impact on small handlers or producers.

In accordance with Executive Order 12612, consideration has been given as to whether the proposed interim order would have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. To this end, notice of the hearing conducted to consider the establishment of a Federal marketing order program for Vidalia onions grown in Georgia was provided to the Governor of Georgia as well as to the State's Commissioner of Agriculture. One State official provided testimony at the hearing that concluded that the proposed Federal program would not conflict with any State statute, would not interfere with any State function, and would impose no burden on the State of Georgia, either financial or otherwise. It is therefore determined that this proposed rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Material Issues

The material issues presented on the record of the hearing are as follows:

1. Whether the handling of Vidalia onions grown in the proposed production area is in the current of interstate or foreign commerce, or directly burdens, obstructs, or affects such commerce;

2. Whether the economic and marketing conditions are such that they justify a need for a Federal marketing agreement and order which will tend to effectuate the declared policy of the Act;

3. What the definition of the commodity and the production area to be covered by the marketing order should be;

4. What the identity of the persons and the marketing transactions to be regulated should be; and

5. What the specific terms and provisions of the order should be including:

(a) The definition of terms used therein which are necessary and incidental to attain the declared policy and objectives of the order and the Act;

(b) The establishment, composition, maintenance, procedures, powers and duties of a committee which shall be the local administrative agency for assisting the Secretary in the administration of the marketing order;

(c) The authority to incur expenses and the procedure to levy assessments on handlers to obtain revenue for paying such expenses;

(d) The authority to establish or provide for the establishment of production and marketing research and market development projects;

(e) The establishment of requirements for handler reporting and recordkeeping;

(f) The requirement of compliance with all provisions of the order and with any regulations issued under it; and

(g) Additional terms and conditions as set forth in §§ 955.71 through 955.87 of the Notice of Hearing published in the **Federal Register** of August 23, 1988 [53 FR 32054] which are common to all marketing agreements and orders, and other terms and conditions published as §§ 955.90 through 955.92 which are common to marketing agreements only.

(6) Determining whether an emergency exists with respect to issue number 2.

Findings and Conclusions

The following findings and conclusions on the material issues are based on the record of the hearing.

(1) The record indicates that the handling of Vidalia onions grown in Georgia is in the current of interstate or foreign commerce or directly burdens, obstructs or affects such commerce.

The record evidence shows that in 1983, more than half of the commercial shipments of Georgia Vidalia onions were marketed in Atlanta, Georgia. That percentage declined over the following five years, and, in 1987, two-thirds of the volume moved to markets outside the State. An undetermined but considerable volume of Vidalia onions is sold within the proposed production area at roadside stands, and some are marketed throughout the United States via mail order operations. Only a small percentage of the crop is processed. The record indicates that no Vidalia onions are currently exported, but that they likely will be in the future.

The shipping season for Georgia Vidalia onions runs from April through June each year. About 5 percent of the volume moves in late April, about 75 percent in May, and the remaining 20 percent is shipped in June.

In addition to Atlanta, the record indicates that other major markets for Vidalia onions include Columbia, South Carolina and New York City, New York. USDA Market News reports show that these three markets accounted for about 66 percent of commercial shipments in 1987. Vidalia onions were also marketed (in descending order of importance) in Cincinnati, Ohio; St. Louis, Missouri; Boston, Massachusetts; Baltimore, Maryland; Chicago, Illinois; Pittsburgh, Pennsylvania; Detroit, Michigan; New Orleans, Louisiana; Buffalo, New York; and Seattle, Washington.

The record indicates that during its season, the Georgia Vidalia onion industry faces strong competition from other domestic onion suppliers as well as from imported supplies. A major competitor is South Texas, whose total shipments of onions during the April through June period average about ten times the volume of Georgia Vidalia onions. Even in Atlanta, Texas arrivals exceed those from the Vidalia district of Georgia. During April, May and June of 1987, for example, 10.4 million pounds of Texas onions were marketed in Atlanta, followed by 5.3 million pounds of Vidalia onions. In addition, 4.0, 2.9, 1.6 and 0.4 million pounds of onions arrived in Atlanta respectively from Mexico, California, New Mexico and Arizona. Onions from these areas compete with Vidalia onions from Georgia for most of the same markets.

Record evidence shows that any handling of Vidalia onions in fresh market channels, including intrastate shipments, exerts an influence on all other handling of onions and vice versa. As is true with other commodities, sellers of onions conduct their businesses so as to obtain maximum returns for the product they have for sale. Handlers and other sellers therefore continually survey all accessible markets so that they may take advantage of the best possible prices available. Further, they constantly attempt to develop demand and seek new markets for their product. Likewise, onion buyers consider prices and availability of onions from all sources in making their purchasing decisions. For this reason, onion supplies and prices in any one location are promptly known elsewhere and have a direct effect on onion supplies and prices in all other locations.

Therefore, it is hereby found that the handling of Vidalia onions grown in a designated part of Georgia is in the current of interstate commerce or directly burdens, obstructs, or affects such commerce. Hence, all handling of Vidalia onions grown in Georgia should be covered by the order.

(2) The need for the marketing order program for Georgia Vidalia onions is supported by the evidence in the record of hearing.

The record indicates that onions are grown in each of the 50 States, but commercial production is concentrated in a few. By far the majority of onions grown in this country (about 85 percent) are produced in the northern tier of States, including Idaho, Oregon, Washington, Michigan and New York. The two principal types of onions grown in these States are globe and Spanish-type onions. Globe onions are the dominant type grown in the Midwest and East and are not generally adaptable to Southern States. They tend to have a strong flavor, are firm to hard to the touch, and keep well under proper storage conditions. Spanish-type onions are particularly well adapted to production in the Western States. They are noted for their milder, sweeter flavor, but have a somewhat more limited storage ability than globes. Onions grown in the Northern States are harvested primarily in July and August, and the bulk of the crop is placed in storage. Marketing of the late-summer onion crop begins shortly after harvest and continues through the fall and winter and into the spring months.

As shipments of the late-summer crop are coming to an end, movement of the spring crop begins. Spring crop onions are grown primarily in the Southern States and are principally of the grano and granex types. These types of onions are typically sweeter and milder than the globe type, and are more tender and perishable than either the globe or Spanish-type onion. Unlike the late-summer onion crop, the spring crop is marketed relatively soon after harvest. Major producers of the spring onion crop are California, Texas, Arizona, and Georgia.

Testimony indicated that onions were first planted commercially in Toombs County, located in what is now known as the Vidalia district of Georgia, around 1930. According to testimony, it was discovered that the unique growing conditions in this area of southeastern Georgia, particularly the low sulfur content of the soil, yielded a sweeter, milder onion than those grown elsewhere. Prices received for these initial offerings were about $3.50 per fifty-pound bag, which was a very good return 60 years ago. Other farmers in the area soon began planting onions, and local demand was strong at the Vidalia

State Farmers' Market. The record indicates that virtually all current commercial onion production in Georgia is in the Vidalia district.

Testimony shows that national distribution of the commodity now known as the Georgia "Vidalia onion" began in the 1970's, the acreage has continued to increase annually. Expansion has been dramatic over the last twelve years in particular. Witnesses testified that Vidalia onion acreage totalled less than 500 acres in 1976, and exceeded 7,100 acres in 1988. Given an average yield of 300 50-pound bags per acre, production over this same time period grew from less than 150,000 bags to over 2 million bags.

Georgia Vidalia onion acreage currently accounts for about six percent of the U.S. annual total, and an estimated 20 percent of the spring crop acreage. Georgia accounts for less than a fifth of spring onion production, however, because yields are much lower than those in competing growing areas. Witnesses indicated that the average yield for Vidalia onions is about 150 hundredweight (cwt.) per acre. This compares to 210 cwt. per acre in Texas. Moreover, the average yield for Texas, California, and Arizona combined is about 270 cwt. per acre.

Witnesses attributed the lower yields received by Vidalia onion producers to a number of problems they face in growing their crop. Vidalia onion plantings begin as early as late September and end as late as early March. The majority of growers attempt to have most of the crop planted by late December or early January. Harvest typically begins in late April.

Since the growing season spans the winter months, freeze damage is a risk Vidalia onion growers face each year. The record indicates that back to back freezes were experienced during the 1983–84 and 1984–85 seasons. The record indicates that the high susceptibility of Vidalia onions to winter kill has resulted in a shift from direct seeding to the use of transplants since 1982. This practice has increased production costs from an average of $5.22 per bag for direct seeded Vidalia onions to $7.44 per bag for transplanted Vidalia onions. In addition to increasing costs, overall quality of the crop has declined since the Vidalia onions that are planted later tend to be less sweet, more pungent and more prone to decay.

Freezing temperatures are not the only weather-related problem faced by Vidalia onion growers. For example, weather conditions during the winter of 1986–87 were favorable. However, extreme temperature fluctuations during April of 1987 resulted in a high percentage of seed stems, and damage was as high as 40 percent in some fields.

The record indicates that in addition to fluctuating temperatures, the humid climate in the production area provides ideal conditions for the growth and spread of bacteria and other organisms which cause disease. Efforts to date have been limited to stopping the spread of disease once it occurs rather than preventing the initial outbreak. Several researchers from the University of Georgia testified that more research is needed in the areas of disease prevention and control.

In addition to the risks faced by Vidalia onion producers during the growing season, losses are also incurred during post-harvest handling. The record indicates that poor handling practices remain one of the weakest links in the marketing of fresh Vidalia onions. The evidence of record is that in Georgia, at least 15 percent of all Vidalia onions harvested and packed is lost due to damage and subsequent decay before it reaches the wholesale or retail level, which translates into a $4.5 million loss in potential annual sales for the growers. In addition to this immediate loss in sales, the merchandising of damaged Vidalia onions results in a tarnished image and the loss of repeat purchases by consumers.

Testimony indicated that onions can be injured at many points as they move from the field to retail markets. Damage resulting from bruising, cutting and scraping decreases the quality and shelf life of the Georgia Vidalia onion. It is important to recognize the significance of bruising as it relates to Vidalia onion shelf life. In a survey of over 9,600 USDA inspection certificates issued from 1972 to 1984 at the New York Terminal Market, it was found that about two-thirds of the Georgia Vidalia onion arrivals had either bacterial or mold rot. Over 6,000 of these shipments had at least two percent decay, which exceeds the tolerance for U.S. No. 1 grade onions. These Vidalia onions subsequently sold for substantially lower prices. Decay often does not exist at the time of harvest or packing, but develops later because bruising during handling allows decay organisms access to the onion flesh.

Further testimony stated that bruising could be reduced by installing cushioning devices at certain points in the packing operation, which may require minimal investment by the packer. For example, a study recently conducted by the Cooperative Extension Service at the University of Georgia demonstrated that a 24 percent reduction in Vidalia onion losses could be realized if foam padding were installed at key damage points in a Vidalia onion packingline. This type of work needs to be done on an industry-wide basis to identify damage points in the many different packingline designs. Further information is also needed on the susceptibility of different varieties to bruising as they move across grading lines.

According to testimony, Vidalia onions are susceptible to damage during handling because of their soft skins. Vidalia onions have traditionally been packed in bags, which offer little physical protection against bruising and decay. Preliminary work by the Cooperative Extension Service at the University of Georgia has shown that boxes may help reduce damage. Vidalia onions stacked in bags are easily crushed and bruised. Results show that bagged Vidalia onions had almost twice the decay loss as those packed in boxes after a forty day period under conditions designed to simulate commercial handling and storage. While boxes may cost more than bags, the savings realized in reduced damage and improved merchandising have the potential for outweighing these higher costs in the long run. The record indicates that further research is needed to determine the optimal packaging method for Vidalia onions.

The record indicates that another weakness in current post-harvest handling practices is improper storage. Currently produced varieties of Vidalia onions are highly perishable and cannot be stored for extended periods. Record evidence indicates that preliminary research has shown that the life of Vidalia onions can be extended by low temperature storage. Evidence shows that when these onions are stored at 34 °F, they become dormant and deterioration proceeds at a significantly reduced rate. In this limited study, Vidalia onions stored at 34 °F, had 40 percent less decay than those stored at 70 °F after 2 weeks. After 3 months, the Vidalia onions stored at 34 °F had 60 percent less decay than those stored at the higher temperature. Witnesses testified that additional research is needed to study the feasibility of implementing these preliminary findings on a commercial basis. Additionally, the identification of varieties with longer storage capability would benefit the industry.

The record indicates that extending the storage life of Vidalia onions has become a critical need of the industry, particularly in view of its increasing supplies and competitive pressures. Witnesses testified that the relatively short life of Vidalia onions accentuates

the industry's marketing risks by adding an urgency to move the product quickly into wholesale and retail channels without regard to existing supplies and prices in those markets.

As previously discussed, Vidalia onions are shipped from April through June, with peak volume moving in May. Market News data indicate that commercial shipments have risen in recent years, totalling 16.5 million pounds in 1985, 28.0 million pounds in 1986, and 36.9 million pounds in 1987.

By far the largest domestic suppliers during the April through June period are Texas and California which shipped 284.0 million pounds and 251.4 million pounds of onions, respectively, during this period in 1987. The record indicates that supplies from Texas provide heavier competition in that they are shipped to many of the same markets in the East, South and Midwest as are Vidalia onions, while California ships more heavily to Western markets.

According to USDA Market News data entered on the record, the average f.o.b. price for "Jumbo" size Vidalia onions during the five-year period 1983 to 1987 was $19.20 per 50-pound bag. That average is somewhat misleading, however, because it includes the freeze damaged crops of 1984 and 1985, when prices averaged over $24.00. Absent those two years, prices averaged $15.33 per bag. Moreover, these averages are not necessarily indicative of prices received for all Vidalia onions because a large, but unquantified supply of smaller sizes was shipped and sold for substantially lower prices. Prices for all Texas onions during the same five-year period (1983–1987) averaged $7.81 per 50-pound bag.

While per unit prices are higher for Vidalia onions than for onions grown elsewhere, witnesses testified that this does not necessarily translate into greater net returns for the Georgia industry because the costs associated with growing and handling Vidalia onions exceed those in other production areas. Additionally, as previously indicated, actual prices received for most Vidalia onions were often below reported f.o.b. prices. For example, a USDA Market News summary of the 1987 Vidalia onion season entered in the record revealed that opening prices for 50-pound bags were $20.00–21.00 for large and mostly $15.00 for medium sized Vidalia onions. While prices remained near their opening levels for about one week, the second week of the season marked the beginning of a steady decline in price for the remainder of the season. By the third week of the marketing season, many consignment shipments were moving throughout the Southeast, Northeast and Midwest. Price returns on many trailer loads were well below prevailing f.o.b. prices. Following the Memorial Day holiday, f.o.b. prices declined sharply for the remainder of the season, and heavy shipments of consignment loads continued. Wholesale prices at many terminal markets were at much lower levels than shipping point f.o.b. prices. Seasonal low f.o.b. price returns were recorded at the close of the deal on June 5, when large Vidalia onions sold for $10.00–$12.00 and medium sizes sold for $7.00–$8.00 per 50-pound bag.

Finally, while Vidalia onion prices for the largest sizes have historically been higher than those for other onions, witnesses indicated that this may no longer hold true. In 1988, the season average f.o.b. price for the Jumbo size was only $6.65 per bag. The record indicates that this price was below production costs, and resulted in losses to growers. Witnesses expressed the belief that many of the small growers and handlers in the industry cannot survive another season of heavy losses as occurred in 1988.

Witnesses attributed the recent downward trend in Vidalia onion prices in part to increasing competitive pressures from other larger onion growing areas. Testimony indicated that while the Vidalia onion is considered unique in its sweetness, other areas are developing sweet varieties of onions to capitalize on the strong consumer demand for sweet onions. For example, the South Texas onion industry has funded, through a Federal marketing order, varietal research to develop an onion variety with the desired characteristics of being mild tasting and sweet. This new variety, called the Texas Grano 1015 Y, is now being actively promoted.The record indicates that during the 1987–88 fiscal year, the South Texas onion industry budgeted $220,000 for research and market development activities. Additionally, handlers in Idaho and Eastern Oregon, also under a Federal marketing order program, budgeted about $760,00 during the same period for promotion and research of its "Sweet Spanish Onion". Witnesses attributed the success these other growing areas have had to their ability to pool available resources under their respective marketing orders. Other onion growing areas attempting to expand markets for their sweet onions include Walla Walla County, Washington and the Imperial Valley of California.

Proponents testified that the research and promotion activities conducted by competitors have assisted those competing industries in developing and promoting sweeter onion varieties that are challenging the Vidalia onion for its share of the onion market. It is believed that a similar program is necessary for Vidalia onions to remain in this competitive industry.

The record indicates that most Georgia residents are familiar with the taste and origin of the Vidalia onion. The record also indicates that they are aware of its unique flavor characteristics and are loyal customers. As the Vidalia industry has grown, the development of new markets has become necessary. Testimony also indicates that it is now necessary to differentiate the Vidalion onion from other onions available in the marketplace to garner customer loyalty in markets located outside of Georgia.

The record indicates that most of the Vidalia onion growers and handlers are not sufficiently large to finance promotion and research programs on an individual basis. In addition, public funds to finance such projects are scarce. Therefore, the Georgia Vidalia onion industry has attempted in the past to operate and fund research and development projects under voluntary programs. Eventually these programs ceased to operate because of inadequate support and financing. Witness testimony unanimously supported a marketing order program to be financed by all handlers for the purpose of strengthening consumer demand through promotion of the commodity and reducing costs through research.

Witnesses also testified that market research, in the form of data collection and analysis, would be an essential part of the overall marketing and promotion strategy. Currently, limited data is gathered with respect to Vidalia onions. To effectively promote and market Vidalia onions, proponents testified that additional knowledge of market conditions and access to more complete data is necessary to make prudent decisions for focusing promotional efforts and promoting the efficient allocation of resources.

In summary, a number of problems were identified in the record which could be resolved through a marketing order that would enable the Vidalia industry to work together. Identifying varieties that have good seedling survival rate, a low susceptibility to cold damage, good eating quality, and increased storage capability would add stability to the supply and quality of the Vidalia onion crop, and could increase yields and reduce costs. The marketing order program could assist handlers in solving mutual post-harvest handling problems, again in the interest of

increasing quality of their offerings, reducing costs and increasing returns. Finally, authorizing the financing of promotion and advertising programs would enable the industry to increase consumer awareness of its unique commodity, strengthen demand and increase sales.

In view of the foregoing, it is concluded that there is a need for a marketing order for Vidalia onions grown in a designated part of Georgia. The order would meet the needs of the industry and would tend to effectuate the declared policy of the Act.

(3) A definition of the term "production area" should be included in the order to delineate the area in which Vidalia onions must be grown before the handling thereof is subject to the marketing order. Such term should be defined to include all of the counties of Appling, Bacon, Bulloch, Candler, Emanuel, Evans, Jeff Davis, Montgomery, Tattnall, Telfair, Toombs, Treutlen, Wheeler, and portions of Dodge, Jenkins, Laurens, Long, Screven, and Wayne counties.

The area defined in the proposed interim order comprises what is generally recognized in the onion trade as the Vidalia district of southeastern Georgia. The counties included are contiguous and share essentially the same growing, harvesting and marketing conditions with respect to Vidalia onions. While production of Vidalia onions is currently concentrated in the three counties of Tattnall, Toombs and Montgomery, Vidalia onions are grown throughout the proposed production area. Further, the boundaries delineated in the order are the same as those that appear in Georgia's Vidalia Onion Act of 1986.

The Georgia State law restricts the use of the term "Vidalia onion" in the labelling and sale of onions to onions grown in this defined area. Additionally, six growers located outside this geographic area have been granted variances under the Georgia statute which enable them to sell their onions as Vidalia onions. These variances may not be transferred to other growers, and will terminate when these individual growers cease to produce onions.

At the hearing, witnesses proposed revising the definition of production area appearing in the Notice of Hearing to include these six growers. Testimony indicated that this addition would make the marketing order production area consistent with that defined in the Georgia State law.

The record indicates that these six growers farm a total of 57.1 acres of onions, ranging from one-tenth of an acre to 35 acres. One of these growers is located in a county adjacent to the proposed production area, one in a county that is only partially included, and four in three counties not contiguous to the proposed area. One grower is about 100 miles outside the defined production area.

At the hearing and in the brief filed, proponents expressed support for including the current acreage of these six growers but opposed any other enlargement of the proposed production area. The brief further presented the argument that there is precedent for the Secretary to define a production area for coverage under a marketing order and then modify that area for regulatory purposes. One example cited was a provision in the California raisin marketing order authorizing raisins produced in Southern California used for certain purposes to be exempt from regulation. The examples cited by the proponents were not analogous to this proposal in that they provided exemptions from handling requirements established under marketing orders for product grown in the defined production area and used for certain specified purposes.

The Act requires that a marketing order be limited in its application to the smallest geographic area found practicable to accomplish the objectives of the Act. It would be incongruous with such a finding to conclude, based upon the record, that the smallest geographic area for this proposed order encompasses the onion acreage of six individual growers in addition to the primary production area. This is particularly true since some of the onion-producing acreage in question is located at a considerable distance from the primary production area, and the proposed production area would not include onion acreage that would be in proximity or contiguous to that of those six growers. Any onion acreage adjoining that of those six growers would possess similar characteristics to that proposed to be included under the order. Additionally, the Georgia State exemption which permits those growers to market their onions as Vidalia onions expires when the individual producers cease production of onions, thereby making the production area as proposed indeterminate. Therefore, the proponents' proposal with respect to these six growers is denied.

The geographic area defined in the proposed interim order accounts for over 99 percent of the current onion acreage in Georgia and, according to record evidence, is generally recognized by the onion trade and consumers as comprising the Vidalia District of Georgia. It is therefore found that the production area as defined in the marketing order is the smallest geographic area to which the order may be applied, consistent with carrying out the declared policy of the Act.

The term "Vidalia onion" should be defined to specify the commodity covered by the proposed order and to which the terms and provisions of the marketing order would be applicable. The record indicates that a "Vidalia onion" may be one of a number of onion varieties grown in the production area, rather than one specific variety of onion. However, testimony indicated that onions acquire special characteristics when grown in the proposed production area. This is due in part to the low sulfur content of the soil. Further, according to testimony, the term "Vidalia onion" has a specific meaning in the onion trade, and consumers perceive Vidalia onions as being a unique commodity distinct from other onions. For these reasons, the term "Vidalia onion" should be defined to mean all varieties of the yellow Granex type. Further, to provide for the possibility that other types of onions that have characteristics similar to what is now known as the "Vidalia onion" may be grown in the production area in the future, the committee should be authorized, upon approval of the Secretary, to add those types of onions to the types included under the term "Vidalia onion".

(4) The term "handler" is synonymous with the term "shipper" and should be defined to identify the persons who would be subject to regulation under the order. Such term should apply to any person except a common carrier transporting Vidalia onions owned by another person, who first performs any of the activities within the scope of the term "handle" as hereinafter defined. The definition identifies persons who would be responsible for meeting the requirements of the order, including paying assessments and submitting reports.

Common or contract carriers transporting Vidalia onions which are owned by another person should not be considered as handlers, even though they transport Vidalia onions, because such carriers do not have control over the Vidalia onions being transported. Nor are they the persons who cause the introduction of such Vidalia onions into the stream of commerce. The only interest of common or contract carriers in such Vidalia onions is to transport them for a service charge to destinations determined by others.

Growers who handle their own Vidalia onions or Vidalia onions grown by others would be considered handlers

under the order. Any person who purchases Vidalia onions from growers and performs any other handling function such as grading and packing such Vidalia onions would be a handler.

The term "handle" should be defined in the order to establish the specific functions which would place Vidalia onions in the current of commerce within the production area or between the production area and any point outside thereof, and to provide a basis for determining which functions are subject to regulation under authority of the marketing order. "Handle" and "ship" are used synonymously and the definition should so indicate.

The record indicates that the term "handle" should include the acts of packaging, loading, transporting or selling Vidalia onions. However, the term handle shall not include the transportation, sale or delivery of field-run Vidalia onions to a handler within the production area for the purpose of having those Vidalia onions prepared for market. In this case, the Vidalia onions have not yet been prepared for market nor are they in their existing condition being transported to market. Most sellers and buyers do not consider them as yet suitable or appropriate for commercial transactions and, as such, they have not yet entered the stream of commerce.

Vidalia onion producers sometimes market their Vidalia onions themselves. In such cases, those growers would be the first handlers of Vidalia onions and would be responsible for paying assessments and complying with other order requirements.

(5)(a) Certain terms should be defined for the purpose of designating specifically their applicability and limitations whenever they are used in the order. The definition of terms discussed below is necessary and incidental to attain the declared policy and objectives of the order and Act.

"Secretary" should be defined to mean the Secretary of Agriculture of the United States, or any officer, or employee of the United States Department of Agriculture who has been or who may be delegated the authority to act for the Secretary.

"Act" should be defined to provide the correct statutory citation for the Agricultural Marketing Agreement Act of 1937, as amended. This is the statute under which the proposed regulatory program would be operative, and this definition avoids the need to refer to the citation throughout the order.

"Person" should be defined to mean an individual, partnership, corporation, association, or any other business unit. This definition is the same as that contained in the Act and insures that it has the same meaning in the order as it has in the Act.

A definition of the term "registered handler" was included in the Notice of Hearing. This provision would have required all Vidalia onion handlers to register with the committee after meeting certain qualifications. However, testimony at the hearing indicated that this requirement would be unnecessary to administer the order. This definition is therefore being deleted from the interim order.

The term "producer" should be synonymous with "grower" and should be defined to identify those persons who are eligible to vote for, and serve as, producer members and alternates on the committee and those who may vote in any referendum. The term should mean any person engaged in a proprietary capacity in the production of Vidalia onions for market within the production area. Each business unit (such as a corporation or partnership) should be considered a single producer and should have a single vote in nomination proceedings and referenda. The term "producer" should include any person who owns or shares in the ownership of Vidalia onions such as a landowner, landlord, tenant, or sharecropper. A person who owns and farms land resulting in that person's ownership of the Vidalia onions produced on such land should be considered a producer. The same is true with respect to a person who rents and farms land resulting in that person's ownership of all or part of the Vidalia onions produced on that land.

Likewise, a person who owns land which that person does not farm, but as rental for such land obtains the ownership of a portion of the Vidalia onions produced thereon, should be regarded as a producer for that portion of the Vidalia onions received as rent. The tenant on such land should be regarded as a producer for the remaining portion produced on such land.

In each of these situations the person involved in production regardless of whether an individual, partnership, joint venture, association, corporation, or other business unit, should be considered as one producer entitled to one vote in referenda and committee member nominations.

A joint venture is one whereby several persons contribute resources to a single endeavor to produce and market a Vidalia onion crop. In such venture, one party may be the farmer who contributes one or more factors, such as labor, time, production facilities, or cultural skills, and the other party may be a handler who contributes money and cultural, harvesting, and marketing supervision. Normally, a husband and wife operation would be considered a partnership. One test to determine if a person is a producer should be whether or not the person, that is, the individual or other business unit, has title to the Vidalia onions produced.

A number of producers in the production area own or operate packing sheds. A producer who owns or operates a packing shed should not be precluded from qualifying as a producer under the order. The term "producer-handler" should be defined to mean any person who both produces and handles Vidalia onions. This definition is needed because at least four members of the committee are required to be producer-handlers. The Notice of Hearing provided that to qualify as a producer-handler, a grower would have to handle such grower's own production as well as the production of other growers. The record indicates, however, that a producer-handler need only handle Vidalia onions, regardless of who produced them. Therefore, the definition of the term "producer-handler" has been revised to mean a producer who also handles Vidalia onions.

A definition of the term "Varieties" was included in the Notice of Hearing. However, upon the basis of the hearing record, it has been determined that inclusion of this definition in the proposed order is unnecessary because it duplicates the language contained in the definition of the term "Vidalia onion." It is therefore being deleted from the interim order. The term "Committee" should be defined to mean the administrative agency known as the Vidalia Onion Committee established under the provisions of the marketing order. Such a committee is authorized by the Act, and this definition is merely to avoid the necessity of repeating the full name each time it is used.

The term "fiscal period" should be defined to mean the annual period for which the committee would plan the use of its funds. This period should be established so as to allow sufficient time prior to the time Vidalia onions are first shipped for the committee to organize and develop its budget for the ensuing season. However, it should also be set to minimize incurring expenses during a fiscal period prior to the time assessment income is available to defray such expenses. The Notice of Hearing proposed that "fiscal period" mean the 12-month period beginning January 1 and ending the following December 31. However, record evidence indicates that the planting, harvesting,

and marketing cycle for Vidalia onions grown in the production area begins in September and ends in late May or June. The fiscal period should coincide with the Valdalia onion crop year, because the industry typically plans its operation on this basis. A fiscal period of January 1 through December 31 would be undesirable because this time period would cover portions of two crop years. To eliminate this difficulty, hearing testimony supported the fiscal period being established for a 12-month period beginning September 16 and ending September 15 of the next year. However, if necessary to improve the committee's management or for other reasons, based on experience once the order is established, it may be desirable to establish a fiscal period other than one ending on September 15. Thus, authority should be included in the order to provide for the establishment of a different fiscal period if recommended by the committee and approved by the Secretary. In any event, the beginning date of any new fiscal period should be sufficiently in advance of the harvesting season to permit the committee to formulate its marketing policy and perform other administrative functions. Also, it should be recognized that if at some future date there is a change in the fiscal period, such change would result in a transition period being more or less than 12 months. Also, if the interim order is issued in time to levy assessments on 1989 shipments, the initial fiscal period should end on September 15, 1989, so that the subsequent fiscal period would begin September 16, 1989.

(b) Pursuant to the Act, it is desirable to establish an agency to administer the order locally as an aid to the Secretary in carrying out the declared policy of the Act and to provide for effective and efficient operation of the order. The Vidalia Onion Committee should therefore be established and consist of nine members, including one public member. The record indicates that a committee composed of nine members, with a like number of alternates, would provide adequate representation and would provide for reasonable judgment and deliberation with respect to recommendations made to the Secretary, and in the discharge of other committee duties.

Since the marketing order is intended to primarily benefit Vidalia onion producers, it is appropriate that the committee be comprised primarily of growers. Eight of the nine committee members should therefore be Vidalia onion growers. Since the program would be financed by handlers, and handlers would be responsible for complying with the terms of the marketing order, however, it would be reasonable to provide for handler representation on the committee as well. For this reason, proponents proposed that of the eight producer members on the committee, at least four of those members should be producer-handlers.

The record evidence indicates that the line of differentiation between growers and handlers is somewhat blurred in the Vidalia onion industry, with most growers handling their own production. Of the current 260 growers, over half (about 145 of the total) would qualify to serve as producer-handlers. Less than 20 percent of the current Vidalia onion handlers do not grow onions. It is therefore reasonable to expect that handler input would be adequately provided for through the producer-handler membership on the committee.

The record indicates that, at least initially, producer members and their alternates should be selected from the production area at large. Since the production area is relatively small, this method should be adequate to ensure equitable representation on the committee. However, authority should be included in the marketing order to establish districts for the purpose of committee representation in the future if deemed necessary by the committee and approved by the Secretary. The record indicates that Vidalia onion production is currently concentrated in the three counties of Tattnall, Toombs and Montgomery, which together account for about 80 percent of production. Should all eight industry members selected to serve on the committee be from these three counties, for example, it may be necessary to divide the production area into districts to ensure representation of the remaining counties. In considering how membership should be apportioned among these districts consideration should be given to acreage and production of Vidalia onions in the various districts as well as other relevant factors. This would ensure that adequate input during committee deliberations is obtained from the entire production area.

Hearing testimony indicated that the eight persons selected to serve as grower members or alternates shall be individuals who are producers, or officers or employees of producers, and who are residents of the production area. Such persons could be expected to have strong interests in the effects of committee decisions of Vidalia onion producers and handlers. Each person selected to serve as a producer-handler should, in addition, be engaged in handling Vidalia onions.

At the hearing, witnesses supported adding a public member to the administrative committee. While the influence of consumers would be implicitly present in the deliberations of the producer and producer-handler committee members, and all meetings would be public, the appointment of a public member would offer many advantages. One would be the direct communication between industry members and the public member, who would have no connection with the industry and whose opinions would afford the industry an opportunity to discuss its problems and concerns with someone who would view these problems and concerns from outside the Vidalia onion industry. The proposal to add a public member on the committee is found to have merit and the provisions of the proposed interim order have been revised accordingly.

The public representative and that person's alternate should not be permitted to have a direct financial interest in the production, processing, financing, buying, packing, or marketing of Vidalia onions except as a consumer, nor be a director, officer, or employee of any firm so engaged. Such public representatives should be able to devote sufficient time and express a willingness to attend committee activities regularly and to familiarize themselves with the background and economics of the industry. Public members should be residents of the production area, since such persons could be expected to be familiar with and knowledgeable about industry problems and practices.

Each member of the committee, including the public member, should have an alternate. This would ensure that all portions of the production area are adequately represented in the conduct of the committee's business and that the continuity of operation is not interrupted. The order should provide that alternate members should meet the same qualifications as their respective members. They would act in the place and stead of their respective members during temporary absences. In the case of the death, removal, resignation, or disqualification of a member, the alternate should serve as member until a new member is selected.

If both the member and alternate for a particular committee position are absent from a meeting, the member, the alternate, or the committee, in that order, should be empowered to designate another alternate from the same group (i.e., producer or producer-handler) to act in the place of the absent

member. Only the alternate public member should be able to serve in the absence of the public member, however. This procedure would further ensure the proper and efficient operation of the committee.

With the exception of initial members, the term of office of committee members and their respective alternates should be for two year and should begin on September 16 and end on September 15, or for such other two year period as the committee may recommend and the Secretary approve. The record indicates that the term of office should begin on September 16 because that is considered the beginning of the Vidalia onion crop year. The Vidalia onion season ends sometime during the summer, and begins again in mid-September when growers begin seeding for the next year's crop. At that point in time, it can be determined which growers are remaining in business and qualify to serve on the committee. Beginning the term of office on September 16 would also enable new growers to serve on the committee.

A two-year term is appropriate because it would give members sufficient time to become familiar with committee operations and enable them to make meaningful contributions at committee meetings. Furthermore, a two-year term would enable establishment of a rotation so that approximately one half of the committee membership would terminate each year. Staggered terms would lend continuity to the committee by insuring that some experienced members would be on the committee at all times. Therefore, the order should provide that the terms shall be determined so that approximately one half of the total committee membership terminates each year.

The effective date of the interim order, if issued, may not coincide with the specified beginning date of the terms of office of committee members and alternates. Therefore, a provision is necessary to adjust the initial terms of office. To accomplish this, the order should provide that the terms of office of the initial members and alternates shall begin as soon as possible after the effective date of the order.

The Notice of Hearing proposed that the term of office for initial members and alternates should be established so that one half of the initial members and alternates would serve for a one-year term and one half would serve for a two-year term. However, record evidence indicates that while it is important to provide a constant infusion of new members to the committee, it is equally important to provide continuity and experience. Hearing testimony supported revising the terms of office for initial producer and producer-handler committee members and alternates so that the term of one fourth of the initial members would be one year; the term of one fourth of the initial members would be two years; the term of one fourth of the initial members would be three years; and the term of one fourth of the initial members would be four years. The record indicates that the appropriate method for determining how many years each of the initial members would serve would be for the initial committee member nominees to draw lots at the first nomination meeting. This would determine which members would serve the initial one-, two-, three-, and four-year terms and would provide for the desired rotation of successor members. Since there would be only one public member, there is no need to provide for staggering that membership. The initial public member should serve a two-year term of office. The provisions of the proposal have been revised accordingly and are reflected in the proposed interim order.

In the event that the initial members are selected prior to September 16, 1989, the initial one-year term would not end on September 15, 1989, but would continue until September 15, 1990. Similarly, the two-, three-, and four-year terms would end on September 15, 1991, 1992, 1993, respectively. For the purposes of applying the tenure requirements of the proposed order, each of these initial terms would be considered as a one-, two-, three-, or four-year term even though the actual period of the appointment may be several months longer.

In order to prevent unnecessary vacancies from occurring on the committee, the order should provide that members and alternates shall serve in such capacity for the portion of the term of office for which they are selected, and until their respective successors are selected. However, so that there is a continual turnover in membership and infusion of new ideas, the order should provide that no member may serve more than three consecutive terms on the committee unless specifically exempted by the Secretary. After serving three consecutive terms, a committee member who has served three terms should be eligible to serve as an alternate, but should be ineligible to serve as a member for a period of one year. These tenure requirements should not apply to alternate members.

In applying the tenure requirements to initial committee members, the principle that should prevail is limiting total membership to no more than six years. Hence, the initial members serving one and two year terms would be eligible to serve two additional terms, and the initial members serving three and four year terms would be eligible to serve only one additional term.

The order should provide that the Secretary shall have the authority to select members and alternates of the committee, but the Vidalia onion growers should have the responsibility for recommending nominees to the Secretary for selection. The nomination procedure outlined in the order would provide a means of making available to the Secretary the names of prospective members and alternates desired by the industry to serve on the committee.

The record indicates that the Secretary should conduct a meeting for the purpose of nominating initial industry committee members. All producers of record in the production area should receive notice of the meeting in sufficient time to enable them to attend. Nominations should be received and voted upon at these meetings. Those persons receiving the highest number of votes for each of the positions to be filled should be considered the nominee for that position.

The committee should be responsible for conducting subsequent nomination meetings, and providing notice to Vidalia onion producers of those meetings. While the Notice of Hearing contained a proposal that would allow nominations to be conducted by mail balloting of growers, no testimony was presented at the hearing in support of this method of nominations. The proposal in the Notice also provided that at least one nominee be submitted for each position for the Secretary's consideration. Witnesses testified that only the nominees receiving the highest number of votes should be submitted to the Secretary for appointment to the committee, since Vidalia onion growers should determine who should represent them in administering this marketing order program. Thus, § 955.22 provides that one nominee be designated for each member and alternate member position that is vacant or is about to become vacant.

Meetings held for nominating members and alternates of subsequent committees should be held no later than August 1 of each year or such other date as the Secretary may specify. Inasmuch as the term of office would begin September 16 of each year, nomination meetings should be held in sufficient time to assure that nominations for members and alternates will be submitted to the Secretary in sufficient time so that appointments may be made

prior to the beginning of each new term of office.

Nominations should be submitted in such manner and form as the Secretary may prescribe. One nominee should be designated for each position which is to be filled the following September 16. Sufficient information about each nominee should be provided so the Secretary is able to determine if such person is qualified for the position for which nominated.

Only Vidalia onion producers should participate in designating nominees for producer and producer-handler members and alternates. All producers would be entitled to vote for both producer and producer-handler members. That is, the election of producer-handler members should not be limited to producer-handlers. In the event districts are established in the future for nomination purposes, such persons should be growers within the district in which they so participate. If a person produces Vidalia onions in more than one district, such person should elect the district within which such person wishes to participate in electing nominees for committee members and alternates.

Each grower should be allowed to cast only one vote in the nomination process on behalf of the grower and that grower's agents, subsidiaries, affiliates and representatives. This limitation, however, is construed to mean that one vote may be cast for each member and alternate member position which is to be filled in the district in which that person has chosen to participate.

Provisions also should be made for the nomination and selection of a public member and alternate. The record indicates that nominees for the public member and alternate should be selected by the industry members of the committee and should be forwarded to the Secretary no later than November 1 or such other date recommended by the committee and approved by the Secretary. The nominees would be selected under procedures recommended by the committee and approved by the Secretary. It is also reasonable to require that the names of nominees for the initial public member and alternate be submitted to the Secretary as soon as possible after the first regular meeting of the initial producer and producer-handler members of the committee. Provisions of the proposal have been revised to provide for nomination of the public member and alternate as supported at the hearing.

The order should provide that the members of the committee shall be selected by the Secretary from persons nominated or from among other qualified persons. In the event nominations are not made within the time and in the manner specified in the order, the Secretary may select members and alternates without regard to nominations. Such selection should be from qualified persons as provided in the order. Each person to be selected by the Secretary as a member or as an alternate member of the committee should, prior to selection, qualify by advising the Secretary that such person agrees to serve in the position for which nominated.

The order should provide a method for promptly filling any vacancies on the committee for unexpired terms of office. There may be vacancies caused by the death, removal, resignation, or disqualification of a member or alternate. The order should provide that the Secretary shall be authorized to name a successor to fill an unexpired term from nominations made in the same manner as provided for nominating all other members and alternates. Any nomination meetings for the purpose of filling vacancies should be held within a reasonable amount of time after a vacancy occurs.

Committee members and alternates will necessarily incur some expense while on committee business. Reasonable expenses, which may include travel, meals and lodging, should be reimbursed to members while attending committee meetings or performing other duties under the order. Therefore, the order should provide that members and alternates, when serving as members of the committee, shall serve without compensation but shall be reimbursed for such expenses authorized by the committee and necessarily incurred by them in attending committee meetings and in the performance of their duties under the order.

The order should specify a procedure for the committee to conduct its meetings. It should provide that a majority of all members of the committee is necessary to constitute a quorum and to pass any motion or approve any committee action. Accordingly, five members of the nine member committee must be present in order to constitute a quorum and enable the committee to conduct a meeting. Five affirmative votes should be required to pass any motion or approve any committee action.

There may be times when it will be impossible to assemble the committee promptly to meet an emergency situation. Therefore, the order also should enable committee members, and alternates when acting as members, to vote by mail, telegraph, telephone or other means of communication, provided that any vote cast orally be confirmed promptly in writing. If an assembled meeting is held, all votes should be cast in person. The majority quorum and voting requirements should still apply when voting by mail, telegraph, telephone or other means of communication.

The committee should be given those specific powers which are set forth in section 608c(7)(C) of the Act. Such powers are granted by the enabling statutory authority and are necessary for an administrative agency, such as the Vidalia Onion Committee, to carry out its proper functions.

The committee's duties as set forth in the proposed interim order are necessary for the discharge of its responsibilities. These duties are similar to those typically specified for administrative agencies under other programs of this nature. They pertain to specific activities authorized under the order, such as investigating and compiling information regarding Vidalia onion marketing conditions, and to the general operation of the order including hiring employees, appointing officers, and keeping records of all committee transactions. Among the duties listed in the Notice of Hearing was that of the committee having its books audited each year by a "competent accountant." At the hearing, it was proposed that this term be changed to Certified Public Accountant. This proposal is deemed to have merit, and paragraph (h) of § 955.31 has been revised accordingly.

The duties listed in § 955.31 are reasonable and necessary if the committee is to function in the manner prescribed under the Act and the order. It should be recognized that the duties specified are not necessarily all inclusive, and it may develop that there are other duties which the committee may need to perform which are incidental to, and not inconsistent with, these specified duties.

(c) The committee should be authorized under the order to incur such expenses as the Secretary finds are reasonable and likely to be incurred during each fiscal year. Such a provision is necessary to assure the maintenance and functioning of the committee as well as to finance production research and market promotion programs. Necessary expenses would include, but would not be limited to, such items as employee salaries and benefits; establishment of an office and equipping such office; telephone and mail services; and business related transportation for the committee staff. Expenses incurred by

committee members in attending committee meetings should also be reimbursed as another expense. All such expenses may be incurred on an ongoing basis.

The committee should be required to prepare a budget showing estimates of income and expenditures necessary for the administration of the marketing order during each fiscal year. The budget, including an analysis of its component parts, should be submitted to the Secretary sufficiently in advance of each fiscal period to provide for the Secretary's review and approval. While the proponents offered no indication as to what an appropriate time would be for submission of the committee's annual budget, it typically requires about 60 days for the Secretary's review and approval. Therefore, § 955.41 of the proposal has been revised to require the submission of the committee's recommended budget 60 days prior to the beginning of the fiscal period, or such other date as the Secretary may specify. The submitted budget should include a recommendation to the Secretary of a rate of assessment designed to secure the income required for such fiscal year.

The Act authorizes the Secretary to approve the incurring of expenses by the administrative agency established under an order and states that the order must contain provisions requiring handlers to pay their pro rata share of such expenses.

The rate of assessment should be established by the Secretary on the basis of the committee's recommendation and other available information. In the event that an assessment rate is established which does not generate sufficient income to pay for the approved expenses, the committee should be authorized to recommend to the Secretary an increase in the rate of assessment in order to secure sufficient funds. The Secretary may approve an assessment rate increase, and such increase should be applicable to all Vidalia onions handled during the fiscal year to which that assessment rate applies.

The record shows that an undetermined amount of production is marketed through mail-order sales and roadside stands. Witnesses testified that handlers who sell their Vidalia onions through such outlets would benefit from the research and promotion activities that are contemplated to be conducted under the proposed order. Therefore, such handling of Vidalia onions should not be exempt from the assessment requirements of the proposed order.

The order should provide for the payment of assessments by first handlers of Vidalia onions for maintenance and functioning of the committee throughout the time the order is in effect, irrespective of whether particular provisions of the order are suspended or are inoperative. For example, adverse weather during a growing season could result in reduced supplies, and therefore planned market support activities for the season could be cancelled. The committee should be able to continue levying assessments to pay other approved expenses incurred for other purposes.

At the hearing, the proponents recommended adding a provision to § 955.42 that would allow the establishment of a continuing assessment rate that would be carried over from one fiscal period to the next and remain the same until changed. However, Annual rulemaking, including the opportunity for public comment, prior to each fiscal period would promote good fiscal practices and responsibility. In addition, the fiscal year established in the order would begin on September 16, about seven months before shipments begin. Since the committee would be required to recommend an assessment rate prior to September 16, adequate time would be available for the Secretary's review and approval. A continuing assessment rate would therefore be unnecessary. Therefore, the provision proposed at the hearing to allow an established assessment rate to continue in effect indefinitely has been denied.

If a handler does not pay any assessment by the date it is due, the order should provide that the late assessment may be subject to a late payment charge or an interest charge at rates set by the committee with the Secretary's approval. The record indicates that such charges should not be considered penalties, but should be set at rates established to cover additional costs that may be incurred by the committee in attempting to collect overdue assessments, and should encourage timely payments. The time frame in which payments would be considered to be late and late or interest charges incurred should be recommended by the committee and approved by the Secretary.

The committee should be authorized to accept advance payment of assessments so that it may pay expenses which become due before assessment income is received. This would give the committee more flexibility in paying obligated expenses, particularly in the first part of a fiscal year before assessment funds are received.

The committee should also be able to borrow money to meet administrative expenses that would be incurred before assessment income is sufficient to defray such expenses. However, the committee should not borrow money to pay obligations if sufficient funds already exist in the committee's reserve fund or in other committee accounts.

The committee should also be authorized to receive voluntary contributions from persons other than those assessed under the order for the payment of production research or promotion activities as authorized by the order. Such contributions should be received by the committee without any obligations to the donor, and the expenditure of such funds should be under the complete control of the committee and subject to the provisions of the order. The committee should not receive a voluntary contribution from any person if that contribution could represent a conflict of interest.

With the approval of the Secretary, the committee should be authorized to carry over any excess assessment income into the following fiscal period as a reserve. If such excess income is not carried over as a reserve, handlers should be entitled to a refund proportionate to the assessments each handler paid. The reserve should not be allowed to exceed approximately three years' expenses.

One purpose of the reserve fund would be to provide stability in the administration of the order in the case of a low crop year. Also, establishing a reserve should minimize the necessity of the committee borrowing money at the beginning of a fiscal year or raising an assessment rate during a season of less than anticipated production.

Finally, reserve funds could be used to cover necessary liquidation expenses in the event the order is terminated. Upon such termination, any funds not needed to defray liquidation expenses should be disposed of as determined by the Secretary. To the extent possible, however, these funds should be returned pro rata to the handlers from whom they were collected.

All funds collected by the committee through assessments or any other provision of the order should be used only for the purposes set forth in the order. The Secretary should at all times have authority to require the committee, its members and alternates, and its employees and agents to account for all receipts, disbursements, property or records of the committee for which such person has been responsible. Likewise, when any such person ceases to act in the aforesaid positions, that person

should account for all receipts, disbursements, property or records of the committee for which such person has been responsible. In the event the order is terminated or becomes inoperative, the committee should appoint, with the approval of the Secretary, one or more trustees for holding records, funds or other property of the committee.

(d) The marketing order should authorize the committee to establish and provide for the establishment of production research, marketing research and development, and marketing promotion projects, including paid advertising, designed to assist, improve, or promote the marketing, distribution, consumption, or efficient production of Vidalia onions. Funding for these programs should come from any authorized receipts of the committee, including assessment income, voluntary contributions and miscellaneous income such as interest.

The committee should have the authority to initiate new production and marketing research projects as well as to contribute to research which may currently be taking place.

Testimony indicated that public funds for research are becoming scarcer and more difficult to obtain. Proponents of the marketing order proposal believe that the Georgia Vidalia onion industry needs to finance research in the areas of onion storageability and improving cultural practices.

The record also supports the need for marketing research and promotion projects. Research would enable the Georgia Vidalia onion industry to identify and analyze its current markets and find ways of expanding current markets and developing new ones.

Expanding markets for Vidalia onions could be accomplished by promotion activities including paid advertising to acquaint wholesalers, retailers, and consumers with the product available from the Vidalia area.

Marketing development projects would enable the committee to compile meaningful market data and to explore marketing possibilities, such as how to gain entry to or recapture a specific market. That authority also would enable the committee to contact buyers, distribute educational material relating to the handling and marketing of Vidalia onions, and disseminate to the industry the results of current or past marketing research projects. It would also allow the committee to give out promotional literature, recipes, and information relative to consumption or use.

The committee should be authorized to conduct these types of activities itself, or to contract with other organizations to conduct them on its behalf. For example, it was indicated at the hearing that the committee may choose to contract with the universities or other research groups to conduct such projects or studies for the committee.

Record testimony indicated that the committee should be authorized to develop a common identifying mark that could be used by all Vidalia onion producers and handlers for the purpose of distinguishing the Vidalia onion in the marketplace. Proponents supported utilizing such a mark in conjunction with any paid advertising, to make the consumer aware that they are purchasing Georgia Vidalia onions. Witnesses supported advertising as a means of increasing demand for Vidalia onions.

Georgia's Vidalia onions have a very limited marketing season (late April to Mid-June) and prices customarily begin to decline rapidly over the season. Proponents believe a limited education and advertising campaign would help increase the public's awareness of this specialty onion with the objective of expanding the market and increasing consumption of Vidalia onions. Paid advertising with an identifying mark would assist in clarifying and maintaining the Georgia Vidalia onion's image in the marketplace in a way not available through other forms of promotion or publicity.

Market promotion programs including paid advertising for Vidalia onions carried out with funds collected under the proposed program would be generic in nature and would not use particular name brands, handler or producer names, or favor any particular portion of the production area. In addition any promotion material or advertising would not be authorized to make false or unwarranted claims on behalf of Vidalia onions. Nor would such material be authorized to include statements which disparage other agricultural commodities.

The record does not indicate the amount of assessment funds that may be allotted for research and promotion programs. The committee should have the responsibility to determine the amount of funds spent on each program each year. Such determination should be based on the needs of each program each year. The amount of funds to be spent on research and promotion programs would be included in the annual budget required to be submitted to the Secretary for review and approval.

All research and promotion projects to be conducted under the order in a given fiscal period should be submitted by the committee to the Secretary for approval prior to being undertaken. This will ensure that all projects are appropriate given the order's authority, and that sufficient funds will be available for their funding. Further, the committee should be required to report at least annually on the progress of each project and at the conclusion of each project. Such reports should be made available to growers and handlers and to the Secretary.

(e) The committee should have the authority, with the approval of the Secretary, to require that first handlers submit to the committee such reports and information as the committee may need to perform its functions and fulfill its responsibilities under the order. The record indicates that in the normal course of business, Vidalia onion handlers collect and record information that may be needed by the committee. In addition, handlers testified at the hearing that they currently compile, report and maintain information similar to that which may need to be collected to administer the proposed order. Witnesses expressed the belief that the reporting requirements that may be imposed under the proposed order would not constitute an undue burden on handler businesses.

Reports could be needed by the committee for such purposes as collecting assessments; compiling statistical data for use in evaluating marketing development projects; making recommendations for production research; and determining whether handlers are complying with order requirements. The record evidence indicates that to the extent necessary for the committee to perform its functions, handlers will likely need to provide information on the quantity of Vidalia onions handled each season. This required information may include, but would not necessarily be limited to, the quantities of Vidalia onions received by the handler and the quantities disposed of by such handler, the date of each such receipt and disposition, and the identity of the carrier transporting such onions. This should not be construed as a complete list of information the committee might require, nor should it be assumed that all of the above would necessarily be required of handlers. There may be other reports or kinds of information which the committee may find necessary for the proper conduct of its operations under the order. Therefore, the committee should have the authority, with the Secretary's approval, to require each handler to furnish such information as it finds necessary to perform its duties under the order.

The record shows that an undetermined amount of production is marketed through mail-order sales and roadside stands. However, the record also supports the position that all fresh market shipments of Vidalia onions should be reported, and that no exemptions under the recordkeeping requirements should be provided.

Each handler should be required to maintain such records of Vidalia onions received and disposed of as may be necessary to verify the reports that the handlers submit to the committee. All such records should be maintained for two fiscal periods after the fiscal period in which the transactions occurred. The order should provide the authority for the Secretary and authorized employees of the committee to have access to handlers' premises to examine those records pertaining to matters within the purview of the order. This provision would enable verification of compliance with requirements of the order.

All reports and records submitted for committee use by handlers would be required to remain confidential and be disclosed to none other than persons authorized by the Secretary, except as required by law. Such reports would become part of the committee's and Secretary's records. However, the committee should be authorized to release composite information compiled from many or all reports. Such composite information could be helpful to the committee and to the industry in planning operations under the order and in promoting the industry. Any release of composite information should not disclose the identity of the persons furnishing the information or any person's individual operation.

(f) No handler should be permitted to handle Vidalia onions except in conformity with the provisions of this part. If the program is to be effective, compliance with its requirements is essential, and no handler should be permitted to evade any of its provisions. Any such evasion on the part of even one handler could be demoralizing to those handlers who are in compliance and would tend to impair the effective operation of the program.

At the hearing, the proponents supported adding a sentence to § 955.80 to provide that no person located either inside or outside the production area could apply the term "Vidalia onion" or any other term using the word "Vidalia" to any container of onions unless the product in that container met the definition of Vidalia onions as set forth in § 955.5 of the proposed marketing order. This would include the requirement that the product in the container was grown in the production area delineated in the order.

Witnesses testified that consumers are being deceived when they purchase onions they believe to be Georgia Vidalia onions, but are actually onions produced outside the proposed production area. Proponents testified that the application of the Vidalia name to onions not grown in the production area is an unfair trade practice which destroys the reputation of the Vidalia onion and causes harm to the industry.

The Act provides that a marketing order can only apply to a defined commodity grown in a specified production area. No authority exists for regulating the handling of that commodity grown outside that production area. The proponents' proposal with regard to labelling onions grown outside the production area is not consistent with the authority in the enabling legislation and is therefore not included in the proposed marketing order. This proposal is denied.

(g) The provisions of §§ 955.71 through 955.73 and §§ 955.81 through 955.92 of the order as contained in the Notice of Hearing and hereinafter set forth, are common to marketing agreements and orders now operating. All such provisions are incidental to and not inconsistent with the Act and are necessary to effectuate the other provisions of the marketing order and marketing agreement and to effectuate the declared policy of the Act. The record evidence supports inclusion of each such provision as proposed in the Notice of Hearing, with the exception of § 955.71 as discussed below. These provisions which are applicable to both the marketing agreement and the marketing order, identified by section number and heading are as follows: § 955.71 Termination or suspension; § 955.72 Proceedings after termination; § 955.73 Effect of termination or amendment; § 955.81 Right of the Secretary; § 955.82 Duration of immunities; § 955.83 Agents; § 955.84 Derogation; § 955.85 Personal liability; § 955.86 Separability; and § 955.87 Amendments. Those provisions applicable to the marketing agreement only are: § 955.90 Counterparts; § 955.91 Additional Parties; and § 955.92 Order with marketing agreement.

The order should provide that the Secretary conduct a periodic referendum every six years with the initial referendum conducted within six years of the effective date of the marketing order.

The Secretary of Agriculture has determined that continuance referenda are an effective means for ascertaining whether producers favor continuance of marketing order programs. The Act provides that the Secretary shall terminate a marketing order whenever, through the conduct of a referendum, it is indicated that a majority of all producers favor termination and such majority produced more than 50 percent of the commodity for market during a representative period.

Since less than 50 percent of all producers usually participate in a referendum, it is difficult to determine overall producer support or opposition to termination of an order. Thus, to provide a basis for determining whether producers favor continuance of the order, authority for continuance referenda should be included. Continuance should be based upon the affirmative vote of two-thirds of the producers voting or producers of two-thirds of the volume of Vidalia onions represented in the referendum.

Hearing testimony favored the concept of conducting continuance referenda, but opposed a two-thirds vote requirement to continue the marketing order. It was stated that one-third of the industry should not determine the fate of the program, and that a majority vote would be more equitable.

The Act requires that in the promulgation or amendment of a marketing order, at least two-thirds of the producers voting, by number or volume represented in the referendum, must favor the issuance or amendment of a marketing order. Continuance referenda should be based on the same standard of industry support. This requirement is considered adequate to measure the producers support to continue the marketing order. Therefore, the proposal that continuance referenda require a majority vote is denied. The Secretary would consider termination of the order if less than two-thirds of the producers voting in the referendum and producers of less than two-thirds of the volume of Vidalia onions represented in the referendum favor continuance. In evaluating the merits of continuance versus termination, the Secretary should not only consider the results of the referendum but also should consider all other relevant information concerning the operation of the order and the relative benefits and disadvantages to producers, handlers and consumers in order to determine whether continued operation of the order would tend to effectuate the declared policy of the Act.

In any event, section 8c(16)(B) of the Act requires the Secretary to terminate the order whenever the Secretary finds that the majority of all producers favor termination, and that such majority

produced more than 50 percent of the commodity for market.

The Secretary's "Guidelines for Fruit, Vegetable, and Specialty Crop Marketing Orders" provide for periodic referenda to allow producers the opportunity to indicate their support for or rejection of a marketing order. It is the position of the Department that periodic referenda ensure that marketing order programs continue to be accountable to producers, obligate producers to evaluate their programs periodically, and involve them more closely in their operation. The record evidence supports these goals.

The proposed interim order includes miscellaneous changes which have been made for clarity and consistency.

(6) Section 900.12(d) of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders [7 CFR Part 900] authorizes the Secretary to omit issuing a recommended decision and providing an opportunity to file exceptions thereto when it has been determined on the basis of the hearing record that due and timely execution of the Secretary's functions imperatively and unavoidably requires such omission.

Testimony was presented at the hearing that it was essential for Vidalia onion producers to have the opportunity to vote on this proposed order and have it in place prior to the 1989 marketing season which begins in April.

Testimony indicates that the Vidalia onion industry is facing severe problems due to dramatic increases in available supplies and growing pressures from competing onion production areas. Last season, prices averaged well below costs of production, and many growers fear they will be forced out of business if this situation recurs during the 1989 season. The proposed marketing order program has been deemed necessary by the industry to allow it to find new markets, to reduce its production and handling costs, and to become profitable in the highly competitive onion market.

The pressing nature of this issue and the consideration involved in establishing a new market order program require the issuance of a tentative decision to make it possible to issue an interim rule to implement the marketing order by April 1989. This procedure will give interested parties the opportunity to comment fully, through exceptions, in the tentative decision and interim marketing order.

Accordingly, for the foregoing reasons, it is found on the basis of the hearing record that the due and timely execution of the Secretary's functions in this proceeding imperatively and unavoidably requires the omission of a recommended decision.

Rulings on Briefs of Interested Parties

At the conclusion of the hearing the Administrative Law Judge fixed October 25, 1988 as the final date for interested persons to file proposed findings and conclusions, and written arguments or briefs based upon the evidence received at the hearing. One brief was filed by Frank M. Grasberger on behalf of Farmers Allied for the Vidalia Onion Referendum (FAVOR). In summary, the brief reaffirmed the testimony presented at the hearing in support of the proposed marketing order. In particular, it reiterated support of including six onion growers located outside the proposed production area as Vidalia onion growers under the order, but opposed any other enlargement of the proposed production area.

Each point included in the brief was carefully considered, along with the evidence in the record, in making the findings and reaching the conclusions set forth in this tentative decision. To the extent that any suggested findings or conclusions contained in the brief are inconsistent with the findings and conclusions of this tentative decision, the request to make such findings or to reach such conclusions are denied for the reasons previously stated in this decision.

Tentative Marketing Agreement and Interim Order

Annexed hereto and made a part hereof are two documents entitled, respectively, "Tentative Marketing Agreement, Regulating the Handling of Vidalia Onions Grown in Georgia", and "Interim Order Regulating the Handling of Vidalia Onions Grown in Georgia", which have been decided upon as the detailed and appropriate means of effectuating the foregoing conclusions.

If approved by growers in the referendum, the interim order and tentative agreement would become effective on an interim basis for the 1989 season which begins in April. Finalizing the proposed marketing order and agreement would depend upon the nature of the comments received by June 30 and upon a favorable vote by growers in a subsequent referendum.

It is hereby ordered. That this entire decision, except the annexed tentative marketing agreement, be published in the **Federal Register.** The regulatory provisions of the tentative marketing agreement are identical to those contained in the interim order as hereby proposed by the annexed interim order which is published with the decision.

Referendum Order

It is hereby directed that a referendum be conducted in accordance with the procedure for the conduct of referenda [7 CFR 900.400 *et seq.*], to determine whether the issuance of the annexed interim order as hereby proposed regulating the handling of Vidalia onions grown in Georgia, is approved or favored by producers, as defined under the terms of the order, who during the representative period were engaged in the production of Vidalia onions in the production area.

The representative period for the conduct of such referendum is hereby determined to be September 1, 1987 through August 31, 1988.

The agents of the Secretary to conduct such referendum are hereby designated to be John R. Toth and William G. Pimental, Fruit and Vegetable Division, Agricultural Marketing Service, USDA, P.O. Box 2276, Winter Haven, Florida 33883, telephone 813–299–4770; and Anne M. Dec, Marketing Order Administration Branch, Fruit and Vegetable Division, Agricultural Marketing Service, USDA, Room 2525–S, P.O. Box 96456, Washington, DC 20090–6456, telephone 202–447–2020.

List of Subjects in 7 CFR Part 955

Marketing agreements and orders, Vidalia onions, Georgia.

Dated: February 21, 1989.

Robert Melland,

Deputy Assistant Secretary, Marketing and Inspection Services.

Interim Order Regulating the Handling of Vidalia Onions Produced in Georgia [1]

Findings upon the basis of the hearing record. Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601 *et seq.*], and the applicable rules of practice and procedure effective thereunder [7 CFR Part 900], a public hearing was held upon a proposed marketing agreement and order regulating the handling of Vidalia onions grown in Georgia.

Upon the basis of the record it is found that:

(1) The tentative marketing agreement and interim order, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The tentative marketing agreement and interim order regulate the handling of Vidalia onions grown in the

[1] This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

production area in the same manner as, and are applicable only to persons in the respective classes of commercial and industrial activity specified in, the proposed marketing agreement and order upon which a hearing has been held;

(3) The tentative marketing agreement and interim order are limited in their application to the smallest regional production area which is practicable, consistent with carrying out the declared policy of the Act, and the issuance of several orders applicable to subdivisions of the production area would not effectively carry out the declared policy of the Act;

(4) There are no differences in the production and marketing of Vidalia onions produced in the production area which make necessary different terms and provisions applicable to different parts of such area; and

(5) All handling of Vidalia onions grown in the production area is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce.

It is therefore ordered, that on and after the effective date thereof, all handling of Vidalia onions grown in the production area shall be in conformity to, and in compliance with, the terms and conditions of the said interim order, as follows:

The provisions of the tentative marketing agreement and interim order are set forth in full herein. Those sections identified with an asterisk (*) apply to only proposed tentative marketing agreement and not to the proposed interim order.

It is proposed that Title 7, Chapter IX be amended by adding Part 955 to read as follows:

PART 955—VIDALIA ONIONS GROWN IN GEORGIA

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Marketing Agreement

*955.90 Counterparts.
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Authority: Sec. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

Definitions

§ 955.1 Secretary.

"Secretary" means the Secretary of Agriculture of the United States, or any officer or employee of the Department of Agriculture who has been delegated, or who may hereafter be delegated, the authority to act for the Secretary.

§ 955.2 Act.

"Act" means Public Act No. 10, 73d Congress (May 12, 1933), as amended and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended [Sec. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601 *et seq.*].

§ 955.3 Person.

"Person" means an individual, partnership, corporation, association, or any other business unit.

§ 955.4 Production area.

"Production area" means that part of the State of Georgia enclosed by the following boundaries: Beginning at a point in Laurens County where U.S. Highway 441 intersects Highway 16; thence continue southerly along U.S. Highway 441 to a point where it intersects the southern boundary of Laurens County; thence southwesterly along the border of Laurens County to a point where it intersects the county road known as Jay Bird Springs Road; thence southeasterly along Jay Bird Springs Road to a point where it intersects U.S. Highway 23; thence easterly to a point where U.S. Highway 23 intersects the western border of Telfair County; thence southwesterly following the western and southern border of Telfair County to a point where it intersects with Jeff Davis County; thence following the southern border of Jeff Davis County to a point where it intersects with the western border of Bacon County; thence southerly and easterly along the border of Bacon County to a point where it intersects Georgia State Road 32; thence easterly along Georgia State Road 32 to Seaboard Coastline Railroad; thence northeasterly along the tracks of Seaboard Coastline Railroad to a point where they intersect Long County and Liberty County; thence northwesterly and northerly along the southwestern border of Liberty County to a point where the border of Liberty County intersects the southern border of Evans County; thence northeasterly along the eastern border of Evans County to the intersection of the Bulloch County border; thence northeasterly along the Bulloch County border to a point where it intersects with the Ogeechee River; thence northerly along the main channel of the Ogeechee River to a point where it intersects with the southeastern border of Screven County; thence northeasterly along the southeasterly border of Screven County to the main channel of the Savannah River; thence northerly along the main channel of the Savannah River to a point where the northwestern boundary of Hampton County, South Carolina intersects the Savannah River; thence due west to a point where State Road 24 intersects Brannen Bridge Road; thence westerly along Brannen Bridge Road to a point where it intersects with State Road 21; thence westerly along State Road 21 to the intersection of State Road 17; thence westerly along State Road 17 to the intersection of State Road 56 and southerly to the northern border of Emanuel County; thence westerly and southerly along the border of Emanuel County to a point where it intersects the Treutlen County border; thence southerly to a point where the Truetlen County border intersects Interstate Highway 16; thence westerly to the point of beginning in Laurens County.

§ 955.5 Vidalia onion.

"Vidalia onion" means all varieties of *Allium cepa* of the hybrid yellow

granex, granex parentage or any other similar variety recommended by the committee and approved by the Secretary, that are grown in the production area.

§ 955.6 Handler.

"Handler" is synonymous with "shipper" and means any person (except a common or contract carrier of Vidalia onions owned by another person) who handles Vidalia onions, or causes Vidalia onions to be handled.

§ 955.7 Handle.

"Handle" or "ship" means to package, load, sell, transport, or in any other way to place Vidalia onions, or cause Vidalia onions to be placed, in the current of commerce within the production area or between the production area and any point outside thereof. Such term shall not include the transportation, sale, or delivery of field-run Vidalia onions to a person within the production area for the purpose of having such Vidalia onions prepared for market.

§ 955.9 Producer.

"Producer" is synonymous with "grower" and means any person engaged in a proprietary capacity in the production of Vidalia onions for market.

§ 955.10 Producer-Handler.

"Producer-Handler" means a producer who handles Vidalia onions.

§ 955.12 Committee.

"Committee" means the Vidalia Onion Committee, established pursuant to § 955.20.

§ 955.13 Fiscal period.

"Fiscal period" means the 12-month period beginning on September 16 and ending on September 15 of the next year or such other period that may be recommended by the committee and approved by the Secretary.

Committee

§ 955.20 Establishment and membership.

(a) There is hereby established a Vidalia Onion Committee, consisting of nine members, to administer the terms and provisions of this part. Eight members shall be producers, and one shall be a public member. At least four of the producer members shall be producer-handlers. Each member shall have an alternate who shall have the same qualifications as the member.

(b) Each member, other than the public member, shall be an individual who is, prior to selection and during such member's term of office, a resident of the production area and a grower or an officer or employee of a grower.

(c) The public member shall be a resident of the production area and shall have no direct financial interest in the commercial production, financing, buying, packing or marketing of Vidalia onions, except as a consumer, nor shall such person be a director, officer or employee of any firm so engaged.

§ 955.21 Term of office.

(a) Except as otherwise provided in paragraph (b) of this section, the term of office of committee members and their respective alternates shall be for two years and shall begin as of September 16 or for such other period as the committee may recommend and the Secretary approve. The terms shall be determined so that approximately one-half of the total committee membership shall terminate each year. Members and alternates shall serve in such capacity during the term of office or portion thereof for which they are selected and until their respective successors are selected.

(b) The term of office of the initial members and alternates shall begin as soon as possible after the effective date of this part. As determined by lot drawn at the initial nomination meeting, one-fourth of the initial grower members and alternates shall serve for a one-year term, one-fourth shall serve for a two-year term, one-fourth shall serve for a three-year term, and one-fourth shall serve for a four-year term. The term of office for the initial public member and alternate shall be for two years.

(c) The consecutive terms of office of members shall be limited to three 2-year terms.

§ 955.22 Nominations.

(a) Initial members. For nominations to the initial committee, a meeting of producers shall be held by the Secretary.

(b) Successor members. (1) The committee shall hold or cause to be held not later than August 1 of each year, or such other date as may be specified by the Secretary, a meeting or meetings of growers for the purpose of designating one nominee for each position as member and for each position as alternate member of the committee which is vacant, or which is about to become vacant.

(2) Nominations for members and alternates shall be supplied to the Secretary in such manner and form as the Secretary may prescribe, not later than August 15 of each year, or by such other date as may be specified by the Secretary.

(3) The Secretary may, upon recommendation of the committee, divide the production area into districts for the purpose of nominating committee members and their alternates.

(c) Only producers may participate in designating nominees to serve as committee members. Each producer is entitled to cast only one vote on behalf of such producer and such producer's agents, subsidiaries, affiliates, and representatives in designating nominees for committee members and alternates. An eligible voter's privilege of casting only one vote shall be construed to permit a voter to cast one vote for each position to be filled.

(d) The producer members shall nominate the public member and alternate member at the first meeting following the selection of members for a new term of office. Nominations for the public member and alternate member shall be supplied to the Secretary in such manner and form as the Secretary may prescribe, not later than November 1, or such other date as may be specified by the Secretary.

§ 955.23 Selection.

From the nominations made pursuant to § 955.22 or from other qualified persons, the Secretary shall select members and alternate members of the committee.

§ 955.24 Acceptance.

Any person nominated to serve as a member or alternate member of the committee shall, prior to selection by the Secretary, qualify by filing a written acceptance indicating such person's willingness to serve in the position for which nominated.

§ 955.25 Alternates.

An alternate member of the committee shall act in the place and stead of the member for whom such person is an alternate during such member's absence or when designated to so by such member. In the event both a member of the committee and that member's alternate are unable to attend a committee meeting, the member, the alternate, or the committee, in that order, may designate another alternate from the same district (if applicable) and the same group (producer or producer-handler) to serve in such member's stead. Only the public member's alternate is authorized to serve in the place and stead of the public member. In the event of the death, removal, resignation or disqualification of a member, that member's alternate shall serve until a successor to such member is selected.

§ 955.26 Vacancies.

To fill any vacancy occasioned by the failure of any person nominated as a

member or as an alternate to qualify, or in the event of the death, removal, resignation, or disqualification of a member or alternate, a successor for the unexpired term may be selected by the Secretary from nominations made pursuant to § 955.22, or from other eligible persons.

§ 955.27 Failure to nominate.

If nominations are not made within the time and manner prescribed in § 955.22, the Secretary may, without regard to nominations, select members and alternates on the basis of the representation provided for § 955.20.

§ 955.28 Procedure.

(a) Five members of the committee shall constitute a quorum, and five concurring votes shall be required to pass any motion or approve any committee action.

(b) The committee may provide for meetings by telephone, telegraph, or other means of communication, and any vote cast orally at such meetings shall be confirmed promptly in writing: *Provided,* that if an assembled meeting is held, all votes shall be cast in person.

§ 955.29 Expenses.

Members and alternates shall serve without compensation but shall be reimbursed for such expenses authorized by the committee and necessarily incurred by them in attending committee meetings and in the performance of their duties under this part.

§ 955.30 Powers.

The committee shall have the following powers:

(a) To administer the provisions of this part in accordance with its terms;

(b) To make rules and regulations to effectuate the terms and provisions of this part;

(c) To receive, investigate, and report to the Secretary complaints of violation of the provisions of this part; and

(d) To recommend to the Secretary amendments to this part.

§ 955.31 Duties.

The committee shall have, among others, the following duties:

(a) As soon as practicable after the beginning of each term of office, to meet and organize, to select a chairman and such other officers as may be necessary, to select subcommittees of committee members of alternates, and to adopt such rules and regulations for the conduct of its business as it deems necessary;

(b) To act as intermediary between the Secretary and any producer or handler;

(c) To furnish to the Secretary such available information as may be requested;

(d) To appoint such employees, agents, and representatives as it may deem necessary, to determine the compensation and define the duties of each such person, and to protect the handling of committee funds;

(e) To investigate from time to time and to assemble data on the growing, harvesting, shipping, and marketing conditions with respect to Vidalia onions;

(f) To keep minutes, books, and records which clearly reflect all of the act and transactions of the committee. Such minutes, books, and records shall be subject to examination at any time by the Secretary or the Secretary's authorized agent or representative. Minutes of each committee meeting shall be furnished promptly to the Secretary;

(g) Prior to the beginning of each fiscal period, to prepare and submit to the Secretary a budget of its projected income and expenses for such fiscal period, together with a report thereon and a recommendation as to the rate of assessment for such period;

(h) To cause its books to be audited by a Certified Public Accountant at least once each fiscal period, and at such other time as the committee may deem necessary or as the Secretary may request. The report of such audit shall show the receipt and expenditure of funds collected pursuant to this part. A copy of each report shall be furnished to the Secretary. A copy shall also be made available at the principal office of the committee for inspection by producers and handlers provided that confidential information shall be removed;

(i) To give the Secretary the same notice of meetings of the committee and its subcommittees as is given to its members.

Expenses and Assessments

§ 955.40 Expenses.

The committee is authorized to incur such expenses as the Secretary may find are reasonable and likely to be incurred by the committee for its maintenance and functioning, and to enable it to exercise its powers and perform its duties in accordance with the provisions of this part. The funds to cover such expenses shall be acquired in the manner prescribed in § 955.42 and § 955.45.

§ 955.41 Budget.

At least 60 days prior to each fiscal period, or such other date as may be specified by the Secretary, and as may be necessary thereafter, the committee shall prepare an estimated budget of income and expenditures necessary for the administration of this part. The committee may recommend a rate of assessment calculated to provide adequate funds to defray its proposed expenditures. The committee shall present such budget to the Secretary with an accompanying report showing the basis for its calculations.

§ 955.42 Assessments.

(a) The funds to cover the committee's expenses shall be acquired by the levying of assessments upon handlers as provided in this subpart. Each person who first handles Vidalia onions shall pay assessments to the committee upon demand, which assessments shall be in payment of such handler's pro rata share of the committee's expenses.

(b) Assessments shall be levied upon handlers at rates established by the Secretary. Such rates may be established upon the basis of the committee's recommendations or other available information.

(c) At any time during, or subsequent to, a given fiscal period the committee may recommend the approval of an amended budget and an increase in the rate of assessment. Upon the basis of such recommendations, or other available information, the Secretary may approve an amended budget and increase the assessment rate. Such increase shall be applicable to all Vidalia onions which were handled during such fiscal period.

(d) The payment of assessments for the maintenance and functioning of the committee may be required under this part throughout the period it is in effect irrespective of whether particular provisions of this part are suspended or become inoperative.

(e) To provide funds for the administration of the provisions of this part during the initial fiscal period or the first part of a fiscal period when neither sufficient operating reserve funds nor sufficient revenue from assessments on the current season's shipments are available, the committee may accept payment of assessments in advance or may borrow money for such purposes.

(f) The committee may impose a late payment charge or an interest charge or both, on any handler who fails to pay any assessment in a timely manner. Such time and the rates shall be recommended by the committee and approved by the Secretary.

§ 955.43 Accounting.

(a) All funds received by the committee pursuant to the provisions of

this part shall be used solely for the purposes specified in this part.

(b) The Secretary may at any time require the committee, its members and alternates, employees, agents and all other persons to account for all receipts and disbursements, funds, property, or records for which they are responsible. Whenever any person ceases to be a member or alternate of the committee, such person shall account for all receipts and disbursements and deliver all property and funds in such member's possession to the committee, pertaining to the committee's activities for which such person was responsible, and shall execute such assignments and other instruments as may be necessary or appropriate to vest in the committee full title to all of the property, funds, and claims vested in such person.

(c) The committee may make recommendations to the Secretary for one or more of the members thereof, or any other person, to act as a trustee for holding records, funds, or any other committee property during periods of suspension of this part, or during any period or periods when regulations are not in effect and, upon determining such action is appropriate, the Secretary may direct that such person or persons shall act as trustee or trustees for the committee.

§ 955.44 Excess funds.

If, at the end of a fiscal period, the assessments collected are in excess of expenses incurred, such excess shall be accounted for as follows:

(a) The committee, with the approval of the Secretary, may establish an operating reserve and may carry over to subsequent fiscal periods excess funds in a reserve so established, except funds in the reserve shall not exceed the equivalent of approximately three fiscal periods' budgeted expenses. Such reserve funds may be used to defray any expenses authorized under this part, to defray expenses during any fiscal period prior to the time assessment income is sufficient to cover such expenses, to cover deficits incurred during any fiscal period when assessment income is less than expenses, to defray expenses incurred during any period when any or all provisions of this part are suspended or are inoperative, and to cover necessary expenses of liquidation in the event of termination of this part. Upon termination of this part, any funds not required to defray the necessary expenses of liquidation shall be disposed of in such manner as the Secretary may determine to be appropriate except that to the extent practicable, such funds shall be returned pro rata to the persons from whom such funds are collected.

(b) If such excess is not retained in a reserve as provided in paragraph (a) of this section, each handler entitled to a proportionate refund of the excess assessments collected shall be credited at the end of a fiscal period with such refund against the operations of the following fiscal period unless such handler demands payment thereof, in which event such proportionate refund shall be paid.

§ 955.45. Contributions.

The committee may accept voluntary contributions but these shall only be used to pay expenses incurred pursuant to § 955.50. Such contributions shall be free from any encumbrances by the donor, and the committee shall retain complete control of their use.

Research and Development

§ 955.50 Research and development.

(a) The committee, with the approval of the Secretary, may establish or provide for the establishment of production research, marketing research and development and marketing promotion projects, including paid advertising, designed to assist, improve, or promote the marketing, distribution, consumption, or efficient production of Vidalia onions. Any such project for the promotion and advertising of Vidalia onions may utilize an identifying mark which shall be made available for use by all handlers in accordance with such terms and conditions as the committee, with the approval of the Secretary, may prescribe. The expense of such projects shall be paid from funds collected pursuant to § 955.42 or § 955.45.

(b) In recommending projects pursuant to this section, the committee shall give consideration to the following:

(1) The expected supply of Vidalia onions in relation to market requirements;

(2) The supply situation among competing areas and commodities;

(3) The anticipated benefits from such projects in relation to their costs;

(4) The need for marketing research with respect to any market development activity; and

(5) Other relevant factors.

(c) If the committee should conclude that a program of research and development should be undertaken, or continued, in any fiscal period, it shall submit the following for the approval of the Secretary:

(1) Its recommendations as to the funds to be obtained pursuant to § 955.42 or § 955.45;

(2) Its recommendation as to any research projects; and

(3) Its recommendations as to promotion activity and paid advertising.

(d) Upon conclusion of each activity, but at least annually, the committee shall summarize and report the results of such activity to the Secretary.

(e) All marketing promotion activity engaged in by the committee, including paid advertising, shall be subject to the following terms and conditions:

(1) No marketing promotion, including paid advertising, shall refer to any private brand, private trademark or private trade name;

(2) No promotion or advertising shall disparage the quality, use, value or sale of like or any other agricultural commodity or product, and no false or unwarranted claims shall be made in connection with the product; and

(3) No promotion or advertising shall be undertaken without reason to beleive that returns to producers will be improved by such activity.

Reports and Recordkeeping

§ 955.60 Reports and recordkeeping.

Upon request of the committee, made with the approval of the Secretary, each handler shall furnish to the committee, in such manner and at such time as it may prescribe, such reports and other information as may be necessary for the committee to perform its duties under this part.

(a) Such reports may include, but are not limited to, the following: (1) The quantities of Vidalia onions received by a handler; (2) the quantities disposed of by the handler; (3) the date of each such disposition; and (4) the identification of the carrier transporting such Vidalia onions.

(b) All such reports shall be held under appropriate protective classification and custody by duly appointed employees of the committee, so that the information contained therein which may adversely affect the competitive position of any handler in relation to other handlers will not be disclosed. Compilations of general reports from data submitted by handlers is authorized, subject to the prohibition of disclosure of an individual handler's identity or operations.

(c) Each handler shall maintain for at least two succeeding years such records of the Vidalia onions received and disposed of by such handler as may be necessary to verify reports submitted to the committee pursuant to this section.

Miscellaneous Provisions

§ 955.71 Termination or suspension.

(a) The Secretary may at any time terminate the provisions of this part by giving at least one day's notice by means of a press release or in any other manner which the Secretary may determine.

(b) The Secretary shall terminate or suspend the operations of any or all of the provisions of this part whenever it is found that such provisions do not tend to effectuate the declared policy of the Act.

(c) The Secretary shall terminate the provisions of this part at the end of any fiscal period whenever it is found that such termination is favored by a majority of producers who, during a representative period, have been engaged in the production of Vidalia onions: *Provided,* That such majority has, during such representative period, produced for market more than fifty percent of the volume of such Vadalia onions produced for market, but such termination shall be effective only if announced on or before June 15 of the then current fiscal period.

(d) Within six years of the effective date of this part, the Secretary shall conduct a continuance referendum to ascertain whether continuance of this part is favored by producers. Subsequent referenda to ascertain continuance shall be conducted every six years thereafter.

(e) The provisions of this part shall, in any event, terminate whenever the provisions of the Act authorizing them cease to be in effect.

§ 955.72 Proceedings after termination.

(a) Upon the termination of the provisions of this subpart, the then functioning members of the committee shall continue as joint trustees, for the purpose of liquidating the affairs of the committee, of all funds and property then in the possession, or under control, of the committee, including claims for any fund unpaid or property not delivered at the time of such termination. Action by said trusteeship shall require the concurrence of a majority of the said trustees.

(b) The said trustees shall continue in such capacity until discharged by the Secretary; shall, from time to time, account for all receipts and disbursements and deliver all property on hand, together with all books and records of said committee and of the trustees, to such person as the Secretary may direct; and shall upon the request of the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such person full title and right to all of the funds, property, and claims vested in said committee or the trustees pursuant to this subpart.

(c) Any person to whom funds, property, or claims have been transferred or delivered by the committee or its members pursuant to this section shall be subject to the same obligations imposed upon the members of the committee and upon the said trustees.

§ 955.73 Effect of termination or amendment.

Unless otherwise expressly provided by the Secretary, the termination of this subpart or of any regulation issued pursuant to this subpart, or the issuance of any amendments to either thereof, shall not:

(a) Affect or waive any right, duty, obligation, or liability which shall have arisen or which may thereafter arise in connection with any provision of this subpart or any regulation issued under this subpart;

(b) Release or extinguish any violation of this subpart or of any regulations issued under this subpart; or

(c) Affect or impair any rights or remedies of the Secretary or of any other person with respect to any such violations.

§ 955.80 Compliance.

No handler shall handle Vidalia onions except in conformity with the provisions of this part.

§ 955.81 Right of the Secretary.

The members of the committee (including successors and alternates) and any agent or employee appointed or employed by the committee shall be subject to removal or suspension by the Secretary at any time. Each and every order, regulation, decision, determination, or other act of the committee shall be subject to the continuing right of the Secretary to disapprove of the same at any time. Upon such disapproval, the disapproved action of the committee shall be deemed null and void except as to acts done in reliance thereon or in compliance therewith prior to such disapproval by the Secretary.

§ 955.82 Duration of immunities.

The benefits, privileges, and immunities conferred upon any person by virtue of this part shall cease upon the termination of this part, except with respect to acts done under and during the existence of this part.

§ 955.83 Agents.

The Secretary may, by designation in writing, name any person, including any officer or employee of the Government, or name any agency in the United States Department of Agriculture, to act as the Secretary's agent or representative in connection with any of the provisions of this part.

§ 955.84 Derogation.

Nothing contained in this part is, or shall be construed to be, in derogation or in modification of the rights of the Secretary or of the United States to exercise any powers granted by the Act or otherwise, or, in accordance with such powers, to act in the premises whenever such action is deemed advisable.

§ 955.85 Personal liability.

No matter or alternate of the committee or any employee or agent thereof, shall be held personally responsible, either individually or jointly with others, in any way whatsoever, to any handler or to any person for errors in judgment, mistakes, or other acts, either of commission or omission, as such member, alternate, employee, or agent, except for acts of dishonesty, willful misconduct, or gross negligence.

§ 955.86 Separability.

If an provision of this part is declared invalid, or the applicability thereof to any person, circumstance, or thing is held invalid, the validity of the remainder of this part, or the applicability thereof to any other person, circumstance, or thing shall not be affected thereby.

§ 955.87 Amendments.

Amendments to this part may be proposed, from time to time, by the committee or by the Secretary.

Marketing Agreement

***§ 955.90 Counterparts.**

This agreement may be executed in multiple counterparts and when one counterparts is signed by the Secretary, all such counterpart shall constitute, when taken together, one and the same instrument as if all signatures were contained in one original.

***§ 955.91 Additional parties.**

After the effective date thereof, any handler may become a party to this agreement if a counterpart is executed by such handler and delivered to the Secretary. This agreement shall take effect as to such new contracting part at the time such counterpart is delivered to the Secretary, and the benefits, privileges, and immunities conferred by this agreement shall then be effective as to such new contracting party.

***§ 955.92 Order with marketing agreement.**

Each signatory hereby requests the Secretary to issue, pursuant to the Act, an order providing for regulating the handling of Vidalia onions in the same manner as is provided for in this agreement.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

Tentative Marketing Agreement Regulating the Handling of Vidalia Onions Grown in Georgia

The parties hereto, in order to effectuate the declared policy of the Agricultural Marketing Agreement Act of 1937, as amended (Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674), and in accordance with the applicable rules of practice and procedure effective thereunder (7 CFR Part 900) desire to enter into this agreement regulating the handling of Vidalia Onions grown in Georgia; and each party hereto agrees that such handling shall, from the effective date of this marketing agreement, be in conformity to, and in compliance with, the provisions of said marketing agreement as hereby enacted.

The provisions of §§ 955.1–955.92, inclusive, of the order annexed to and made a part of the decision of the Secretary of Agriculture with respect to a proposed marketing agreement and order regulating the handling of Vidalia Onions grown in Georgia, plus the following additional provisions shall be, and the same hereby are, the terms and conditions hereof; and the specified provisions of said marketing annexed order are hereby incorporated into this marketing agreement as if set forth in full herein:

§ 955.90 Counterparts.

This agreement may be executed in multiple counterparts and when one counterpart is signed by the Secretary, all such counterparts shall constitute, when taken together, one and the same instrument as if all signatures were contained in one original.

§ 955.91 Additional parties.

After the effective date hereof, any handler may become a party to this agreement if a counterpart is executed by such handler and delivered to the Secretary. This agreement shall take effect as to such new contracting party at the time such counterpart is delivered to the Secretary, and the benefits, privileges, and immunities conferred by this agreement shall then be effective so as to such new contracting party.

§ 955.92 Order with marketing agreement.

Each signatory handler requests the Secretary to issue, pursuant to the Act, an order providing for regulating the handling of Vidalia Onions in the same manner as is provided for in this agreement.

The undersigned hereby authorizes the Director, Fruit and Vegetable Division, Agricultural Marketing Service, United States Department of Agriculture, to correct any typographical errors which may have been made in this marketing agreement.

IN WITNESS WHEREOF, the contracting parties, acting under the provisions of the Act, for the purpose and subject to the limitations therein contained, and not otherwise, have hereto set their respective signatures and seals.

_____

(Firm Name)

By: [1] _____

(Signature)

_____

(Mailing Address)

_____

(Title)

_____

(Date of Execution

(Corporate Seal; if none, so state)

Public reporting burden for this collection of information is estimated to average five minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of Agriculture, Clearance Officer, OIRM, Room 404–W, Washington, D.C. 20503.

This information is required to determine voter eligibility and vote of Vidalia Onion handlers. Falsification of information on this government document may result in a fine of not more than $10,000 or imprisonment for not more than five years or both (18 U.S.C. 1001).

(For use by incorporated handlers)

OMB Approval No: 0581–0160

Expiration Date: 2/29/92

CERTIFICATE OF RESOLUTION

(Corporation only)

At a duly convened meeting of the Board of Directors of _____ held at _____ on the _____ day of _____ 1989, RESOLVED, That _____ shall become a party to the marketing agreement regulating the handling of Vidalia Onions grown in Georgia, which was annexed to and made part of the decision of the Secretary of Agriculture, and it is further, RESOLVED, That

_____

(Name)

_____

(Title)

and

_____

(Name)

_____

(Title)

be, and the same hereby are, authorized and directed severally or jointly to sign, execute, and deliver counterparts of the said agreement to the Secretary of Agriculture.

I,

_____

Secretary of _____ do hereby certify this is a true and correct copy of a resolution adopted at the above named meeting as said resolution appears in the minutes thereof.

_____

(Signature)

_____

(Address of Firm)

(Corporate Seal; if none, so state)

[1] If one of the contracting parties to this agreement is a corporation, my signature constitutes certification that I have the power granted to me by the Board of Directors to bind this corporation to the marketing agreement.

[FR Doc. 89–4427 Filed 2–22–89; 12:52 pm]

BILLING CODE 3410–02–M

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