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Briefing on How To Use the Federal Register—
For information on briefing in Washington, DC, see announcement on the inside cover of this issue.

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THE FEDERAL REGISTER
WHAT IT IS AND HOW TO USE IT

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

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

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

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

WASHINGTON, DC

WHEN: June 15; at 9:00 a.m.
WHERE: Office of the Federal Register, First Floor Conference Room, 1100 L Street, NW., Washington, DC
RESERVATIONS: 202–523–5240

Regulation Identifier Numbers (RINs)

Agencies have begun including a Regulation Identifier Number in the headings of their **Federal Register** documents. RINs also appear in entries listed in the *Unified Agenda of Federal Regulations*, which is published in the **Federal Register** in April and October of each year. Assigning RINs makes it easier for the public and agency managers to track the entries at the various stages of their development.

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

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Presidential Documents

Title 3—

The President

Proclamation 5984 of May 22, 1989

National Digestive Disease Awareness Month, 1989

By the President of the United States of America

A Proclamation

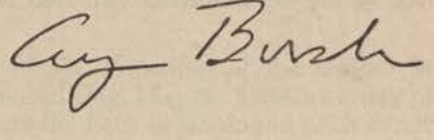
An estimated 20 million Americans suffer from chronic digestive diseases, and more Americans are hospitalized for these diseases than for any other type of illness. The total social and economic impact of digestive diseases is thus enormous, affecting half of all Americans at some time during their lives and costing the Nation nearly $50 billion each year. In addition to the immeasurable pain, discomfort, and personal distress they inflict upon their victims, digestive diseases rank third among illnesses in total cost in the United States. These diseases are responsible for almost 15 percent of all admissions to general hospitals and for 25 percent of all surgical procedures.

Medical science has made important advances in the field of digestive diseases research in recent years. Recognizing the widespread impact of digestive diseases and the dire need for research in this field, many governmental, health care, scientific, and voluntary organizations have committed themselves to increasing public awareness and understanding of gastrointestinal diseases.

In recognition of their important efforts to combat digestive diseases, the Congress, by House Joint Resolution 170, has designated the month of May 1989 as "National Digestive Disease Awareness Month" and has authorized and requested the President to issue a proclamation in observance of this event.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim the month of May 1989 as National Digestive Disease Awareness Month. I urge all government agencies and the people of the United States, as well as educational, philanthropic, scientific, medical, and health care organizations and professionals, to participate in appropriate ceremonies to encourage further research into the causes and cures of all types of digestive diseases.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-second day of May, in the year of our Lord nineteen hundred and eighty-nine, and of the Independence of the United States of America the two hundred and thirteenth.



[FR Doc. 89-12627
Filed 5-23-89; 10:47 am]
Billing code 3195-01-M

Presidential Documents

Proclamation 5985 of May 22, 1989

Prayer for Peace, Memorial Day, 1989

By the President of the United States of America

A Proclamation

On Memorial Day, we pause to remember and to pray for those Americans who died while defending the peace and freedom we enjoy every day of the year. On this day, we recall with solemn pride the places where these departed heroes made their final stand for the cause of human rights and individual liberty—the Argonne, Omaha Beach, Pork Chop Hill, and a hundred rice paddies and jungles in Vietnam.

We also recall the heroes who have perished in more recent times, such as the soldiers who liberated Grenada and the Marines who fell to terrorist attacks in Beirut and other cities around the world. With the tragic loss still fresh in our minds, we remember the men of turret number two aboard the USS IOWA, the six sailors on the USS WHITE PLAINS, and the two crewmen on the USS AMERICA who were recently killed in the line of duty. Like the brave and selfless Americans who have gone before them, these young men were willing to put themselves in harm's way to protect our national security.

Across the country, Americans are participating in special ceremonies or pausing privately to pray for those who died while serving this great Nation. Some of us had close personal ties to the men and women we honor today; all of us are bound to them by a lasting debt of gratitude.

Today, we continue the Memorial Day tradition of expressing our appreciation for the veterans who died for a cause they considered more important than life itself. They did not serve in order to die; they served so that others might dwell in freedom. These veterans defended the lives of innocent people and helped to preserve a way of life—one that cherishes and protects the God-given rights of all. Their time on earth was well spent.

On Memorial Day, we give thanks for the great blessings of freedom and peace and for the generations of Americans who have won them for us. We also pray for the same strength and moral resolve demonstrated by these hallowed veterans, as well as for the true and lasting peace found in a world where liberty and justice prevail.

In respect and recognition of those Americans to whom we pay tribute today, the Congress, by a joint resolution approved on May 11, 1950 (64 Stat. 158), has requested the President to issue a proclamation calling upon the people of the United States to observe each Memorial Day as a day of prayer for permanent peace and designating a period on that day when the people of the United States might unite in prayer.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby designate Memorial Day, May 29, 1989, as a day of prayer for permanent peace, and I designate the hour beginning in each locality at 11 o'clock in the morning of that day as a time to unite in prayer. I urge the press, radio, television, and all other information media to cooperate in this observance.

I also direct all appropriate Federal officials and request the Governors of the several States and the Commonwealth of Puerto Rico, and the appropriate officials of all units of government, to direct that the flag be flown at half-staff

until noon during this Memorial Day on all buildings, grounds, and naval vessels throughout the United States and in all areas under its jurisdiction and control, and I request the people of the United States to display the flag at half-staff from their homes on this day for the customary forenoon period.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-second day of May, in the year of our Lord nineteen hundred and eighty-nine, and of the Independence of the United States of America the two hundred and thirteenth.

George Bush

[FR Doc. 89-12628
Filed 5-23-89; 10:48 am]
Billing code 3195-01-M

Rules and Regulations

Federal Register
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Wednesday, May 24, 1989

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 55, 56, and 70

[Docket No. PY-89-002]

Increase in Fees and Charges

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule revises the charges for Federal voluntary egg products inspection; voluntary egg, poultry, and rabbit grading; and laboratory services. These charges are increased to reflect higher costs associated with these programs due to the 4.1-percent increase in salaries of Federal employees allocated by Congress under the Federal Pay Comparability Act of 1970, salary increases of State employees cooperatively utilized in administering the programs, and other increased Agency costs.

EFFECTIVE DATE: June 1, 1989.

FOR FURTHER INFORMATION CONTACT: Janice L. Lockard, 202-447-3506.

SUPPLEMENTARY INFORMATION: This rule has been reviewed under USDA procedures established in Departmental Regulation 1512-1 implementing Executive Order 12291. It has been classified "non-major" as it does not meet the criteria contained therein for major regulatory actions.

The Administrator, Agricultural Marketing Service (AMS), has determined that this action will not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), because (i) the fees and charges merely reflect, on a cost-per-unit-graded/inspected basis, a minimal increase in the costs currently borne by those entities utilizing the services; and (ii) competitive effects are offset under the major voluntary programs (resident shell egg and poultry grading) through administrative charges based on the volume of product handled; i.e., the cost to users increases in proportion to increased volume.

Each fiscal year, the fees for services rendered to operators of official poultry, rabbit, shell egg, and egg products plants by the AMS are reviewed. A cost analysis is performed to determine if such fees are adequate to recover the cost of providing the services. The fees are determined by the employee's salary and fringe benefits, cost of supervision, travel, and other overhead and administrative costs.

The Agricultural Marketing Act of 1946, as amended, provides for the collection of fees approximately equal to the cost of providing voluntary egg products inspection; voluntary egg, poultry, and rabbit grading; and laboratory services.

The last fee increase was effective on May 1, 1987. Since then, Federal employees' salaries have increased by about 6 percent, including a 4.1-percent increase in salaries beginning in January 1989. Also, health benefits are up 28 percent, and salaries of federally licensed State employees have increased by about 9 percent. Additionally, the costs for workers' compensation increased 15 percent.

With the exception of salary increases for federally licensed State graders, costs of supervision and other overhead and administrative costs have also increased for the reasons described above. These costs are covered by an administrative service charge assessed on each case of shell eggs and each pound of poultry handled in plants using resident grading service. In 1987, these rates were established at $.026 per case of shell eggs and $.00026 per pound of poultry. These rates are changed to $.027 and $.00027, respectively. Also, these charges were set at a minimum of $130 and maximum of $1,300 per billing period for each official plant. These amounts are changed to $135 and $1,350, respectively.

Overall, resident fees and charges will be increased about 10 percent.

Due to the situations described above, the hourly rate for nonresident voluntary grading and inspection service is increased from $23.20 to $24.12. Likewise, the rate for such services performed on Saturdays, Sundays, or holidays is increased from $24.92 each to $25.92. The hourly rate for laboratory analyses for other than individual tests is increased from $29.32 to $30.52, and the fees for individual tests are increased approximately 4 percent. Administrative charges for the resident voluntary rabbit grading and egg products inspection programs and nonresident voluntary continuous poultry and egg grading programs continue to be based on 25 percent of the grader's or inspector's total salary costs. The minimum charge per billing period for these programs is increased from $130 to $135 per official plant.

Based on an analysis of costs to provide these services, a proposed rule to increase the fees for certain grading and inspection services for eggs, poultry, and rabbits was published in the **Federal Register** (54 FR 11541) on March 21, 1989. Comments on the proposed rule were solicited from interested parties until April 20, 1989. No comments were received. Therefore, the amendments are promulgated as proposed.

Information collection requirements and recordkeeping provisions contained in 7 CFR Parts 55, 56, and 70 have been previously approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35, and 7 CFR Part 55 has been assigned OMB No. 0581-0146; and 7 CFR Part 56 has been assigned OMB No. 0581-0128; and 7 CFR Part 70 has been assigned OMB No. 0581-0127.

Pursuant to the provisions of 5 U.S.C. 553, good cause is found for making this rule effective less than 30 days after publication, because current revenue does not cover the costs of providing these services and the new fees should be made effective as soon as possible in order to conform with normal monthly billing cycles. A 30-day comment period was provided for in the proposed rule and no comments were received. Accordingly, this rule is made effective June 1, 1989.

List of Subjects

7 CFR Part 55

Egg products, Voluntary inspection service.

7 CFR Part 56

Shell eggs, Voluntary grading service.

7 CFR Part 70

Poultry, Poultry products, Rabbit products, Voluntary grading service.

For reasons set out in the preamble and under authority contained in the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621 *et seq.*), Title 7, Parts 55, 56, and 70 of the Code of Federal Regulations, is amended as follows.

PART 55—VOLUNTARY INSPECTION OF EGG PRODUCTS AND GRADING

1. The authority citation for Part 55 continues to read as follows:

Authority: Secs. 202–208 of the Agricultural Marketing Act of 1946, as amended, (60 Stat. 1087–1091; 7 U.S.C. 1621–1627).

2. Section 55.510 is amended by revising paragraphs (b) and (c) to read as follows:

§ 55.510 Fees and charges for services other than on a continuous resident basis.

* * * * *

(b) Fees for product inspection and sampling for laboratory analysis will be based on the time required to perform the services. The hourly charge shall be $24.12 and shall include the time actually required to perform the sampling and inspection, waiting time, travel time, and any clerical costs involved in issuing a certificate.

(c) Services rendered on Saturdays, Sundays, or legal holidays shall be charged for at the rate of $25.92 per hour. Information on legal holidays is available from the Supervisor.

* * * * *

3. Section 55.550 is revised to read as follows:

§ 55.550 Laboratory analysis fees.

(a) The fees listed for the following individual laboratory analyses cover costs involved in the preparation and analysis of the product, certificate issuance, and personnel and overhead costs other than the expenses listed in § 55.530.

	Fee
Solids	$15.26
Fat	30.52
Bacteriological plate count	15.26
Bacteriological direct count	30.52
Coliforms: [1]	
Step 1	22.89
Step 2	22.89
E. coli (presumptive): [2]	
In addition to coliform analysis—	
Step 1	([3])
Step 2	22.89
Without coliform analysis—	
Step 1	22.89
Step 2	22.89
Yeast and mold count	15.26
Sugar	38.15
Salt	38.15
Color:	
NEPA	22.89
B-Carotene	30.52
Whipping test	15.26
Whipping test plus bleeding	22.89
Fat film test	38.15
Oxygen	15.26
Glucose:	
Quantitative	30.52
Qualitative	22.89
Palatability and odor:	
First sample	15.26
Each additional sample	7.63
Staphylococcus	45.78
Salmonella: [4]	
Step 1	30.52
Step 2	15.26
Step 3	30.52

[1] Coliform test may be in two steps as follows: Step 1—presumptive test through lauryl sulfate tryptose broth; Step 2—confirmatory test through brilliant green lactose bile broth.

[2] E. coli test may be in two steps as follows: Step 1—presumptive coliform test through lauryl sulfate tryptose broth; Step 2—presumptive E. coli test through eosin-methylene blue agar.

[3] No charge.

[4] Salmonella test may be in three steps as follows: Step 1—growth through differential agars; Step 2—growth and testing through triple-sugar-iron and lysine-iron agars; Step 3—confirmatory test through biochemicals.

(b) The fee charge for any laboratory analysis not listed in paragraph (a) of this section, or for any other applicable services rendered in the laboratory, shall be based on the time required to perform such analysis or render such service. The hourly rate shall be $30.52.

4. Section 55.560 is amended by revising paragraph (a)(3) to read as follows:

§ 55.560 Charges for continuous inspection and grading service on a resident basis.

* * * * *

(a) * * *

(3) An administrative service charge equal to 25 percent of the grader's or inspector's total salary costs. A minimum charge of $135 will be made each billing period. The minimum charge also applies where an approved application is in effect and no product is handled.

* * * * *

PART 56—GRADING OF SHELL EGGS AND U.S. STANDARDS, GRADES, AND WEIGHT CLASSES FOR SHELL EGGS

5. The authority citation for Part 56 continues to read as follows:

Authority: Secs. 202–208 of the Agricultural Marketing Act of 1946, as amended (60 Stat. 1087–1091; 7 U.S.C. 1621–1627).

6. Section 56.46 is amended by revising paragraphs (b) and (c) to read as follows:

§ 56.46 On a fee basis.

* * * * *

(b) Fees for grading services will be based on the time required to perform the services. The hourly charge shall be $24.12 and shall include the time actually required to perform the grading, waiting time, travel time, and any clerical costs involved in issuing a certificate.

(c) Grading services rendered on Saturdays, Sundays, or legal holidays shall be charged for at the rate of $25.92 per hour. Information on legal holidays is available from the Supervisor.

7. Section 56.52 is amended by revising paragraph (a)(4) to read as follows:

§ 56.52 Continuous grading performed on a resident basis.

* * * * *

(a) * * *

(4) An administrative service charge based upon the aggregate number of 30-dozen cases of all shell eggs handled in the plant per billing period multiplied by $.027, except that the minimum charge per billing period shall be $135 and the maximum charge shall be $1,350. The minimum charge also applies where an approved application is in effect and no product is handled.

* * * * *

8. Section 56.54 is amended by revising paragraph (a)(2) to read as follows:

§ 56.54 Charges for continuous grading performed on a nonresident basis.

* * * * *

(a) * * *

(2) An administrative service charge equal to 25 percent of the grader's total salary costs. A minimum charge of $135 will be made each billing period. The minimum charge also applies where an approved application is in effect and no product is handled.

* * * * *

PART 70—VOLUNTARY GRADING OF POULTRY PRODUCTS AND RABBIT PRODUCTS AND U.S. CLASSES, STANDARDS, AND GRADES

9. The authority citation for Part 70 continues to read as follows:

Authority: Secs. 202–208 of the Agricultural Marketing Act of 1946, as amended, (60 Stat. 1087–1091; 7 U.S.C. 1621-1627).

10. Section 70.71 is amended by revising paragraphs (b) and (c) to read as follows:

§ 70.71 On a fee basis.

* * * * *

(b) Fees for grading services will be based on the time required to perform such services for class, quality, quantity (weight test), or condition, whether ready-to-cook poultry, ready-to-cook rabbits, or specified poultry food products are involved. The hourly charge shall be $24.12 and shall include the time actually required to perform the work, waiting time, travel time, and any clerical costs involved in issuing a certificate.

(c) Grading services rendered on Saturdays, Sundays, or legal holidays shall be charged for at the rate of $25.92 per hour. Information on legal holidays is available from the Supervisor.

11. Section 70.76 is amended by revising paragraph (a)(2) to read as follows:

§ 70.76 Charges for continuous poultry grading performed on a nonresident basis.

* * * * *

(a) * * *

(2) An administrative service charge equal to 25 percent of the grader's total salary costs. A minimum charge of $135 will be made each billing period. The minimum charge also applies where an approved application is in effect and no product is handled.

* * * * *

12. Section 70.77 is amended by revising paragraphs (a) (4) and (5) to read as follows:

§ 70.77 Charges for continuous poultry or rabbit grading performed on a resident basis.

* * * * *

(a) * * *

(4) For poultry grading: An administrative service charge based upon the aggregate weight of the total volume of all live and ready-to-cook poultry handled in the plant per billing period computed in accordance with the following: Total pounds per billing period multiplied by $.00027, except that the minimum charge per billing period shall be $135 and the maximum charge shall be $1,350. The minimum charge also applies where an approved application is in effect and no product is handled.

(5) For rabbit grading: An administrative service charge equal to 25 percent of the grader's total salary costs. A minimum charge of $135 will be made each billing period. The minimum charge also applies where an approved application is in effect and no product is handled.

* * * * *

Done at Washington, DC on: May 18, 1989.

J. Patrick Boyle,

Administrator.

[FR Doc. 89-12392 Filed 5-23-89; 8:45 am]

BILLING CODE 3410-02-M

Agricultural Stabilization and Conservation Service

7 CFR Parts 725 and 726

Farm Marketing Quotas, Acreage Allotments, and Production Adjustment

AGENCY: Agricultural Stabilization and Conservation Service (ASCS), USDA.

ACTION: Final rule.

SUMMARY: This final rule adopts without change a proposed rule which was published in the **Federal Register** on March 16, 1989 (54 FR 11001) to amend the regulations at 7 CFR Parts 725 and 726 to strengthen the registration and reporting requirements of flue-cured and burley tobacco dealers. This final rule further provides that, except for dealers who are exempt from regular records and reports on MQ-79 as provided in §§ 725.102 and 726.95, each person who expects to purchase and resell flue-cured or burley tobacco shall annually register with the U.S. Department of Agriculture for the respective marketing year beginning with the 1989-1990 marketing year.

The final rule also amends the recordkeeping and reporting requirements to require a balance entry on MQ-79 after each purchase or resale of tobacco in order that the purchaser may collect and submit any marketing quota penalties that may be due when a dealer's resales of tobacco exceed prior purchases of tobacco.

EFFECTIVE DATE: May 24, 1989.

FOR FURTHER INFORMATION CONTACT: Dennis Daniels, Program Specialist, Tobacco and Peanuts Division, ASCS, USDA, P.O. Box 2415, Washington, DC 20013, telephone (202) 382-0200.

SUPPLEMENTARY INFORMATION: This rule has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Department Regulation No. 1512-1 and has been classified as "not major." It has been determined that this rule will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local governments, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises, to compete with foreign-based enterprises in domestic or export markets.

Information collection requirements proposed by this rule will not become effective until they have been approved by OMB in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507). Such approval has been requested and is being considered under OMB Control Number 0560-0058. Comments concerning the information collection requirements contained in this rule may be addressed to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer, ASCS/USDA, Washington, DC 20503, telephone (202) 395-7340.

It has been determined that the Regulatory Flexibility Act is not applicable to this final rule since the Agricultural Stabilization and Conservation Service (ASCS) is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

The title and number of the Federal Assistance Program to which this rule applies are: Commodity Loan and Purchases; 10.051, as found in the catalog of Federal Domestic Assistance.

This program/activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115 (June 24, 1983).

Discussion of Changes

Section 373 of the Agricultural Adjustment Act of 1938, as amended ("the 1938 Act"), provides that the Secretary may require warehousemen and persons engaged in the business of purchasing tobacco from producers to report to the Secretary such information and keep such records as the Secretary finds to be necessary to enable him to carry out the provisions of the tobacco program as set forth in the 1938 Act.

This final rule amends the regulations at 7 CFR Parts 725 and 726 to require that each person who expects to purchase and resell flue-cured or burley tobacco, except for dealers who are exempt from regular records and reports on MQ-79, as provided in §§ 725.102 and 726.95, shall annually register with the U.S. Department of Agriculture. In order to afford an ASCS representative an opportunity to verify the information provided by the applicant and to obtain

proper identification of the applicant before submitting the application to the State ASCS office for approval, this final rule requires such applicants to complete Form MQ–79–2–A, Application for Dealer Identification Card, in the local county ASCS office where the applicant resides or where the applicant's principal business is located.

Section 314 of the 1938 Act provides that, until the amount of penalty provided in this section is paid, a lien on the tobacco with respect to which each penalty is incurred, and on any subsequent tobacco subject to marketing quotas in which the person liable for payment of the penalty has an interest, shall be in effect in favor of the United States for the amount of the penalty. Reports indicate that some dealers who have been assessed marketing quota penalties have had other family members register as dealers and conduct operations for such dealer using the new registration number and name in order to avoid payments of penalty which such dealer incurred under his original registration number. The final rule provides that for purposes of dealer registration all persons living at the same residence should be considered one entity unless an applicant can substantiate that such applicant's buying and selling of tobacco are entirely independent from any other persons. In addition, the final rule provides that if a claim has been established against a dealer as a result of a tobacco marketing quota penalty such dealer, upon notification by the applicable State ASCS office, would return the dealer card to the State ASCS office within 15 days of notification. Upon timely return of the dealer card, the claim would be annotated on the card and promptly returned to the dealer.

Dealers currently are required by regulation to file reports on MQ–79 of purchases and resales of tobacco at auction and non-auction. At the time of each transaction, if resale pounds exceed purchased pounds, a penalty is considered due on such excess pounds. The final rule requires the dealer to enter a balance on MQ–79 after each transaction to reflect the pounds available for resales. This information will afford the purchaser the opportunity to determine if the pounds of tobacco being sold by the dealer were subject to marketing quota penalty. If such marketing by the dealer is subject to penalty, the purchaser will be required to collect the penalty or deduct the penalty from the sales proceeds and submit the check to ASCS for the amount of penalty due. The purchaser of tobacco from a dealer at nonauction, or a warehouseman if sold at auction, will be required to sign MQ–79 on the same line as the transaction is recorded, and shall collect and submit any marketing quota penalties that may be due when such dealer's resales exceed prior purchases.

This final rule adopts without change, the proposed rule which was published in the **Federal Register** on March 16, 1989 (54 FR 11001) to: (1) Strengthen the registration and reporting requirements of flue-cured and burley tobacco dealers; (2) require dealers, except dealers who are exempt from regular records and reports on MQ–79, to register annually with the U.S. Department of Agriculture; and (3) require a balance entry on MQ–79 after each purchase or resale of tobacco.

No comments were received during the comment period which ended on April 16, 1989.

Lists of Subjects in 7 CFR Part 725 and 726

Acreage allotments, Marketing quotas, Reporting and recordkeeping requirements, Tobacco.

Final Rule

Accordingly, 7 CFR Part 725 and 726 is amended as follows:

PART 725—[AMENDED]

1. In Part 725:

A. The authority citation is revised to read as follows:

Authority: 7 U.S.C. 1301, 1313, 1314, 1314–1, 1314b, 1314b–1, 1314c, 1363, 1372–75, 1377, 1378 and 1421, Pub. L. 100–387.

B. Section 725.91 is amended by revising paragraph (d) to read:

§ 725.91 Identification of marketings.

* * * * *

(d) *Identification of dealer marketings of resale tobacco.* Each auction and nonauction marketing of resale tobacco in the current year shall be identified by a dealer identification card, Form MQ–79–2, issued to the dealer for use in the current marketing year.

* * * * *

§ 725.93 [Amended]

C. Section 725.93 is amended by adding the words "or dealer" following each instance in which the word "producer" occurs.

D. Section 725.99 is amended by revising paragraph (e) to read:

§ 725.99 Warehouseman's records and reports.

* * * * *

(e) *Warehouseman's entries on other dealer reports.* Each warehouseman shall record, or have the dealer record, on a Form MQ–79 the total purchases and resales made by each such dealer or other warehouseman during each sale day at the warehouse. Warehousemen shall sign the Form MQ–79 on the same line as the transaction is recorded when a dealer resells tobacco at the warehouse. If any tobacco resold by the dealer is tobacco bought by the dealer and carried over by the dealer from a crop produced prior to the current crop, the entry shall be made on the Form MQ–79 to clearly show such fact.

* * * * *

E. Section 725.100 is amended by revising paragraph (c)(1) to read:

§ 725.100 Dealers' records and reports.

* * * * *

(c) *Record and report of purchases and resales.* (1) Each dealer shall keep a record and make reports on a Form MQ–79 showing all purchases and resales, excluding tobacco not in the from normally marketed by producers as defined in § 725.51(oo) and (oo–1). After each transaction is entered on the Form MQ–79, each dealer shall enter a balance to reflect the pounds of tobacco remaining that may be sold without causing prior resales to exceed prior purchases. Any tobacco sold in excess of such balance shall be considered excess tobacco and subject to a marketing quota penalty at the full penalty rate. The purchaser shall sign the Form MQ–79 on the same line as the transaction is recorded by the dealer who is offering such tobacco for resale. In the event of a purchase or resale of tobacco which is purchased by the dealer from a crop of tobacco produced prior to the current crop, the Form MQ–79 shall be annotated to indicate that such tobacco was so purchased and carried over from a crop produced prior to the current crop.

* * * * *

F. Section 725.108 is revised to read:

§ 725.108 Registration of warehousemen and dealers.

Any warehousemen or dealers dealing in tobacco shall be registered with the U.S. Department of Agriculture.

(a) *Warehouse registration.* Any person desiring to register as a warehouseman shall apply to the Flue-Cured Tobacco Cooperative Stabilization Corporation, Raleigh, N.C. for approval.

(b) *Dealer registration.* Except for dealers who are exempt from the requirements for maintaining regular records and reports on a Form MQ–79 as

provided in § 725.102, each person who expects to deal in flue-cured tobacco during a marketing year shall annually register with the U.S. Department of Agriculture for the respective marketing year beginning with the 1989–1990 marketing year. Such registration shall be handled by the North Carolina State ASCS Office, Raleigh, N.C. Registration may be accomplished by such person filing a Form MQ–79–2–A, after March 1 of the calendar year in which the marketing year begins, at the local county ASCS office where the applicant resides or where the applicant's principal business is located. The applicant shall provide the names of other individuals who will be authorized to use the assigned dealer registration number to transact business on behalf of the applicant. Only one dealer registration number will be issued to each dealer entity. Persons maintaining the same residence shall be considered one entity, unless such persons can substantiate to the satisfaction of the State ASC committee for the State in which the application is made that such persons operate their tobacco business entirely as separate entities.

(1) *Issuance of dealer cards.* After approval by the North Carolina State ASCS Office, each dealer will be assigned a four-digit identification number and issued a dealer identification card (Form MQ–79–2).

(2) *TMQ lien notation.* If a claim has been established against a dealer as a result of a tobacco marketing quota penalty such dealer, upon notification by the applicable State ASCS office, shall return the dealer identification card to the State ASCS office within 15 days of notification. Upon timely return of the dealer identification card the claim shall be annotated on the dealer identification card and promptly returned to the dealer.

PART 726—[AMENDED]

2. In Part 726:

A. The authority citation is revised to read as follows:

Authority: 7 U.S.C. 1301, 1313, 1314, 1314–1, 1314b–2, 1314e, 1363, 1372–75, 1377, 1378 and 1421, Pub. L. 100–387.

B. Section 726.85 is amended by revising paragraph (d) to read:

§ 726.85 Identification of marketings.

* * * * *

(d) *Identification of dealer marketings of resale tobacco.* Each auction and nonauction marketing of resale tobacco in the current year shall be identified by a dealer identification card, Form MQ–79–2, issued to the dealer for use in the current marketing year.

* * * * *

§ 726.87 [Amended]

C. Section 726.87 is amended by adding the words "or dealer" following each instance in which the word "producer" occurs.

D. Section 726.93 is amended by revising paragraph (e) to read:

§ 726.93 Warehouseman's records and reports.

* * * * *

(e) *Warehouseman's entries on other dealer reports.* Each warehouseman shall record, or have the dealer record, on a Form MQ–79, the total purchases and resales made by each such dealer or other warehouseman during each sale day at the warehouse. Warehousemen shall sign the Form MQ–79 on the same line as the transaction is recorded when a dealer resells tobacco at the warehouse. If any tobacco resold by the dealer is tobacco bought by the dealer and carried over by the dealer from a crop produced prior to the current crop, the entry shall be made on the Form MQ–79 to clearly show such fact.

* * * * *

E. Section 726.94 is amended by revising paragraph (c)(1) to read:

§ 726.94 Dealers records and reports.

* * * * *

(c) *Record and report of purchases and resales.* (1) Each dealer shall keep a record and make reports on a Form MQ–79 showing all purchases and resales, excluding tobacco not in the form normally marketed by producers as defined in § 726.51 (nn) and (nn–1). After each transaction entered on the Form MQ–79, each dealer shall enter a balance to reflect the pounds of tobacco remaining that may be sold without causing prior resales to exceed prior purchases. Any tobacco sold in excess of such balance shall be considered excess tobacco and subject to a marketing quota penalty at the full penalty rate. The purchaser shall sign the Form MQ–79 on the same line as the transaction is recorded by the dealer who is offering such tobacco for resale. In the event of a purchase or resale of tobacco which is purchased by the dealer from a crop of tobacco produced prior to the current crop, the Form MQ–79 shall be annotated to indicate that such tobacco was so purchased and carried over from a crop produced prior to the current crop.

* * * * *

F. Section 726.99 is revised to read:

§ 726.99 Registration of warehousemen and dealers.

Any warehousemen or dealer dealing in tobacco shall be registered with the U.S. Department of Agriculture.

(a) *Warehouse registration.* Any person desiring to register as a warehouseman shall apply to the North Carolina State ASCS Office, Raleigh, NC for approval.

(b) *Dealer registration.* Except for dealers who are exempt from the requirements for maintaining regular records and reports on the Form MQ–79 as provided in § 726.95, each person who expects to deal in burley tobacco during a marketing year shall annually register with the U.S. Department of Agriculture for the respective marketing year beginning with the 1989–1990 marketing year. Such registration shall be handled by the North Carolina State ASCS Office, Raleigh, NC. Registration may be accomplished by such person filing a MQ–79–2–A, after March 1 of the calendar year in which the marketing year begins, at the local county ASCS office where the applicant resides or where the applicant's principal business is located. The applicant shall provide the names of other individuals who will be authorized to use the assigned dealer registration number to transact business on behalf of the applicant. Only one dealer registration number will be issued to each dealer entity. Persons maintaining the same residence shall be considered one entity, unless such persons can substantiate to the satisfaction of the State ASC committee for the State in which the application is made that such persons operate their tobacco business entirely as separate entities.

(1) *Issuance of dealer cards.* After approval by the North Carolina State ASCS Office, each dealer will be assigned a four-digit identification number and issued a dealer identification card (Form MQ–79–2).

(2) *TMQ lien notation.* If a claim has been established against a dealer as a result of a tobacco marketing quota penalty such dealer, upon notification by the applicable State ASCS office, shall return the dealer identification card to the State ASCS office within 15 days of notification. Upon timely return of the dealer identification card the claim shall be annotated on the card and promptly returned to the dealer.

Signed in Washington, DC, on May 19, 1989.

Keith D. Bjerke,

Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 89-12445 Filed 5-23-89; 8:45 am]

BILLING CODE 3410-05-M

FEDERAL HOME LOAN BANK BOARD

12 CFR Part 584

[No. 89-1430]

Prohibited Acts

Date: May 11, 1989.

AGENCY: Federal Home Loan Bank Board.

ACTION: Final rule.

SUMMARY: The Federal Home Loan Bank Board ("Board"), as operating head of the Federal Savings and Loan Insurance Corporation ("FSLIC"), is amending its regulations on prohibited acts by expanding the authority delegated to the Supervisory Agent (SA) to include disapproval of applications filed pursuant to 12 CFR 584.9(d) for relief from the prohibitions contained in 12 CFR 584.9(b), Management Interlocks. This amendment will streamline the application process and expedite decision delivery.

EFFECTIVE DATE: May 24, 1989.

FOR FURTHER INFORMATION CONTACT: Robyn Dennis, Financial Analyst, (202) 331-4572, Office of Regulatory Activities, 801 Seventeenth Street, NW., Washington, DC 20006.

SUPPLEMENTARY INFORMATION: The Board has previously delegated significant elements of its supervisory and examination functions to the Federal Home Loan Banks ("FHLBanks") under the direction of the Principal Supervisory Agents. By establishing the Office of Regulatory Activities (Board Resolution No. 86-755), the Board determined that its purpose of improving the effectiveness of its examination and supervisory functions would be furthered.

As part of this organizational restructuring, the Board, upon consideration of a recommendation by the Office of Regulatory Activities, has determined that delegation of routine application decisions where criteria and standards are clear and definitive and that are currently performed by the Office of Regulatory Activities can be more efficiently and effectively carried out by relying on the existing expertise at the FHLBanks. As is its practice in granting any delegation of authority, the Board reserves unto itself the right to decide any application that present issues of law or policy or would establish a precedent of national significance.

This delegation does not diminish the statutory responsibility of the Board to, through the Office of Regulatory Activities, oversee, control, and, where necessary, improve the functions of examination and supervision. Proposed legislation contained in the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 may affect or eliminate the provision restricting management interlocks for holding companies (12 U.S.C. 1730a). This delegation, in the interim, will expedite delivery of decisions in this area.

Pursuant to 12 CFR 508.11 and 508.14, the Board finds that, because these amendments relate to rules of Board organization, procedure, and practice, notice and public comment are unnecessary, as is the 30-day delay of the effective date.

List of Subjects in 12 CFR Part 584

Holding companies, Reporting and recordkeeping requirements, Savings and loan associations, Securities.

Accordingly, the Federal Home Loan Bank Board hereby amends Part 584, Subchapter F, Chapter V, of Title 12, Code of Federal Regulations, as set forth below.

SUBCHAPTER F—REGULATIONS FOR SAVINGS AND LOAN HOLDING COMPANIES

PART 584—REGULATED ACTIVITIES

1. The authority for Part 584 is revised to read as follows:

Authority: Sec. 5A, 47 Stat. 725, as added by sec. 1, 64 Stat. 256, as amended (12 U.S.C. 1425a); sec. 2, 48 Stat. 128, as amended (12 U.S.C. 1462); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); secs. 401-403, 405-407, 48 Stat. 1255-1257, 1259-1260, as amended (12 U.S.C. 1724-1726, 1728-1730); sec. 408, 82 Stat. 5, as amended (12 U.S.C. 1730a); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943-1948 Comp., p. 1071.

2. Amend § 584.9 by revising paragraphs (d) and (e) to read as follows:

§ 584.9 Prohibited acts.

* * * * *

(d) Application for Corporation approval required by this section shall contain a full statement of the reasons in support thereof. Such applications shall be filed with the Corporation by transmitting the original and one copy to the Director, Office of Regulatory Activities, and one copy to the Supervisory Agent.

(e) Approval by the Supervisory Agent. The Supervisory Agent may grant or withhold prior written approval for any management interlock requiring the Corporation's approval for examination or extension under paragraph (b) of this section, provided the exemption or extension request does not present an issue of law or policy and would not establish a precedent of national significance. Approval will be granted if (1) the interlock is not prohibited by Part 563f of this chapter, and (2) the Supervisory Agent determines the interlock would not be likely to have an anticompetitive effect and would not be objectionable on supervisory grounds. For applications not approved, the PSA shall give the applicant prompt notice, in writing, citing the specific basis for disapproval. Applications shall be filed with the Supervisory Agent of the district in which the principal office of the subsidiary insured institution that conducts the principal savings and loan business of such holding company is located.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 89-12369 Filed 5-23-89; 8:45 am]

BILLING CODE 6720-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 88-AGL-11]

Alteration of VOR Federal Airway; Indiana

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment realigns Federal Airways V-243 located in the vicinity of Bowling Green, KY. Currently, V-243 is aligned, in part, from Bowling Green, KY, to Terre Haute, IN, at a distance of approximately 158 nautical miles. We have redescribed that portion of V-243 via the Huntingburg, IN, very high frequency omni-directional radio range (VOR). This action improves navigation in that area and lowers the minimum en route altitude (MEA).

EFFECTIVE DATE: 0901 u.t.c. July 27, 1989.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace Branch (ATO-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence

Avenue, SW., Washington, DC 20591; telephone: (202) 267-9250.

SUPPLEMENTARY INFORMATION:

History

On July 6, 1988, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to realign V-243 from Bowling Green, KY, via Huntingburg, IN, to Terre Haute, IN (53 FR 25347). The present alignment from Bowling Green to Terre Haute has an MEA of 7,000 feet for fifty percent of the distance. By adding Huntingburg to the route segment, the MEA will be lowered significantly. Currently, traffic arriving and departing the Evansville, IN, terminal area is vectored below the MEA to expedite traffic flow in that area. This action reduces controller workload and delays. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.123 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6E dated January 3, 1989.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations realigns V-243 from Bowling Green, KY, via Huntingburg, IN, to Terre Haute, IN. The present alignment from Bowling Green to Terre Haute has an MEA of 7,000 feet for fifty percent of the distance. By adding Huntingburg to the route segment, the MEA has been lowered significantly. Currently, traffic arriving and departing the Evansville, IN, terminal area is vectored below the MEA to expedite traffic flow in that area. This action reduces controller workload and reduces delays.

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

List of Subjects in 14 CFR Part 71

Aviation safety, VOR federal airways.

Adoption of the Amendment

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

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

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.

§ 71.123 [Amended]

2. Section 71.123 is amended as follows:

V-243 [Amended]

By removing the words "Terre Haute, IN." and substituting the words "Huntingburg, IN; to Terre Haute, IN."

Issued in Washington, DC, on May 15, 1989.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 89-12426 Filed 5-23-89; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 97

[Docket No. 25901; Amdt. No. 1400]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

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

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

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

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

For Examination.

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which the affected airport is located; or
3. The Flight Inspection Field Office which originated the SIAP.

For Purchase

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA-200), FAA Headquarters Building, 800 Independence Avenue SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription

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

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS-420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267-8277.

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

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of

the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form document is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

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

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

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

List of Subjects in 14 CFR Part 97

Approaches, Standard instrument, Incorporation by reference.

Issued in Washington, DC, on May 12, 1989.

Robert L. Goodrich,

Director, Flight Standards Service.

Adoption of the Amendment

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

PART 97—[AMENDED]

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

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

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

** * * Effective July 27, 1989*

Bethel, AK—Bethel, VOR RWY 18, Amdt. 8
Bethel, AK—Bethel, VOR RWY 36, Amdt. 7
Bethel, AK—Bethel, VOR/DME RWY 18, Orig.
Bethel, AK—Bethel, VOR/DME RWY 36, Orig.
Bethel, AK—Bethel, LOC/DME BC RWY 36, Amdt. 4
Bethel, AK—Bethel, NDB RWY 18, Amdt. 8
Bethel, AK—Bethel, ILS/DME, RWY 18, Amdt. 4
Menominee, MI—Menominee-Marinette Twin County, NDB RWY 3, Amdt. 1
Menominee, MI—Menominee-Marinette Twin County, ILS RWY 3, Amdt. 1
Kearney, NE—Kearney Muni, VOR RWY 13, Orig.
Kearney, NE—Kearney Muni, VOR RWY 18, Amdt. 11
Kearney, NE—Kearney Muni, VOR RWY 36, Amdt. 8
Kearney, NE—Kearney Muni, LOC RWY 36, Amdt. 4
Kearney, NE—Kearney Muni, NDB RWY 36, Amdt. 3
Raleigh/Durham, NC—Raleigh/Durham, ILS RWY 5R, Amdt. 24
Raleigh/Durham, NC—Raleigh/Durham, ILS RWY 23L, Amdt. 4
Raleigh/Durham, NC—Raleigh/Durham, ILS RWY 23R, Amdt. 4
Bedford, PA—Bedford, VOR/DME-A, Amdt. 3
Lockhart, TX—Lockhart Muni, VOR/DME RWY 18, Orig.

** * * Effective Jun 29, 1989*

Window Rock, AZ—Window Rock, RNAV RWY 2, Amdt. 1
Los Angeles, CA—Los Angeles Intl, ILS RWY 6R, Amdt. 12
Santa Rosa, CA—Sonoma County, ILS RWY 32, Amdt. 15
Vidalia, GA—Vidalia Muni, LOC RWY 24, Orig.
Vidalia, GA—Vidalia Muni, NDB RWY 24, Orig.
Vidalia, GA—Vidalia Muni, NDB RWY 24, Amdt. 5, Cancelled
Olney-Noble, IL—Olney-Noble, VOR/DME-A, Amdt. 7
Olney-Noble, IL—Olney-Noble, LOC RWY 10, Amdt. 3
Olney-Noble, IL—Olney-Noble, NDB RWY 3, Amdt. 11
East Tawas, MI—Iosco County, VOR-A, Amdt. 6
Oxford, MS—University-Oxford, LOC RWY 9, Amdt. 2
Oxford, MS—University-Oxford, NDB RWY 9, Orig.
Oxford, MS—University-Oxford, NDB RWY 9, Amdt. 1, Cancelled
Reno, NV—Reno Cannon Intl, NDB RWY 16R, Amdt. 5
Portland, OR—Portland Intl, VOR-B, Amdt. 2
Portland, OR—Portland Intl, VOR RWY 28R, Amdt. 2
Pittsburgh, PA—Greater Pittsburgh Intl, ILS RWY 10R, Amdt. 4
Bay City, TX—Bay City Muni, NDB RWY 13, Amdt. 2
Houston, TX—Ellington Field, VOR RWY 22, Orig.
Stephenville, TX—Clark Field Muni, VOR/DME-A, Amdt. 2
Luray, VA—Luray Caverns, NDB-A, Amdt. 1
Parkersburg, WV—Wood County Airport, Gill Robb Wilson Field, NDB RWY 3, Amdt. 5, Cancelled

** * * Effective May 10, 1989*

Dallas-Fort Worth, TX—Dallas/Fort Worth International, CONVERGING ILS-2 RWY, 13R, Amdt. 1
Dallas-Fort Worth, TX—Dallas/Fort Worth International, ILS-1 RWY 17L, Amdt. 3
Dallas-Fort Worth, TX—Dallas/Fort Worth International, CONVERGING ILS-2 RWY, 17L, Amdt. 1
Dallas-Fort Worth, TX—Dallas/Fort Worth International, ILS-1 RWY 17R, Amdt. 15
Dallas-Fort Worth, TX—Dallas/Fort Worth International, CONVERGING ILS-2 RWY, 17R, Amdt. 1
Dallas-Fort Worth, TX—Dallas/Fort Worth International, CONVERGING ILS-2 RWY, 31R, Amdt. 1

** * * Effective May 8, 1989*

Indianapolis, IN—Indianapolis Brookside Airpark, VOR RWY 36, Amdt. 6

** * * Effective May 5, 1989*

Danville, VA—Danville Regional, ILS RWY 2, Amdt. 1

* * * *Effective May 4, 1989*

New Bedford, MA—New Bedford Muni, LOC (BC) RWY 23, Amdt. 7

* * * *Effective May 2, 1989*

Albany, NY—Albany County, VOR RWY 1, Amdt. 19

[FR Doc. 89-12425 Filed 5-23-89; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 942

[Docket No. 90239-9039]

RIN 0648-AB50

Cordell Bank National Marine Sanctuary

AGENCY: Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice of National Marine Sanctuary designation; final rule; and summary of final management plan.

SUMMARY: The National Oceanic and Atmospheric Administration, by the Designation Document contained in this notice, designates an area of marine waters encompassing a total of 397.05 square nautical miles surrounding Cordell Bank, which is located approximately 50 nautical miles west-northwest of San Francisco, California, as the Cordell Bank National Marine Sanctuary. Further, NOAA by this notice issues regulations to implement the designation and regulate activities in the Sanctuary consistent with the provisions of the Designation Document. Finally, this notice summarizes the final Management Plan (MP) prepared for the Sanctuary, which details the goals and objectives, management responsibilities, research activities, interpretive and educational programs, and enforcement, including surveillance, activities for the area.

EFFECTIVE DATE: Pursuant to section 304(b) of the Marine Protection, Research, and Sanctuaries Act (16 U.S.C. 1434(b)), Congress has forty-five days of continuous session beginning on the day on which this notice is published to review the designation and regulations before they take effect. After forty-five days, the designation and regulations automatically become final and take effect unless the designation or any of its terms is disapproved by Congress through enactment of a joint resolution. A document announcing the effective date will be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Joseph A. Uravitch, Chief, Marine and Estuarine Management Division, OCRM, NOS, NOAA, 1825 Connecticut Avenue, NW., Washington, DC 20235, (202/673-5122). Copies of the Final Environmental Impact Statement and Management Plan (FEIS/MP) are available upon request from OCRM.

SUPPLEMENTARY INFORMATION: Title III of the Marine Protection, Research, and Sanctuaries Act, as amended (16 U.S.C. 1431 *et seq.*) ("Act") 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 the Congress, a variety of specified officials, and other interested persons, that the designation will fulfill the purpose and policies of the Act (set forth in section 301(b) (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.

Section 303 of the Act requires the Secretary to make a number of findings before he or she can designate an area as a National Marine Sanctuary. Section 304 of the Act requires the Secretary to give notice of the designation in the **Federal Register**, to take a variety of other actions including preparation of a MP for the Sanctuary and a FEIS for the designation, and to issue necessary and reasonable regulations implementing the designation.

The authority of the Secretary to designate National Marine Sanctuaries has been delegated to the Under Secretary for Oceans and Atmosphere by DOC Organization Order 10-15, § 3.01(z) (Jan. 11, 1988). The authority to administer the other provisions of the Act has been delegated to the Assistant Administrator for Ocean Services and Coastal Zone Management of NOAA by NOAA Circular 83-38, Directive 05-50 (Sept. 21, 1983, as amended).

The waters surrounding Cordell Bank were nominated for designation as a National Marine Sanctuary in July 1981. On June 30, 1983, NOAA declared the area an active candidate for designation. A public scoping meeting to gather information to determine the range and significance of issues related to designation and management was held on April 25, 1984.

Cordell Bank and its surrounding waters, because of a rare combination of oceanic conditions and undersea topography, provide a highly productive marine environment in a discrete, well defined area. The prevailing California Current flows southward along the coast, while the upwelling of nutrient-rich bottom waters brings nutrients and stimulates the growth of planktonic organisms. These nutrients support the entire food chain from small crustaceans to fish, marine mammals and seabirds that form the exceptionally vigorous, ecological community flourishing at Cordell Bank. The area is being designated as a National Marine Sanctuary for the purpose of protecting and conserving the area and ensuring the continued availability of the ecological, research, educational, aesthetic, and recreational resources therein. In addition, historical or cultural resources may be present within the Cordell Bank area and its designation as a Sanctuary will protect these resources as well.

On August 28, 1987, NOAA published proposed regulations to implement the proposed designation for the Sanctuary in the **Federal Register** (52 FR 32563) and invited public comment. On the same date, NOAA issued a Draft Environmental Impact Statement (DEIS) and MP which described in detail the proposed regulatory regime and alternatives to it and, in accordance with section 304(a)(1)(C) of the Act, sent a Designation Prospectus to the Committee on Merchant Marine and Fisheries of the United States House of Representatives and the Committee on Commerce, Science and Transportation of the United States Senate for review and approval.

Public hearings to receive comments on the proposed designation and DEIS/MP were held in Bodega, California, on September 29, 1987, and in San Francisco, California, on September 30, 1987. Comments received by NOAA in response to the **Federal Register** notice and at the public hearings on the DEIS/MP were reviewed and, where appropriate, the recommendations contained therein were incorporated in the FEIS/MP. The significant comments on the proposed regulations and the

regulatory elements of the DEIS/MP and FEIS/MP and NOAA's responses to them follow:

(1) *Comment:* The majority of commentators recommended selection of the boundary option encompassing the largest area (397.05 square nautical miles) (boundary alternative number 1). These commentators felt that the area encompassed was of ecological significance and in need of protection and that the larger area would make management and protection of the Sanctuary easier.

Response: NOAA has adopted this recommendation. The larger boundary encompasses additional habitat used by marine mammals and seabirds for resting, feeding and migration. In addition, it provides a larger ecological buffer area for the unique concentration of resources found on and around Cordell Bank. The larger boundary also provides for a more easily managed area as it is contiguous to the Point Reyes-Farallon Islands National Marine Sanctuary (PRNMS).

The benthic resources, marine mammals and seabirds that are observed on and around Cordell Bank and on the adjacent continental shelf break were described in the DEIS/MP. The distribution of these organisms on, and in the area surrounding, the Bank supported designation of a smaller area (101.10 square nautical miles) (boundary alternative number 2). However, information provided to NOAA during the DEIS/MP comment period and the results of recent research demonstrates substantial use by seabirds and marine mammals of the area encompassed by boundary alternative number 1.

(2) *Comment:* A great majority of commentators recommended adoption of a regulation prohibiting all hydrocarbon exploration and development activities within the Sanctuary.

Response: This alternative was not examined in the DEIS/MP. When it was raised in comments on the DEIS/MP, the FEIS/MP did not rate it as the preferred option. While hydrocarbon exploration, development, and production activities could threaten Sanctuary resources (impacts from seismic exploration, oil discharges from accidental spills including well blow-outs, and on-site discharges of drill cuttings and drilling muds) (see FEIS/MP, Vol. I, pp. 82–91), the FEIS/MP opined that it was not necessary to prohibit all hydrocarbon exploration and development activities within the Sanctuary at this time. The United States Department of the Interior's Outer Continental Shelf (OCS) Oil and Gas 5-Year Leasing Plan, in recognition of the unlikelihood of finding viable oil and gas reserves under Cordell Bank and the area within the 50 fathom isobath surrounding the Bank (together, the core area of the Sanctuary, consisting of approximately 18.14 square nautical miles) and the special environmental sensitivity of Cordell Bank, has deferred, until its expiration in February 1992, leasing the core area. The 5-year plan, the Sanctuary regulations, the management framework, and other Federal regulations and statutes were believed adequate to protect Sanctuary resources from being damaged from hydrocarbon exploration and development activities.

Upon publication of the FEIS/MP, NOAA received additional public comments urging that oil and gas activities be banned throughout the Sanctuary. NOAA also received a letter from EPA stating that, based on information in the FEIS, a Sanctuary-wide ban on hydrocarbon development appeared to be the environmentally preferable alternative.

Based on all the above, NOAA is: (1) By this notice of final rule banning all oil and gas activities on Cordell Bank and within the 50 fathom isobath surrounding the Bank; and (2) initiating a rule making considering expansion of the ban to the entire Sanctuary.

Initiating a rule making considering expanding the ban to the entire Sanctuary was chosen over taking regulatory action with respect thereto in this notice of final rule, because the notice proposing this rule (52 FR 32563, Aug. 28, 1987) and the DEIS/MP did not consider such a ban. A regulatory prohibition of this magnitude should not be imposed without assessing the protection to sensitive Sanctuary resources that would be afforded by such a prohibition and the effect of such a prohibition on this nation's domestic energy reserve potential and on potential lease revenues to the Treasury of the United States, and without all interested persons having notice and an opportunity to comment.

Immediately banning oil and gas activities in the core area by this notice of final rule is justified given the special environmental sensitivity of the core area and that a ban on oil and gas activities in the core area was an alternative examined in the DEIS/MP, upon which public comment was solicited.

(3) *Comment:* Several commentators recommended that a proposed ocean sewage outfall pipe from the City of Santa Rosa be prohibited because of their belief that discharges from the outfall could adversely impact the Sanctuary.

Response: The City of Santa Rosa is considering several sites for the disposal of sewage effluent. The plans of the City are in the preliminary stages and the eventual disposal site and the nature of permissible discharges have not been decided. NOAA, as manager of PRNMS, is a member of the task force set up by the California Regional Water Control Board to determine the optimal site and nature of the discharges.

No sewage can be discharged into the ocean without a permit from the United States Environmental Protection Agency (EPA) issued under the Clean Water Act (CWA). Under § 942.9 of the Cordell Bank National Marine Sanctuary regulations, since the discharge of sewage into the Sanctuary, and the discharge of sewage outside of the Sanctuary if such discharge enters the Sanctuary and injures a Sanctuary resource, are prohibited under § 942.6(a)(1), EPA permits allowing such a discharge are not valid without a NOAA certification. Thus, if necessary to protect Sanctuary resources, NOAA can impose conditions as a prerequisite of giving its certification or even deny certification.

(4) *Comment:* Many commentators recommended that anchoring on the ridges and peaks of Cordell Bank be banned to prevent damage to benthic organisms.

Response: Anchoring on the Bank can destroy or disturb many benthic organisms by physical impact of the anchor and dragging of the anchor chain. Because at present only a few vessels visit Cordell Bank and anchor on it, anchoring does not now threaten the Bank's resources. However, if anchoring activities significantly increase, there could be a significant adverse effect on the Sanctuary's benthic flora and fauna. Accordingly, Article 4 of the Designation Document has been expanded to authorize the regulation of anchoring and NOAA intends to monitor anchoring carefully. If anchoring activities increase and threaten the Bank's resources, NOAA will amend the regulations to control anchoring. If anchoring is controlled, the controls would be applicable to only Cordell Bank and the area within the 50 fathom contour (isobath) surrounding the Bank. This is the area in which the benthic resources are most concentrated and susceptible to anchor and anchor chain damage.

(5) *Comment:* Some commentators were unclear as to whether the Sanctuary regulations would apply only to Cordell Bank and the area within the 50 fathom isobath surrounding the Bank (*i.e.*, the core area of the Sanctuary,

consisting of approximately 18.14 square nautical miles) or throughout the entire Sanctuary. One commentator felt that the regulations should apply only to the core area.

Response: NOAA stated in Volume II of the FEIS that Article 4 of the Sanctuary Designation Document has been revised to eliminate ambiguities concerning the application of the Sanctuary's regulatory program. The Designation Document authorizes the regulation of five categories of activities: depositing or discharging of materials or substances; removing, taking, or injuring or attempting to remove, take, or injure benthic invertebrates or algae; hydrocarbon (oil and gas) activities; anchoring; and removing, taking, or injuring or attempting to remove, take, or injure historical or cultural resources.

At this time, only depositing or discharging materials or substances; removing, taking, or injuring or attempting to remove, take, or injure benthic invertebrates or algae; and hydrocarbon activities are being regulated. The prohibition against depositing or discharging applies to the entire Sanctuary. In addition, discharges or deposits beyond the boundary of the Sanctuary which enter the Sanctuary and injure its resources are prohibited. Prohibition of discharges or deposits outside of the 50 fathom isobath area is necessary to protect those pelagic or migratory resources (including seabirds and marine mammals) which occur throughout the Sanctuary.

The prohibition against the taking of benthic invertebrates or algae applies only to the core area. Prohibition within this discrete area is deemed sufficient to protect the unique benthic resources of the Sanctuary found on the submerged seamount. This prohibition does not restrict commercial or recreational fishing activities. The accidental taking of invertebrates or algae during normal fishing operations would not violate this prohibition.

The prohibition against hydrocarbon activities presently also applies only to the core area. However, as discussed under the response to comment (2), above, NOAA today is proposing a rule considering banning hydrocarbon activities throughout the entire Sanctuary.

At this time, anchoring is not being regulated. If in the future it is necessary to control anchoring in order to prevent damage to Sanctuary resources, such regulation will apply only to the core area. This area is where the benthic resources are most concentrated and potentially susceptible to anchor damage.

Also at this time, the taking of, removal of, or injury to or attempt to take, remove, or injure historical or cultural resources is not being regulated. If in the future it is necessary to impose such regulation, it would apply to the entire Sanctuary.

(6) *Comment:* One commentator stated that existing regulations made the proposed regulation prohibiting the discharge or deposit of material in the Sanctuary was unnecessary. That commentator stated that with the exception of solid wastes the discharge of materials or substances was covered adequately by existing laws and regulations.

Response: NOAA disagrees. The regulation prohibiting discharges or deposits within the Sanctuary complements the existing regulatory system, will enhance the area's overall recreational and aesthetic appeal, and will help maintain the present water quality in the Sanctuary. While numerous laws and regulations apply to the disposal of waste in the marine environment, most Federal decisions regarding whether waste may be so disposed are made on a case-by-case basis. Thus, protection of the complete Sanctuary habitat would not be certain without prohibiting discharges in an area which protects the complete Sanctuary habitat.

The CWA provides for a maximum penalty of $10,000 for a single discharge incident without the initiation of a civil action. This does not provide sufficient deterrent for protecting important Sanctuary resources; Sanctuary regulations provide for a maximum penalty of $50,000.

Certain gaps exist in the regulatory framework. The discharge of oil and other hazardous substances in the territorial sea is subject to EPA requirements under the CWA and United States Army Corps of Engineers requirements under the Rivers and Harbors Act (for discharges that might obstruct navigation). These statutes are not sufficient to provide comprehensive protection of a marine area and do not specifically prohibit certain activities that may harm the resources of the Sanctuary, such as the overboard disposal of trash from ships.

Beyond the territorial sea, EPA approval is needed for ocean dumping and for the placement of new ocean outfalls. EPA regulations require EPA to consider the ecological productivity and sensitivity of any area proposed for dumping or an outfall. However, such regulations do not guarantee that EPA will prohibit the disposal of waste in the Sanctuary. Specifically, the provisions of the CWA do not apply to discharges of non-biodegradable solid wastes such as casual litter. The prohibition in the Sanctuary regulations is designed specifically to protect the area's important living resources from the effects of all harmful effluent and solid wastes. In addition, it prevents floating or submerged waste debris (*e.g.*, non-biodegradable plastics) from being deposited in areas where animals could eat or become entangled in the debris, possibly lending to illness or death. Finally, the deposit of non-biodegradable litter reduces the aesthetic qualities of the Bank and thereby detracts from its recreational value.

(7) *Comment:* Several commentators recommended that NOAA consider provisions to increase shipping safety in the area such as the deployment of special buoys, establishment of communication systems, and redirection of vessel traffic to prevent collision that might result in spills of hazardous materials.

Response: The United States Coast Guard (USCG) has jurisdiction over shipping safety in United States waters. The USCG has determined that existing safety regulations and Traffic Separation Scheme (TSS) are adequate for the number of vessels using the ocean approaches to the port of San Francisco Bay in the area around Cordell Bank. This determination was based on an USCG Port Access Route Study and the fact that while compliance with the TSS is voluntary, virtually all traffic uses it.

The USCG has also initiated the Offshore Vessel Movement Reporting System, an advisory service, to inform mariners of the locations and movements of large vessels, such as oil tankers, in the ocean approaches to San Francisco Bay, including areas east of Cordell Bank. Participation by mariners is voluntary, but by monitoring the radio transmissions of vessels, close encounters and possible collisions between ships may be avoided. NOAA will cooperate with the USCG in enforcement and surveillance procedures that relate to shipping within Sanctuary waters.

Under international law, foreign flag vessels in waters beyond the limits of the United States territorial sea, such as those in the vicinity of Cordell Bank, cannot be regulated directly by the United States Government. Under international law, any regulation of navigation on the high seas must be endorsed by the International Maritime Organization in order for it to apply to foreign flag traffic.

Finally, NOAA has prepared a computerized National Contingency and Emergency Response Plan. The plan details alert procedures and responses and describes Sanctuary resources at risk. This plan will be expanded to include the Cordell Bank area.

(8) *Comment:* There was disagreement on the need and extent of possible regulations of fishing activities. Statements were made that overfishing already occurred and that "abnormal" fishing activities should be banned. In contrast, NOAA also received comments that asked for confirmation that commercial and recreational fishing will be excluded from the scope of Sanctuary regulations.

Response: NOAA reaffirms that no regulation of fishing, other than by existing State and Federal statutes, will occur with the designation of the Cordell Bank area as a National Marine Sanctuary. Fishing vessels, however, must comply with the Sanctuary's regulatory prohibition on discharges and, in the future, could be regulated with respect to anchoring. All State and Federal regulatory programs pertaining to fishing, including Fishery Management Plans promulgated under the Magnuson Fishery Conservation and Management Act, remain in effect.

Sanctuary wardens will enforce the California Department of Fish and Game Code (and Chapter 14 of the California Administrative Code), which regulates and manages a wide variety of activities affecting the living marine resources found in the territorial sea and in the 200-mile wide exclusive economic zone. In addition, NOAA will continue to monitor the status of fishery resources around Cordell Bank.

(9) *Comment:* Commentators requested that the regulations be revised to protect any historical or cultural artifacts that may be found within the Sanctuary.

Response: NOAA agrees that it is necessary to protect and manage any historical or cultural artifacts that may be in the Sanctuary. While the presence of any such resources on Cordell Bank or in its surrounding waters is not known, such resources could exist. Therefore, Article 4 of the Designation Document has been expanded to authorize the regulation of the taking of, removal of, or injury to or attempt to take, remove, or injure cultural or historical resources.

The Act and NOAA's National Marine Sanctuary Program Regulations (15 CFR Part 922; 53 FR 43802, Oct. 28, 1988) require that the management system for a National Marine Sanctuary be established by a Designation Document and by implementing regulations. Activities may be regulated only to the extent authorized in the Designation Document. Under section 304(a)(4) of the Act, the Designation Document may be modified only by the same procedures by which the original designation was made. Thus, the Designation Document serves as a constitution for the Sanctuary by establishing the purpose of the Sanctuary designation; the characteristics of the area that give it conservation, recreational, ecological, historical, research, educational or aesthetic value; and the types of activities subject to regulation by the Secretary to protect those characteristics.

The Designation Document for the Cordell Bank National Marine Sanctuary follows:

Designation Document for the Cordell Bank National Marine Sanctuary

Preamble

Under the authority of Title III of the Marine Protection, Research, and Sanctuaries Act of 1972, as amended, 16 U.S.C. 1431 *et seq.* (the "Act"), the Cordell Bank and its surrounding waters offshore northern California, as described in Article 2, are hereby designated as a National Marine Sanctuary for the purpose of protecting and conserving that special, discrete, highly productive marine area and ensuring the continued availability of the ecological, research, educational, aesthetic, historical, and recreational resources therein.

Article 1. Effect of Designation

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 aesthetic value. As used in the Act, this Designation Document, and the Sanctuary regulations, the word "historical" includes cultural, archaeological, and paleontological. Article 4 of this Designation Document lists those activities requiring regulation now or which may require regulation in the future in order to protect Sanctuary resources. Listing of an activity authorizes but does not require its regulation. Therefore, the listing of an activity does not imply that the activity will be regulated in the future. However, if an activity is not listed it cannot be regulated, except on an emergency basis for no longer than 120 days where necessary to prevent immediate, serious, and irreversible damage to a Sanctuary resource, without amending Article 4 to list the activity. Such an amendment can only be accomplished by following the same procedures through which the original designation was made.

Article 2. Description of the Area

The Sanctuary consists of a 397.05 square nautical mile area encompassed by a boundary extending at 180° from the northernmost boundary of the Point Reyes-Farallon Islands National Marine Sanctuary (PRNMS) to the 1,000 fathom isobath northwest of the Bank, then south along this isobath to the PRNMS boundary and back to the northeast along this boundary to the beginning point. The precise boundaries are set forth in the regulations.

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

Cordell Bank is characterized by a combination of oceanic conditions and undersea topography that provides for a highly productive environment in a discrete, well-defined area. In addition, the Bank and its surrounding waters may contain historical resources of national significance. The Bank consists of a series of steep-sided ridges and narrow pinnacles rising from the edge of the continental shelf. It lies on a plateau 300–400 feet (91–122 meters) deep and ascends to within about 115 feet (35 meters) of the surface. The seasonal upwelling of nutrient-rich bottom waters to the upper levels of the Bank stimulates the growth of planktonic organisms. These nutrients, combined with high light penetration in Bank waters and wide depth ranges in the vicinity, have led to a unique association of subtidal and oceanic species. The vigorous biological community flourishing at Cordell Bank includes an exceptional assortment of algae, invertebrates, fishes, marine mammals and seabirds.

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 the Sanctuary's conservation, recreational, ecological, historical, research, education or aesthetic values:

a. Depositing or discharging any material or substance;

b. Removing, taking, or injuring or attempting to remove, take, or injure benthic invertebrates or algae located on the Bank or within the 50 fathom isobath surrounding the Bank;

c. Hydrocarbon (oil and gas) activities within the Sanctuary;

d. Anchoring on the Bank or within the 50 fathom contour surrounding the Bank; and

e. Removing, taking, or injuring or attempting to remove, take, or injure historical resources located within the Sanctuary.

Section 2.—Consistency with International Law

The regulations governing activities listed in section 1 of this Article shall apply to foreign flag vessels and foreign persons 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 necessary to prevent immediate, serious and irreversible damage to a Sanctuary resource, activities, including those 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 fishing is not authorized under Article 4. Fishing vessels, however, are subject to regulation under Article 4 with respect to discharges and deposits and anchoring. 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.* ("Magnuson Act"), shall remain in effect. All permits, licenses, approvals, and other authorizations issued pursuant to the Magnuson Act shall be valid within the Sanctuary subject only to regulations issued pursuant to Article 4.

Section 2.—Defense Activities

The regulation of activities listed in Article 4 shall not prohibit any Department of Defense (DOD) activities that are necessary for national defense. All such activities being carried out by DOD within the Sanctuary on the effective date of designation shall be exempt from any prohibitions contained in the Sanctuary regulations. Additional DOD activities initiated after the effective date of designation that are necessary for national defense will be exempted after consultation between the Department of Commerce and DOD. DOD activities not necessary for national defense, such as routine exercises and vessel operations, shall be subject to all prohibitions contained in the Sanctuary regulations.

Section 3.—Other Programs

All applicable regulatory programs shall remain in effect, and all permits, licenses, approvals, and other authorizations issued pursuant to those programs shall be valid, subject only to the regulation of activities pursuant to Article 4.

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 Pacific Fishery Management Council, review by the appropriate Congressional committees, and approval by the Secretary of Commerce or his/her designee.

[End of Designation Document]

Summary of Final Management Plan

The final MP for the Sanctuary sets forth the Sanctuary's location and provides details on the important resources and uses of the Sanctuary. The MP describes the resource protection, research, and interpretive programs and details the specific activities to be undertaken in each program. The MP includes a detailed breakdown, by program area, of agency roles and responsibilities. The Sanctuary goals and objectives as set forth in the MP are:

Resource Protection

The highest priority management goal is to protect the marine environment and resources of the Cordell Bank National Marine Sanctuary. The specific objectives of resource protection efforts are to:

—Prevent damage to the resources by promulgating regulations to protect them from the adverse effects of harmful effluents and solid wastes and from being injured, removed, or taken by divers;

—Establish cooperative agreements and other mechanisms for coordination among the agencies participating with NOAA in Sanctuary management;

—Develop an effective and coordinated program for enforcement of Sanctuary regulations;

—Promote public awareness of, and voluntary user compliance with, the regulations through an interpretive program stressing resource sensitivity and wise use; and

—Reduce threats to Sanctuary resources raised by major emergencies through contingency and emergency-response planning.

Research

The goal of Sanctuary research activities is to improve understanding of the Cordell Bank environment and resources and to resolve specific management problems, some of which may involve resources common to both the Bank area and the nearby PRNMS. Research results will be used in interpretive programs for visitors and others interested in the Sanctuary, as well as for resource protection. Specific objectives of the research program are to:

—Establish a framework and procedures for administering research to ensure that research projects are responsive to management concerns and that results contribute to improved management of the Sanctuary;

—Initiate a monitoring program to assess environmental changes as they occur;

—Identify the range of effects on the environment that would result from predicted changes in human activity;

—Incorporate research results into the interpretive program in a format useful for the general public; and

—Encourage information exchange among all the organizations and agencies undertaking research in the Sanctuary to promote more informed management.

Interpretation

The goal of interpretive programs is to improve public awareness and understanding of the significance of the Sanctuary and the need to protect its resources. The management objectives designed to meet this goal are to:

—Provide the public with information on the Sanctuary, its goals and objectives, with an emphasis on the need to use these resources wisely to ensure their long-term viability;

—Broaden support for the Sanctuary and Sanctuary management by offering programs suited to visitors with a range of diverse interests;

—Provide for public involvement by encouraging feedback on the effectiveness of interpretive programs, collaboration with Sanctuary management staff in extension and outreach programs, and participation in other volunteer programs; and

—Collaborate with other organizations to provide interpretive services complementary to the Sanctuary program.

Visitor Use

The Sanctuary goal of visitor management is to encourage commercial and recreational use of the Sanctuary compatible with the primary goal of resource protection. Specific management objectives are to:

—Provide relevant information about Sanctuary regulations, use policies and standards;

—Collaborate with public and private organizations in promoting compatible use of the Sanctuary by exchanging information concerning the commercial and recreational potential of the Sanctuary; and

—Assess the current levels of use and monitor use over time to identify and control potential degradation of resources and minimize potential user conflicts.

Summary of Regulations

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

Specifically, the regulations add a new Part 942 to title 15, Code of Federal regulations.

Section 942.1 sets forth the statutory authority for the designation of the Sanctuary and for the issuance of the regulatios.

Section 942.2 sets forth as the purpose for designating the Sanctuary: protecting and conserving the highly productive area of Cordell Bank and its surrounding waters and ensuring the continued availability of the ecological, research, educational, aesthetic, historical and recreational resources therein.

Section 943.3 and Appendix I following § 942.10 set forth the boundaries of the Sanctuary.

Section 943.4 defines various terms used in the regulations. "Person" is defined to mean any private individual, partnership, corporation, or other entity; or any officer, employee, agent, agency, department or instrumentality of the Federal government, any state or local government, or any foreign government. "Sanctuary" is defined to mean the Cordell Bank National Marine Sanctuary. "Injure" is defined to mean to change adversely, either in the long- or short-term, a chemical or physical quality or the viability of a Sanctuary resource. "Sanctuary resource" is defined to mean a living or non-living resource of the Sanctuary that contributes to its conservation, recreational, ecological, historical, research, educational, or aesthetic value. Other terms appearing in the regulations are defined at 15 CFR 922.2.

Section 942.6 prohibits three types of activities and thus makes it unlawful for any person to conduct them. However, any of those 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 or certification issued under § 942.8 or § 942.9 by the Assistant Administrator for Ocean Services and Coastal Zone Management of NOAA.

The first type of activity prohibited is depositing or discharging from any location within the boundaries of the Sanctuary materials or substances of any kind, except for fish, fish parts and chumming materials (bait) produced and discarded during routine fishing activities conducted in the Sanctuary and water (including cooling water) and other biodegradable effluents, specified in § 942.6(a)(1)(i)(B). Depositing or discharging, from any location beyond the boundaries of the Sanctuary, materials or substances of any kind except for the exclusions discussed above is also prohibited if such deposit or discharge enters the Sanctuary and injures a Sanctuary resource.

The second type of activity prohibited is attempting to remove, take, or injure or removing, taking, or injuring benthic invertebrates or algae located on Cordell Bank or within the 50 fathom isobath surrounding the Bank. Section 942.5 allows 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 prohibited in § 942.6.

The third type of activity prohibited is oil and gas activities on the Bank or within the 50 fathom isobath surrounding the Bank.

Section 942.7 sets forth the maximum statutory civil penalty per day for conducting a prohibited activity—$50,000. Each day of a continuing violation constitutes a separate violation. Further, *in rem* actions against any vessel used in conducting a prohibited activity are 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.

Section 942.8 sets forth the procedures for applying for a permit to conduct an otherwise prohibited activity in the Sanctuary and the criteria governing the issuance or denial of such permits. Permits are granted by the Assistant Administrator for Ocean Services and Coastal Zone Management if he or she finds that the activity will further research related to Sanctuary resources, further the educational or historical 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 Sancturary was designated, and the end value of the applicant's overall activity.

Section 942.9 states that all permits, licenses, approvals, and other authorizations issued pursuant to any authority are valid within the Sanctuary subject only to the prohibitions set forth in § 942.6 Other authorizations allowing the discharge or deposit of materials or substances otherwise prohibited under § 942.6(a)(1), or the removal, taking, or injury of, or attempt to remove, take, or injure benthic invertebrates or algae otherwise prohibited under § 942.6(a)(2), are valid if certified by the Assistant Administrator as consistent with the purpose of the Sanctuary and having no significant effect on Sanctuary resources. The certification may impose terms and conditions to ensure consistency.

Section 942.10 sets forth the procedures governing appeals of the grant, denial, conditioning amendment, suspension or revocation of permits by the Assistant Administrator.

Additional Information

Executive Order 12291

NOAA has concluded that these regulations are not "major rules" within Section 1(b) of Executive Order 12291 because they will not result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, state or local government agencies or geographic regions: or,

(3) Significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to

compete with foreign-based enterprises in domestic or export markets.

These regulations prohibit only a narrow range of activities in a relatively small portion of the seas. These regulations also (1) establish procedures whereby permits to conduct an otherwise prohibited activity could be applied for and obtained for a narrow range purposes, and (2) set forth the maximum per day penalty for conducting a prohibited activity. Thus, these regulations will have little or no direct or indirect economic impact and no adverse direct or indirect environmental effects.

Regulatory Flexibility Act

The General Counsel of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration when these regulations were proposed that if they were adopted as proposed they would not have a significant economic impact on a substantial number of small entities. While the proposed regulations were changed to prohibit hydrocarbon activities in the core area, there are no hydrocarbon activities ongoing or planned in that area. Given that the core area is only approximately 18.4 square nautical miles, that the Bank itself does not appear to be an area of high oil reserves, that the Bank would be difficult to drill due to its granite composition, and that the core area is of special environmental sensitivity, it is unlikely the Department of the Interior would ever lease any part of the core area for hydrocarbon exploration or development. The possibility of the core area being leased and all the requisite permits, licenses, and approvals being obtained is too remote upon which to base a conclusion that the prohibition on hydrocarbon activities in the core area would have a significant economic effect on a substantial number of small entities. As a result, neither an initial nor final Regulatory Flexibility Analysis was prepared.

Paperwork Reduction Act

These regulations contain a collection of information requirement subject to the requirements of the Paperwork Reduction Act (Pub. L. No. 96–511) approved by the Office of Management and Budget under Control Number 0648–0141. Public reporting burden for the collection of information is estimated to average 1.5 hours 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 the collection of information, including suggestions for reducing this burden to: Joseph A. Uravitch, Chief, Marine and Estuarine Management Division, OCRM, NOS, NOAA, 1825 Connecticut Ave., NW., Washington DC 20235, and to the Office of Information and Regulatory Affairs, Paperwork Reduction Project (0648–0141), Office of Management and Budget, Washington DC 20530.

National Environmental Policy Act

In accordance with section 304(a)(2) of the Act and the provisions of the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370(a)), a DEIS was prepared for the designation and the proposed regulations. As required by section 304(a)(2) of the Act, the DEIS included the resource assessment report required by section 303(b)(3) of the Act, maps depicting the boundaries of the proposed designated area, and the existing and potential uses and resources of the area. The DEIS was made available for public review on August 28, 1987, with comments due on October 12, 1987. Public hearings to receive comments on the proposed designation were held in Bodega, California, on September 29, 1987, and in San Francisco, California, on September 30, 1987. All comments were reviewed and, where appropriate, were incorporated into the FEIS and these regulations.

Exective Order 12612

This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism Assessment under Exective Order 12612.

Executive Order 12630

This rule does not have takings implications sufficient to require preparation of a Takings Implications Assessment under Executive Order 12630.

List of Subjects in 15 CFR Part 942

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

(Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program)

Dated: May 19, 1989.

John J. Carey,

Acting Assistant Administrator for Ocean Services and Coastal Zone Management.

Accordingly, for the reasons set forth in the preamble, 15 CFR is amended as follows:

1. Part 942 is added to read as follows:

PART 942—CORDELL BANK NATIONAL MARINE SANCTUARY

Sec.

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

§ 942.1 Authority.

The Sanctuary has been designated by the designee of 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, 304, 305, and 307 of the Act.

§ 942.2 Purpose.

The purpose of designating the Sanctuary is to protect and conserve the special, discrete, highly productive marine area of Cordell Bank and its surrounding waters and to ensure the continued availability of the ecological, research, educational, aesthetic, historical and recreational resources therein.

§ 942.3 Boundary.

The Sanctuary consists of an area of marine waters approximately 50 miles west-northwest of San Francisco, California. The Sancturay consists of a 397.05 square nautical mile area extending at 180° from the northernmost boundary of the Point Reyes-Farallon Islands National Marine Sanctuary (PRNMS) to the 1,000 fathom isobath northwest of the Bank, then south along this isobath to the PRNMS boundary and back to the northwest along this boundary to the beginning point. The boundary coordinates are listed in Appendix I following § 942.10.

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

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

(f) "Sanctuary" means the Cordell Bank National Marine Sanctuary.

(g) "Sanctuary resource" means a living or non-living resource of the Sanctuary that contributes to its conservation, recreational, ecological, historical, research, educational, or aesthetic value.

Other terms appearing in these regulations are defined in 15 CFR 922.2.

§ 942.5 Allowed activities.

All activities except those prohibited by § 942.6 may be conducted within the Sanctuary subject to all other prohibitions, restrictions, and conditions imposed by any other authority.

§ 942.6 Prohibited activities.

(a) Except as necessary for national defense, as necessary to respond to an emergency threatening life, property or the environment, or as permitted or certified by the Assistant Administrator in accordance with §§942.8 and 942.9, the following activities are prohibited and thus unlawful for any person to conduct:

(1) *Depositing or discharging marterials or substances.* (i) Depositing or discharging, from any location within the boundaries of the Sanctuary, materials or substances of any kind except:

(A) Fish, fish parts and chumming materials (bait) produced and discarded during routine fishing activities conducted in the Sanctuary; and

(B) Water (including cooling water) and other biodegradable effluents incidental to use of a vessel in the Sanctuary and generated by: Marine sanitation devices approved by the United States Coast Guard; routine vessel maintenance, *e.g.*, deck wash down; engine exhaust; or meals on board vessels.

(ii) Depositing or discharging, from any location beyond the boundaries of the Sanctuary, materials or substances of any kind, except for the exclusions listed in paragraph (a)(1)(i) of this section, which enter the Sanctuary and injure a Sanctuary resource.

(2) *Removing, taking, or injuring sanctuary resources.* Removing, taking, or injuring or attempting to remove, take, or injure benthic invertebrates or algae located on Cordell Bank or within the 50 fathom isobath surrounding the Bank. There is a rebuttable presumption that any such resource found in the possession of a person within the Sanctuary was taken or removed by that person. This prohibition does not apply to accidental removal, injury, or takings during normal fishing operations.

(3) *Hydrocarbon (oil and gas) activities.* Hydrocarbon (oil and gas) exploration, development, and production activities on Cordell Bank or within the 50 fathom isobath surrounding the Bank.

(b) All activities being carried out by the Department of Defense (DOD) within the Sanctuary on the effective date of designation that are necessary for national defense are exempt from the prohibitions contained in these regulations. Additional DOD activities initiated after the effective date of designation that are necessary for national defense will be exempted by the Assistant Administrator after consultation between the Department of Commerce and DOD. DOD activities not necessary for national defense, such as routine exercises and vessel operations, are subject to all prohibitions contained in these regulations.

(c) The prohibitions in this section are applicable to foreign persons and foreign flag vessels only to the extent consistent 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.

(d) Where necessary to prevent immediate, serious, and irreversible damage to a Sanctuary resource, any activity may be regulated within the limits of the Act on an emergency basis for no more than 120 days.

§ 942.7 Penalties.

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

(b) 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 15 CFR Part 904.

§ 942.8 Permit applications—procedures and criteria.

(a) If a person wishes to conduct an activity prohibited under § 942.6, 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 permits, licenses, approvals, and other authorizations shall be attached.

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

(d) The Assistant Administrator, at his or her discretion, may issue a permit subject to such terms and conditions as deemed appropriate, to conduct an activity otherwise prohibited by § 942.6, if the Assistant Administrator finds that the activity will further research related to Sanctuary resources; further the educational or historical 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.

(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 subsection, in whole or in part, if the Assistant Administrator determines that the permittee has acted in violation of the terms or conditions of the permit or of these regulations or that other good cause exists for amending, suspending or revoking the permit. Any such action shall be communicated in writing to the permittee, 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.

§ 942.9 Certification of other authorizations.

(a) All permits, licenses, approvals, and other authorizations issued pursuant to any authority are valid within the Sanctuary subject only to the prohibitions set forth in § 942.6. All applicable regulatory programs remain in effect.

(b) A permit, license, approval, or other authorization allowing the discharge or deposit of materials or substances otherwise prohibited under § 942.6(a)(1), or the removal, taking, or injury of, or attempt to remove, take, or injure benthic invertebrates or algae otherwise prohibited under § 942.6(a)(2) shall be valid if certified by the Assistant Administrator as consistent with the purpose of the Sanctuary and having no significant effect on Sanctuary resources. Such certification may impose terms and conditions as deemed appropriate to ensure consistency.

(c) In considering whether to make the certifications called for in this section, the Assistant Administrator may seek and consider the views of any other person, within or outside the Federal government, and may hold a public hearing as deemed appropriate.

(d) Any certification called for in this section shall be presumed unless the Assistant Administrator acts to deny or condition the certification within 60 days from the date that the Assistant Administrator receives notice of the permit, license, approval, or other authorization, and the supporting data deemed necessary by the Assistant Administrator in order to make a decision on the certification.

(e) The Assistant Administrator may amend, suspend, or revoke any certification made under this section whenever the continued conduct of the activity would violate any terms or conditions of the certification. Any such action shall be communicated in writing to both the holder of the certified permit, license, approval, or other authorization and the issuing agency and shall set forth reason(s) for the action taken.

(f) Either the holder or the issuing agency may appeal any action conditioning, denying, amending, suspending, or revoking any certification in accordance with the procedure provided for in § 942.10.

§ 942.10 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, denial, conditioning, amendment, suspension, or revocation of any permit under § 942.8 to the Administrator of NOAA. In order to be considered by the Administrator, such appeal must be in writing, must state the action(s) appealed and the reason(s) therefor, and must be submitted 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, 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 and other interested persons 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, the Administrator 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 determined appropriate by the hearing officer. Within 30 days of the conclusion of the hearing, the hearing officer shall recommend a decision in writing to the Administrator.

(d) The Administrator may adopt the hearing officer's recommended decision, in whole or in part, or may reject or 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.

Appendix I to Part 942: Cordell Bank National Marine Sanctuary Boundary Coordinates

Point No.	Latitude	Longitude
1	38°15'51.72"	123°10'52.44"
2	38°07'55.88"	123°38'33.53"
3	38°06'45.21"	123°38'00.40"
4	38°04'58.41"	123°37'14.34"
5	38°04'28.22"	123°37'17.83"
6	38°03'42.75"	123°36'55.66"
7	38°03'11.10"	123°36'19.78"
8	38°02'46.12"	123°36'21.98"
9	38°02'02.74"	123°35'56.56"
10	38°01'27.10"	123°35'55.12"
11	38°01'22.28"	123°36'55.13"
12	38°01'11.54"	123°37'28.21"
13	38°00'49.16"	123°37'29.77"
14	37°59'54.49"	123°36'47.90"
15	37°59'12.39"	123°35'59.55"
16	37°58'39.40"	123°35'14.85"
17	37°58'00.57"	123°34'42.93"
18	37°57'18.99"	123°33'43.15"
19	37°56'56.42"	123°32'51.97"
20	37°56'18.90"	123°32'49.24"
21	37°55'22.37"	123°32'36.96"
22	37°54'26.10"	123°32'21.73"
23	37°53'07.46"	123°31'46.81"
24	37°52'34.93"	123°31'18.90"
25	37°51'42.81"	123°31'19.10"
26	37°50'59.58"	123°31'02.96"
27	37°48'49.14"	123°28'44.61"
28	37°49'22.64"	123°29'34.07"
29	37°48'49.14"	123°28'44.61"
30	37°48'36.95"	123°28'08.29"
31	37°48'03.37"	123°28'23.27"
32	37°47'41.54"	123°28'01.97"
33	37°47'01.78"	123°27'16.78"
34	37°46'51.92"	123°26'48.98"
35	37°46'13.20"	123°26'04.79"
36	37°46'00.73"	123°25'36.99"
37	37°50'25.31"	123°25'26.53"
38	37°54'32.28"	123°23'16.49"
39	37°57'45.71"	123°19'17.72"
40	37°59'29.27"	123°14'12.16"
41	37°59'43.71"	123°08'27.55"
42	38°03'10.20"	123°07'44.35"
43	38°04'01.64"	123°06'58.92"
44	38°08'33.32"	123°04'56.24"
45	38°12'42.06"	123°07'10.21"

[FR Doc. 89-12450 Filed 5-23-89; 8:45 am]
BILLING CODE 3510-08-M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 1, 5 and 31

Fees for Exchange Rule Enforcement and Financial Reviews, Applications for Contract Market Designation, Audits of Leverage Transaction Merchants, and Leverage Commodity Registration

AGENCY: Commodity Futures Trading Commission.

ACTION: Final schedule of fees.

SUMMARY: The Commission periodically adjusts fees charged for certain program services to assure that they accurately reflect current Commission costs. In this regard, the staff recently reviewed the Commission's actual costs for exchange rule enforcement and financial reviews (17 CFR Part 1, Appendix B), applications for contract market designation (17 CFR Part 5, Appendix B), audits of leverage transaction merchants (17 CFR Part 31, Appendix B) and leverage commodity registration (17 CFR Part 31, Appendix A). The following fee schedule for FY 1989 reflects the costs to the Commission of providing those services during fiscal years 1986, 1987 and 1988. Accordingly, the fee for applications for contract market designation will remain at $16,000, the fee for leverage commodity registration will remain at $4,500, and a new schedule of fees is being issued for exchange rule enforcement and financial reviews and audits of leverage transaction merchants.

EFFECTIVE DATE: August 22, 1989.

FOR FURTHER INFORMATION CONTACT: Gerry Smith, Office of the Executive Director, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581, telephone number 202–254–6090.

SUPPLEMENTARY INFORMATION: The Commission periodically reviews the actual costs of providing services for which fees are charged and adjusts its fees accordingly. In connection with its most recent review, the Commission has determined that fees for exchange rule enforcement and financial reviews and audits of leverage transaction merchants should be adjusted.

I. Computation of Fees

In accordance with the Futures Trading Act of 1982 (7 U.S.C. 16a) the Commission has established fees for certain activities and functions performed by the Commission.[1] In calculating the actual cost of conducting exchange rule enforcement and financial reviews, processing applications for contract market designation, performing audits of leverage transaction merchants and registering leverage commodities, the Commission takes into account personnel costs, benefits and administrative costs.

The Commission first determines personnel costs by extracting data from the agency's Budget Account Code (BAC) system. Employees of the Commission record the time spent on each project under the BAC system. The Commission then adds an overhead factor for benefits, including retirement, insurance and leave, based on a government-wide standard established by the Office of Management and Budget in Circular A–76. An overhead factor is also added for general and administrative costs, such as space, equipment and utilities. These general and administrative costs are derived by computing the percentage of Commission appropriations spent on these non-personnel items. The overhead calculations fluctuate slightly due to changes in government-wide benefits and in the percentage of Commission appropriations applied to non-personnel costs from year to year. The actual overhead factor for the preceding fiscal years is as follows: FY 1986—104%; FY 1987—101%; FY 1988—100%.

Once the total personnel costs and overhead for each project have been determined, the costs for FY 1986, FY 1987 and FY 1988 are averaged. This results in a calculation of the average annual cost for each project over the three-year period, which is the basis for the fee.

II. Exchange Rule Enforcement and Financial Reviews

On December 4, 1987, the Commission published a final rule which provides that the annual fee for rule enforcement and financial reviews for each exchange should be calculated by computing the average annual cost of reviewing that exchange over the preceding three fiscal years, then multiplying that amount by 65% and rounding to the nearest multiple of $100. (See 52 FR 46070). As a result of applying this formula, the Commission has established the following exchange rule enforcement and financial review fees for FY 1989 which are due 90 days after publication of this notice.

[1] For a broader discussion of the history of Commission fees, see 52 FR 46070 (Dec. 4, 1987).

Exchange	Actual average costs FY 1986–FY 1988	FY 1989 fee
Chicago Board of Trade	$252,315	$164,000
Chicago Mercantile Exchange	251,153	163,200
Commodity Exchange, Inc.	117,790	76,600
Coffee, Sugar & Cocoa Exchange	65,200	42,400
New York Mercantile Exchange	103,690	67,400
New York Cotton Exchange	87,144	56,600
Kansas City Board of Trade	64,226	41,700
New York Futures Exchange	66,777	43,400
Minneapolis Grain Exchange	40,335	26,200
Philadelphia Board of Trade	4,983	3,200
Amex Commodities Corp.	1,691	1,100
Total	1,055,304	685,800

As in the calculation of the FY 1987 and FY 1988 fees, the FY 1989 fee for the Chicago Board of Trade includes the fees for the MidAmerica Commodity Exchange and the Chicago Rice and Cotton Exchange.

III. Applications for Contract Market Designation

A review of actual costs of processing applications for contract market designation for FY 1986, FY 1987 and FY 1988 revealed that the average costs for review of an application for contract market designation over the three year period was $16,213. Therefore, the fee for applications for contract market designation will remain $16,000, in accordance with the formula in the Commission's regulations (17 CFR Part 5, Appendix B).

IV. Audits of Leverage Transaction Merchants

On June 14, 1988, the Commission published a final rule which provides that the annual fee for audits of a leverage transaction merchant should be calculated by computing the average annual costs of reviewing that registered leverage transaction merchant over the preceding three fiscal years, then multiplying that amount by 65% and rounding to the nearest multiple of $100. (See 53 FR 22138). As a result of applying this formula, the Commission has established the following fees for audits of leverage transaction merchants for FY 1989 which are due 90 days after publication of this notice.

Leverage transaction merchant	Actual average costs FY 1986–FY 1988	FY 1989 fee
First Asset Corp.	$14,116	$9,200
Monex International Ltd.	44,299	28,800

Leverage transaction merchant	Actual average costs FY 1986–FY 1988	FY 1989 fee
International Precious Metals Corp.	37,238	24,200
Total	95,653	62,200

V. Leverage Commodity Registration

No new applications for leverage commodity registration were received by the Commission in FY 1988. Accordingly, the Commission will maintain the present fee of $4,500 for leverage commodity registration.

VI. Regulatory Flexibility

The fees implemented in this release affect contract markets (also referred to as "exchanges") and leverage transaction merchants. The Commission has previously determined that contract markets are not "small entities" for purposes of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, 47 FR 18618 (April 30, 1982). Leverage transaction merchants also are not considered "small entities" by the Commission because of the minimum financial requirements for registration. Therefore, the requirements of the Regulatory Flexibility Act do not apply to contract markets or leverage transaction merchants. Accordingly, the Chairman, on behalf of the Commission, certifies that the fees implemented herein do not have a significant economic impact on a substantial number of small entities.

Issued in Washington, DC on May 18, 1989, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 89–12410 Filed 5–23–89; 8:45 am]

BILLING CODE 6351–01–M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 211, 231, 241 and 271

[Release Nos. 33–6835; 34–26831; IC–16961; FR–36]

Management's Discussion and Analysis of Financial Condition and Results of Operations; Certain Investment Company Disclosures

AGENCY: Securities and Exchange Commission.

ACTION: Interpretive release.

SUMMARY: The Commission today announced the publication of an interpretive release regarding the disclosure required by Item 303 of Regulation S–K, Management's Discussion and Analysis of Financial Condition and Results of Operations ("MD&A"). In addition to reporting the results of the first two phases of a continuing review project (the "MD&A Project" or the "Project") undertaken by the staff of the Division of Corporation Finance (the "Division"), the release sets forth the Commission's views regarding several disclosure matters that should be considered by registrants in preparing MD&As. Additionally, in discussing appropriate MD&A disclosure as to participation in high yield, highly leveraged or non-investment grade loans and investments, the release also sets forth the position of the Commission concerning disclosures by investment companies which invest in, or are permitted to invest in, securities issued in highly leveraged transactions, even though investment companies are not subject to MD&A disclosure requirements.

DATE: May 18, 1989.

FOR FURTHER INFORMATION CONTACT: Questions about specific filings should be directed to the staff members responsible for reviewing the documents the registrant files with the Commission. General questions about the release or the MD&A Project should be referred to Howard F. Morin, Assistant Director, at (202) 272–3203, Paul N. Edwards, Special Counsel, at (202) 272–3205, or Emanuel D. Strauss, Attorney-Adviser, Office of Chief Counsel, at (202) 272–2573, each of the Division of Corporation Finance, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Questions about Investment Company Act issues should be referred to Carolyn Lewis, Assistant Director, Division of Investment Management, at (202) 272–2102.

SUPPLEMENTARY INFORMATION: In response to comments received on a concept release issued in 1987 (the "Concept Release"),[1] the Commission undertook the MD&A Project, a special review of the adequacy of MD&A disclosures provided by registrants. Based on the results of the first two phases of the staff's continuing Project, the Commission has concluded that further guidance should be given to registrants to improve overall compliance with the MD&A disclosure requirements.

I. Background

The current framework of MD&A was adopted in 1980,[2] although the origins of the MD&A requirements date to 1968.[3] MD&A requires a discussion of liquidity, capital resources, results of operations, and other information necessary to an understanding of a registrant's financial condition, changes in financial condition and results of operations.[4] While the MD&A requirements adopted in 1980 are far more comprehensive than earlier formulations, they are intentionally general, reflecting the Commission's view that a flexible approach elicits more meaningful disclosure and avoids boilerplate discussions, which a more specific approach could foster. One year after adoption of the current framework, the Commission published a release that included examples of MD&A disclosure to assist registrants.[5]

In 1986, Coopers & Lybrand submitted to the Commission's Office of the Chief Accountant a proposal recommending increased MD&A disclosure of business risks and the performance by the independent auditor of specified review procedures with respect to these disclosures. Shortly thereafter, the managing partners of seven accounting firms [6] issued a white paper entitled "The Future Relevance, Reliability, and Credibility of Financial Information: Recommendations to the AICPA Board of Directors," which also called for increased risk disclosure, but contemplated that such disclosure would be separate from MD&A and would be subjected to audit coverage.

The Commission thereafter issued the Concept Release requesting comments concerning the adequacy of the MD&A requirements and the costs and benefits of the revisions suggested by the proposals.[7] Virtually all the 196

[1] Securities Act Release No. 6711 (April 24, 1987) [52 FR 13715].

[2] Securities Act Release No. 6231 (September 2, 1980) [45 FR 63630].

[3] Securities Act Release No. 4936 (December 9, 1968) [33 FR 18617]; Securities Act Release No. 5520 (August 14, 1974) [39 FR 31894]. See also Securities Act Release No. 6711, *supra* n. 1, for a more detailed summary of the origins of the MD&A requirements.

[4] 17 CFR 229.303(a).

[5] Securities Act Release No. 6349 (September 28, 1981), 23 SEC Docket 962 [not published in the **Federal Register**]; *see also* Securities Act Release No. 6791 (August 1, 1988) [53 FR 29226].

[6] Arthur Andersen & Co.; Arthur Young; Coopers & Lybrand; Deloitte Haskins & Sells; Ernst & Whinney; Peat, Marwick, Mitchell & Co.; and Touche Ross & Co.

[7] Securities Act Release No. 6711, supra n. 1. In the Concept Release, the Commission indicated that much of the business risk disclosure recommended in the Coopers & Lybrand proposal is required by current rules, although not necessarily by MD&A.

commentators opposed the proposals initiated by members of the accounting profession, and most took the position that there was no need to change the MD&A requirements.[8] A number of commentators, however, suggested that stricter enforcement and review, or additional guidance through an interpretive release, would improve compliance. Accordingly, the Division decided to undertake a special review of MD&A disclosures to assess the adequacy of disclosure practices and to identify any common areas of deficiencies, with a view to providing further guidance on compliance with the requirements of Item 303 of Regulation S–K and determining the need for revisions of the Item. Based on the results of the MD&A review, the Commission concurs with the view expressed by most commentators that no amendments to the MD&A requirements set forth in Regulation S–K are needed at this time.

II. Summary of the Project

The staff commenced work on the MD&A Project in early 1988. A total of 218 companies in 12 industries were selected for review in the first phase of this continuing project.[9] Specific industries were chosen so that the staff, through increased familiarity and additional research, could enhance its expertise regarding the industries. Each registrant was selected for an "issuer review" that focused on the registrant rather than any one report filed under the Securities Exchange Act of 1934 ("Exchange Act").[10] Particular emphasis was placed on disclosures made in response to the MD&A requirements.

Of the 218 registrants reviewed, 206 received letters of comment, many of which related to more than one report. Three different categories of comments were issued: (a) Requests for amendment; (b) requests for supplemental information; and (c) requests for compliance in future filings ("futures" comments).[11] Amendments were filed by 72 registrants in response to staff comments.

Work on a second phase of the MD&A Project commenced in October 1988. A total of 141 companies in a second set of 12 industries [12] were selected for review, resulting in 139 comment letters being issued in December, 1988. To date, amendments by 53 registrants have been filed in response to staff comments.

The amendments received in the first two phases principally addressed MD&A, the business description required under Item 101 of Regulation S–K, and the financial statements. More than one-half of the amendments substantively expanded MD&A, most often addressing one or more disclosure issues as to which guidance is provided in this release.

The Division has referred six registrants reviewed during the MD&A Project to the Division of Enforcement due primarily to substantive accounting problems which, in several instances, also affected the adequacy of the registrants' MD&As. The accounting problems encountered include, among other things, possible inadequate maintenance of accounting records and systems of internal controls and possible improper accounting regarding material acquisitions.

The staff has already begun a third phase of the MD&A Project relating to 12 new industries,[13] using the Forms 10–K recently filed for the fiscal year ended November 30, 1988 or later.

III. Evaluation of Disclosure—Interpretive Guidance

A. Introduction

The MD&A requirements are intended to provide, in one section of a filing,[14] material historical and prospective textual disclosure enabling investors and other users to assess the financial condition and results of operations of the registrant, with particular emphasis on the registrant's prospects for the future. As the Concept Release states:

> The Commission has long recognized the need for a narrative explanation of the financial statements, because a numerical presentation and brief accompanying footnotes alone may be insufficient for an investor to judge the quality of earnings and the likelihood that past performance is indicative of future performance. MD&A is intended to give the investor an opportunity to look at the company through the eyes of management by providing both a short and long-term analysis of the business of the company. The Item asks management to discuss the dynamics of the business and to analyze the financials.[15]

As the Commission has stated, "[i]t is the responsibility of management to identify and address those key variables and other qualitative and quantitative factors which are peculiar to and necessary for an understanding and evaluation of the individual company." [16]

The Commission has determined that interpretive guidance is needed regarding the following matters: prospective information required in MD&A; long and short-term liquidity and capital resources analysis; material changes in financial statement line items; required interim period disclosure; MD&A analysis on a segment basis; participation in high yield financings, highly leveraged transactions or non-investment grade loans and investments; the effects of federal financial assistance upon the operations of financial institutions; and preliminary merger negotiations.

B. Prospective Information

Several specific provisions in Item 303 require disclosure of forward-looking information. MD&A requires discussions of "known trends or any known demands, commitments, events or uncertainties that will result in or that

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[8] The comments are available for inspection and copying in the Commission's Public Reference Room at 450 5th Street, NW., Washington, DC [File No. S7–14–87].

[9] The industries were: Miscellaneous Chemical Products; Retail-Grocery Stores; Airlines; Drugs; Real Estate Developers; Nursing Care Facilities/Hospitals; Radio and Television Broadcasting/Cable Television; Textile Mill Products/Knitting Mills; Computer Hardware; Building Contractors and Construction; Toys and Recreational Equipment; and Multi-segment Companies.

[10] The most recent Form 10–K and subsequent reports filed under the Exchange Act were given full reviews and the prior 10–K and intervening reports, as well as proxy and registration statements filed during the period, were examined for background information.

[11] Registrants received combinations of the above categories of comment. Many of the comment letters requested supplemental support for various presentations, and, in several instances, requests for amendments were revised to futures comments during the review process. Conversely, several amendments were requested after staff consideration of supplemental responses provided by registrants. Compliance with futures comments is verified by staff review of subsequent filings.

[12] The industries were: Banks; Savings and Loans; Meat Products; Dairy Products; Miscellaneous Plastic Products; Furniture; Radio and Television Communication Equipment and Apparatus; Research and Measurement Instruments; Industrial Machinery; Computer Software; Eating Places; and Motion Picture-Television Production.

[13] The industries are: Retail-Department Stores; Retail-Apparel Stores; Semiconductor and Related Devices; Crude Petroleum and Natural Gas; Railroads; Steel Works; Paper and Allied Products; Natural Gas Transmission; Lumber and Wood Products; Property-Casualty Insurance; Aircraft-Aircraft Engines; and Newspapers-Publishing and Printing.

[14] The MD&A should contain a discussion of all the material impacts upon the registrant's financial condition or results of operations, including those arising from disclosure provided elsewhere in the filing.

[15] Securities Act Release No. 6711, supra n. 1, at 13717.

[16] Securities Act Release No. 6349, supra n. 5, at 964.

are reasonably likely to result in the registrant's liquidity increasing or decreasing in any material way." [17] Further, descriptions of known material trends in the registrant's capital resources and expected changes in the mix and cost of such resources are required.[18] Disclosure of known trends or uncertainties that the registrant reasonably expects will have a material impact on net sales, revenues, or income from continuing operations is also required.[19] Finally, the Instructions to Item 303 state that MD&A "shall focus specifically on material events and uncertainties known to management that would cause reported financial information not to be necessarily indicative of future operating results or of future financial condition." [20]

The Project results confirm that the distinction between prospective information that is required to be discussed and voluntary forward-looking disclosure is an area requiring additional attention. This critical distinction is explained in the Concept Release:

> Both required disclosure regarding the future impact of presently known trends, events or uncertainties and optional forward-looking information may involve some prediction or projection. The distinction between the two rests with the nature of the prediction required. Required disclosure is based on *currently known trends, events, and uncertainties that are reasonably expected to have material effects*, such as: A reduction in the registrant's product prices; erosion in the registrant's market share; changes in insurance coverage; or the likely non-renewal of a material contract. In contrast, optional forward-looking disclosure involves *anticipating a future trend or event or anticipating a less predictable impact of a known event, trend or uncertainty.*[21]

The rules establishing a safe harbor for disclosure of "forward-looking statements" define such statements to include statements of "future economic performance contained in" MD&A. These safe harbors apply to required statements concerning the future effect of known trends, demands, commitments, events or uncertainties, as well as to optional forward-looking statements.[22]

A disclosure duty exists where a trend, demand, commitment, event or uncertainty is both presently known to management and reasonably likely to have material effects on the registrant's financial condition or results of operation.[23] Registrants preparing their MD&A disclosure should determine and carefully review what trends, demands, commitments, events or uncertainties are known to management. In the following example,[24] the registrant discloses the reasonably likely material effects on operating results of a known trend in the form of an expected further decline in unit sales of mature products.

> While market conditions in general remained relatively unchanged in 1987, unit volumes declined 10% as the Company's older products, representing 40% of overall revenues, continue to approach the end of their life cycle. Unit volumes of the older products are expected to continue to decrease at an accelerated pace in the future and materially adversely affect revenues and operating profits.

In preparing the MD&A disclosure, registrants should focus on each of the specific categories of known data. For example, Item 303(a)(2)(i) requires a description of the registrant's material "commitments" for capital expenditures as of the end of the latest fiscal period. However, even where no legal commitments, contractual or otherwise, have been made, disclosure is required if material planned capital expenditures result from a known demand, as where the expenditures are necessary to a continuation of the registrant's current growth trend. Similarly, if the same registrant determines not to incur such expenditures, a known uncertainty would exist regarding continuation of the current growth trend. If the adverse effect on the registrant from discontinuation of the growth trend is reasonably likely to be material, disclosure is required. Disclosure of planned material expenditures is also required, for example, when such expenditures are necessary to support a new, publicly announced product or line of business.[25]

In the following example, the registrant discusses planned capital expenditures, and related financing sources, necessary to maintain sales growth.

> The Company plans to open 20 to 25 new stores in fiscal 1988. As a result, the Company expects the trend of higher sales in fiscal 1988 to continue at approximately the same rate as in recent years. Management estimates that approximately $50 to $60 million will be required to finance the Company's cost of opening such stores. In addition, the Company's expansion program will require increases in inventory of about $1 million per store, which are anticipated to be financed principally by trade credit. Funds required to finance the Company's store expansion program are expected to come primarily from new credit facilities with the remainder provided by funds generated from operations and increased lease financings. The Company recently entered into a new borrowing agreement with its primary bank, which provides for additional borrowings of up to $50 million for future expansion. The Company intends to seek additional credit facilities during fiscal 1988.

Often a matter which had a material impact on past operating results also involves prospective effects which should be discussed.[26] In identifying the reason for a material change in income from continuing operations and quantifying its effects, the registrant in the following example also describes the reasonably likely effect of a known event: completion of an important contract.

> The Company produced operating income of $22 million during 1987 as compared to $15

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[17] 17 CFR 229.303(a)(1).

[18] 17 CFR 229.303(a)(2)(ii).

[19] 17 CFR 229.303(a)(3)(ii).

[20] 17 CFR 229.303(a), Instruction 3. The data known to management which may trigger required forward-looking disclosure is hereinafter referred to as "known trends, demands, commitments, events or uncertainties."

[21] Securities Act Release No. 6711, supra n. 1, at 13717 (emphasis added).

[22] Rule 175(c) under the Securities Act of 1933 ("Securities Act"), 17 CFR 230.175(c), and Rule 3b-6(c) under the Exchange Act, 17 CFR 240.3b-6.

[23] *Cf. In re American Savings and Loan Association of Florida*, Exchange Act Release No. 25788 (June 8, 1988), 41 SEC Docket 78. In this administrative proceeding jointly conducted by the Commission and the Federal Home Loan Bank Board (the "FHLBB"), it was determined that the MD&As in a Form 10-K and two Forms 10-Q were inadequate under the FHLBB's disclosure requirements, which are substantially similar to the Commission's, for failing to disclose, among other matters, required forward-looking information regarding the potential exposure and risks associated with repurchase transactions between American Savings and Loan and E.S.M. Government Securities. *Cf. also In re Burroughs Corporation*, Exchange Act Release No. 21872 (March 20, 1985), 32 SEC Docket (CCH) 935 (failure to discuss the impact of inventory obsolescence); *In re Marsh & McClennan Companies, Inc.*, Exchange Act Release No. 24023 (January 22, 1987), 37 SEC Docket (CCH) 634 (failure adequately to disclose, in a Form 10-K, the effects of a principal subsidiary's investing and financing activities).

[24] The examples used herein, while modeled in large part upon Project registrants' original or revised MD&As, have been changed so that the registrants are not identified and particular points are emphasized. Of course, each example has been removed from its context as part of a larger document. The examples are provided for purposes of illustration only.

[25] *See* Item 101(c)(1)(ii) of Regulation S-K.

[26] *See, e.g., In re Charter Company*, Exchange Act Release No. 21647 (January 10, 1985), 32 SEC Docket (CCH) 289, in which the MD&A in the registrant's Form 10-K failed to disclose the favorable effect on earnings of the accounting method used, and the anticipated substantial reduction in future profits that would result from use of such method. *Cf. SEC v. Baldwin-United Corporation*, Litigation Release No. 10878 (September 26, 1985) and *In re Robert S. Harrison*, Exchange Act Release No. 22466 (September 26, 1985), 34 SEC Docket (CCH) 141 (both involving a different means of accounting for the same insurance product as in *Charter*, and Baldwin-United Corporation's failure to disclose, in the MD&A of its Form 10-K, its failure to meet the earnings assumptions of the accounting model used, and internal estimates of insufficient taxable income to use tax benefits inherent in the earnings assumptions).

million during 1986, a 47 percent increase. Substantially all of the 47 percent increase can be attributed to the Company's completion of a major contract at a cost less than anticipated. It is expected that operating income during the current year will be significantly less, as only a portion of the profit generated by the completed contract is expected to be replaced by new contracts as a result of a slowdown within the Company's principal industry.

Events that have already occurred or are anticipated often give rise to known uncertainties. For example, a registrant may know that a material government contract is about to expire. The registrant may be uncertain as to whether the contract will be renewed, but nevertheless would be able to assess facts relating to whether it will be renewed. More particularly, the registrant may know that a competitor has found a way to provide the same service or product at a price less than that charged by the registrant, or may have been advised by the government that the contract may not be renewed. The registrant also would have factual information relevant to the financial impact of non-renewal upon the registrant. In situations such as these, a registrant would have identified a known uncertainty reasonably likely to have material future effects on its financial condition or results of operations, and disclosure would be required.

In the following example, the registrant discloses the reasonably likely material effect of a known uncertainty regarding implementation of recently adopted legislation.

The Company had no firm cash commitments as of December 31, 1987 for capital expenditures. However, in 1987, legislation was enacted which may require that certain vehicles used in the Company's business be equipped with specified safety equipment by the end of 1991. Pursuant to this legislation, regulations have been proposed which, if promulgated, would require the expenditure by the Company of approximately $30 million over a three-year period.

Where a trend, demand, commitment, event or uncertainty is known, management must make two assessments:

(1) Is the known trend, demand, commitment, event or uncertainty likely to come to fruition? If management determines that it is not reasonably likely to occur, no disclosure is required.

(2) If management cannot make that determination, it must evaluate objectively the consequences of the known trend, demand, commitment, event or uncertainty, on the assumption that it will come to fruition. Disclosure is then required unless management determines that a material effect on the registrant's financial condition or results of operations is not reasonably likely to occur.[27]

Each final determination resulting from the assessments made by management must be objectively reasonable, viewed as of the time the determination is made.[28]

Application of these principles may be illustrated using a common disclosure issue which was considered in the review of a number of Project registrants: designation as a potentially responsible party ("PRP") by the Environmental Protection Agency (the "EPA") under The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("Superfund").[29]

Facts: A registrant has been correctly designated a PRP by the EPA with respect to cleanup of hazardous waste at three sites. No statutory defenses are available. The registrant is in the process of preliminary investigations of the sites to determine the nature of its potential liability and the amount of remedial costs necessary to clean up the sites. Other PRPs also have been designated, but the ability to obtain contribution is unclear, as is the extent of insurance coverage, if any. Management is unable to determine that a material effect on future financial condition or results of operations is not reasonably likely to occur.

Based upon the facts of this hypothetical base, MD&A disclosure of the effects of the PRP status, quantified to the extent reasonably practicable, would be required.[30] For MD&A purposes, aggregate potential cleanup costs must be considered in light of the joint and several liability to which a PRP is subject. Facts regarding whether insurance coverage may be contested, and whether and to what extent potential sources of contribution or indemnification constitute reliable sources of recovery may be factored into the determination of whether a material future effect is not reasonably likely to occur.

C. Liquidity—Capital Resources

Instruction 2 to Item 303(a) calls for an evaluation of "amounts and certainty of cash flows." "Except where it is otherwise clear from the discussion," Item 303(a)(1) and instructions 2 and 5 to Item 303(a) together also mandate indication of which balance sheet conditions or income or cash flow items should be considered in assessing liquidity, and a discussion of prospective information regarding the registrant's short and long-term sources of, and needs for, capital. Disclosure of material commitments for capital expenditures as of the end of the latest fiscal period is required by Item 303(a)(2). Trend analysis and a description of "any expected material changes in the mix and relative cost" of the registrant's capital resources must also be provided.[31]

Generally, short-term liquidity and short-term capital resources cover cash needs up to 12 months into the future. These cash needs and the sources of funds to meet such needs relate to the day-to-day operating expenses of the registrant and material commitments coming due during that 12-month period.

The discussion of long-term liquidity and long-term capital resources must

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[27] MD&A mandates disclosure of specified forward-looking information, and specifies its own standard for disclosure—*i.e.*, reasonably likely to have a material effect. This specific standard governs the circumstances in which Item 303 requires disclosure. The probability/magnitude test for materiality approved by the Supreme Court in *Basic, Inc., v. Levinson*, 108 S.Ct. 978 (1988), is inapposite to Item 303 disclosure.

[28] Where a material change in a registrant's financial condition (such as a material increase or decrease in cash flows) or results of operations appears in a reporting period and the likelihood of such change was not discussed in prior reports, the Commission staff as part of its review of the current filing will inquire as to the circumstances existing at the time of the earlier filings to determine whether the registrant failed to discuss a known trend, demand, commitment, event or uncertainty as required by Item 303.

[29] 42 U.S.C. 9601, et seq. (1983 & Supp. 1988).

[30] Designation as a PRP does not in and of itself trigger disclosure under Item 103 or Regulation S-K and Instruction 5 thereto, 17 CFR 229.103, regarding "Legal Proceedings," because PRP status alone does not provide knowledge that a governmental agency is contemplating a proceeding. Nonetheless, a registrant's particular circumstances, when coupled with PRP status, may provide that knowledge. While there are many ways a PRP can become subject to potential monetary sanctions, including triggering the stipulated penalty clause in a remedial agreement, the costs anticipated to be incurred under Superfund, pursuant to a remedial agreement entered into in the normal course of negotiation with the EPA, generally are not "sanctions" within either Instruction 5 (B) or (C) to Item 103. Such remedial costs normally would constitute charges to income, or in some cases capital expenditures. The availability of insurance, indemnification or constribution may be relevant under Instruction 5 (A) or (B) in determining whether the criteria for disclosure have been met. *Thomas A. Cole, Esq.*, (January 17, 1989).

[31] Most registrants combine discussions of capital resources and liquidity as permitted by Item 303(a).

When viewed to encompass capital resources, the Commission's concept of liquidity is comparable to the Financial Accounting Standards Board's ("FASB") concept of financial flexibility or the ability of an enterprise to adjust its future cash flows to meet needs and opportunities, both expected and unexpected. Financial flexibility is broader than the FASB's concept of liquidity (defined as short-term nearness of assets and liabilities to cash) because it includes potential internal and external sources of cash not directly associated with items shown on the balance sheet.

Securities Act Release No. 6349, *supra* n. 5, at 972; see also Statement of Financial Accounting Concepts No. 5, *Recognition and Measurement in Financial Statements of Business Enterprises*, ¶ 24a

address material capital expenditures, significant balloon payments or other payments due on long-term obligations, and other demands or commitments, including any off-balance sheet items, to be incurred beyond the next 12 months, as well as the proposed sources of funding required to satisfy such obligations.[32]

Where a material deficiency in short or long-term liquidity has been identified, the registrant should disclose the deficiency, as well as disclosing either its proposed remedy, that it has not decided on a remedy, or that it is currently unable to address the deficiency.[33] In the following example, a financially troubled registrant discusses the material effects of its cash flow problems on its business, and its efforts to remedy those problems.

The Company has violated certain requirements of its debt agreements relating to failure to maintain certain minimum ratios and levels of working capital and stockholders' equity. The Company's lenders have not declared the Company in default and have allowed the Company to remain in violation of these agreements. Were a default to be declared, the Company would not be able to continue to operate. A capital infusion of $4,000,000 is necessary to cure these defaults. The Company has engaged an investment banker and is considering various alternatives, including the sale of certain assets or the sale of common shares, to raise these funds.

The Company frequently has not been able to make timely payments to its trade and other creditors. As of year-end and as of February 29, 1988, the Company had past due payables in the amount of $525,000 and $705,000, respectively. Deferred payment terms have been negotiated with most of these vendors. However, certain vendors have suspended parts deliveries to the Company. As a result, the Company was not always able to make all shipments on time, although no orders have been cancelled to date. Were significant volumes of orders to be cancelled, the Company's ability to continue to operate would be jeopardized. The Company is currently seeking sources of working capital financing sufficient to fund delinquent balances and meet ongoing trade obligations.

Short and long-term liquidity and capital resources analysis should become more comparable from registrant to registrant as a result of the Financial Accounting Standards Board's recent issuance of SFAS 95,[34] which requires the statement of changes in financial position to be replaced by a statement of cash flows as part of a full set of financial statements. This new statement reports net cash provided or used by each of operating, investing and financing activities, as defined, and the net effect of those flows on cash and cash equivalents.

Registrants are expected to use the statement of cash flows, and other appropriate indicators, in analyzing their liquidity, and to present a balanced discussion dealing with cash flows from investing and financing activities as well as from operations. This discussion should address those matters that have materially affected the most recent period presented but are not expected to have short or long-term implications, and those matters that have not materially affected the most recent period presented but are expected materially to affect future periods.[35] Examples of such matters include: (a) Discretionary operating expenses such as expenses relating to advertising, research and development or maintenance of equipment; (b) debt refinancings or redemptions; or (c) levels of financing provided by suppliers or to customers. Liquidity analysis premised upon the new statement of cash flows and prepared in accordance with this guidance should enhance the utility to investors of MD&A disclosure by improving comparability from registrant to registrant and providing information more directly relevant to liquidity than that previously premised upon the statement of changes in financial position.

D. Material Changes

Some Project registrants did not provide adequate disclosure of the reasons for material year-to-year changes in line items, or discussion and quantification of the contribution of two or more factors to such material changes. Instruction 4 to Item 303(a) requires a discussion of the causes of material changes from year-to-year in financial statement line items "to the extent necessary to an understanding of the registrant's businesses as a whole." An analysis of changes in line items is required where material and where the changes diverge from changes in related line items of the financial statements, where identification and quantification of the extent of contribution of each of two or more factors is necessary to an understanding of a material change, or where there are material increases or decreases in net sales or revenue.[36]

Discussion of the impact of discontinued operations and of extraordinary gains and losses is also required where these items have had or are reasonably likely to have a material effect on reported or future financial condition or results of operations. Other non-recurring items should be discussed as "unusual or infrequent" events or transactions "that materially affected the amount of reported income from continuing operations." [37]

As Instruction 4 to Item 303(a) states, repetition and line-by-line analysis is not required or generally appropriate when the causes for a change in one line item also relates to other line items. The same Instruction also states that the discussion need not recite amounts of changes readily computable from the financial statement and "shall not merely repeat numerical data contained in" such statements. However, quantification should otherwise be as precise, including use of dollar amounts or percentages, as reasonably practicable.

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[32] *See, e.g., In re Hiex Development USA, Inc.*, Exchange Act Release No. 26722 (April 13, 1989), 43 SEC Docket (CCH) 1041 (involving in part the registrant's failure to discuss in the MD&A of a Form 10, a material contractual commitment to purchase equipment from an affiliate over a ten year period).

[33] *See, e.g., SEC v. The Charter Company*, Exchange Act Release No. 23350 (June 20, 1986), 35 SEC Docket (CCH) 1232, and *In re Ray M. Van Landingham and Wallace A. Patzke, Jr.*, Exchange Act Release No. 23349 (June 20, 1986), 35 SEC Docket (CCH) 1227, both involving Charter Company's liquidity disclosure concerning losses of trade credit, demands by its banks for a series of materially restrictive loan covenants and discussions with Charter's banks regarding asset sales, dividend restrictions and operational changes.

In a filing which includes an independent accountant's report that is modified as a result of uncertainty about a registrant's continued existence, Section 607.02 of the Codification of Financial Reporting Policies requires "appropriate and prominent disclosure of the registrant's financial difficulties and viable plans to overcome such difficulties."

[34] Statement of Financial Accounting Standards No. 95, *Statement of Cash Flows*. While the new statement is required for annual financial statements for fiscal years ending after July 15, 1988, financial statements for prior years are not required to be restated, and interim financial statements in the initial year of application are not required to use the new statement. Such interim period statements must be restated when presented as comparative prior periods with future interim financial statements.

[35] See 17 CFR 229.303(a), Instruction 3; supra n. 17–30 and accompanying text.

[36] See SEC v. The E.F. Hutton Group, Inc., Exchange Act Release No. 22579 (October 29, 1985), 34 SEC Docket (CCH) 538, involving Hutton's failure to disclose that its bank overdrafting practices were the cause for material changes in interest income from year-to-year, and the risks and uncertainties associated with such practices.

Although Item 303(a)(3)(iii) speaks only to material increases, not decreases, in net sales or revenues, the Commission interprets Item 303(a)(3)(i) and Instruction 4 as seeking similar disclosure for material decreases in net sales or revenues.

[37] 17 CFR 229.303(a)(3)(i); see SEC v. Allegheny International, Inc., Litigation Release No. 11533 (September 9, 1987), 39 SEC Docket (CCH) 196 (failure to disclose a sale of realty that constituted an unusual and infrequent event which had a material impact on pre-tax income); see generally Accounting Principles Board Opinion No. 30.

In the following example, the registrant analyzes the reasons for a material change in revenues and in so doing describes the effects of offsetting developments.

Revenue from sales of single-family homes for 1987 increased 6% from 1986. The increase resulted from a 14% increase in the average sales price per home, partially offset by a 6% decrease in the number of homes delivered. Revenues from sales of single-family homes for 1986 increased 2% from 1985. The average sales price per home in 1986 increased 6%, which was offset by a 4% decrease in the number of homes delivered.

The increase in the average sales prices in 1987 and 1986 is primarily the result of the Company's increased emphasis on higher priced single-family homes. The decrease in homes delivered in 1987 and 1986 was attributable to a decline in sales in Texas. The significant decline in oil prices and its resulting effect on energy-related business has further impacted the already depressed Texas area housing market and is expected to do so for the foreseeable future. The Company curtailed housing operations during 1987 in certain areas in Texas in response to this change in the housing market. Although the number of homes sold is expected to continue to decline during the current year as a result of this action, this decline is expected to be offset by increases in average sales prices.

E. Interim Period Reporting

The second sentence of Item 303(b) states that MD&A relating to interim period financial statements "shall include a discussion of material changes in those items specifically listed in paragraph (a) of this Item, except that the impact of inflation and changing prices on operations for interim periods need not be addressed." [38] As this sentence indicates, material changes to each and every specific disclosure requirement contained in paragraph (a), with the noted exception, should be discussed. This would include, for example, internal and external sources of liquidity, expected material changes in the mix and relative cost of such resources, and unusual or infrequent events or transactions that materially affected the amount of reported income from continuing operations.[39]

In light of the obligation to update MD&A disclosure periodically, the impact of known trends, demands, commitments, events or uncertainties arising during the interim period which are reasonably likely to have material effects on financial condition or results of operations constitutes required disclosure in MD&A.[40] For example, a calendar year end registrant describes, in its June 30 Form 10–Q, a recent event which is reasonably likely to have a material future effect on its financial condition or results of operations.

The Company was advised in late June that Company A, its principal customer, which accounted for 28% and 30% of revenues for the last six months and prior fiscal year, respectively, intends to terminate all purchases effective during the third quarter, due to in-house capabilities recently developed by this customer. The Company is materially dependent on its business with this customer and anticipates upon such termination a material adverse effect on revenues and income. Efforts are being made to replace revenues attributable to such customer by developing new customers. The Company expects it will take at least 6 months to generate such replacement revenues.

F. Other Observations

1. Segment Analysis

In many cases, MD&As of Project registrants with more than one segment were prepared on a segment as well as a consolidated basis. In formulating a judgment as to whether a discussion of segment information is necessary to an understanding of the business, a multi-segment registrant preparing a full fiscal year MD&A should analyze revenues, profitability, and the cash needs of its significant industry segments. To the extent any segment contributes in a materially disproportionate way to those items, or where discussion on a consolidated basis would present an incomplete and misleading picture of the enterprise, segment discussion should be included. This may occur, for example, when there are legal or other restrictions upon the free flow of funds from one segment, subsidiary or division of the registrant to others; when known trends, demands, commitments, events or uncertainties within a segment are reasonably likely to have a material effect on the business as a whole; when the ability to dispose of identified assets of a segment may be relevant to the financial flexibility of the registrant; and in other circumstances in which the registrant concludes that segment analysis is appropriate to an understanding of its business.[41]

The following example illustrates segment disclosure for a manufacturer with two segments. The two segments contributed to operating income amounts that were disproportionate to their respective revenues. The registrant discusses sales and operating income trends, factors explaining such trends, and where applicable, known events that will impact future results of operations of the segment.

NET SALES BY INDUSTRY SEGMENT

Industry segments	1987		1986		1985	
	($ million)	Percent of total	($ million)	Percent of total	($ million)	Percent of total
Segment I	585	55	479	53	420	48
Segment II	472	45	433	47	457	52
Total sales	1057	100	912	100	877	100

[38] 17 CFR 229.303(b).

[39] See, e.g., *In re Amrerican Express Company*, Exchange Act Release No. 23332 (June 17, 1986), 35 SEC Docket (CCH) 1163 (failure to discuss the impact, in several Forms 10–Q and a Form 10–K, of two reinsurance transactions by an insurance subsidiary which were treated by the registrant as materially increasing net income, but which lacked economic substance); *In re Michael R. Maury*, Exchange Act Release No. 23067 (March 26, 1986), 35 SEC Docket (CCH) 435 (the MD&A in a Form 10–Q was found deficient for its failure to disclose the effects on net income of the reversal of previously established reserves).

[40] See *SEC* v. *Ronson Corporation*, Litigation Release No. 10093 (August 15, 1983), 28 SEC Docket (CCH) 841, where the MD&As in a Form 10–K and two Forms 10–Q were found to be inadequate in their failure to state that Ronson's largest customer had shut down its operations which required purchases from Ronson, that it was unlikely that this customer would resume purchases in the short term and that, due to technological changes being made at this customer's facilities, once purchases were resumed, an indefinite reduction in necessary purchases of 30–50% was likely.

[41] Registrants affected by Statement of Financial Accounting Standards No. 94, *Consolidation of All Majority-Owned Subsidiaries*, which requires, among other things, consolidation of non-homogeneous subsidiaries, should recognize that segment analysis generally will be appropriate, inasmuch as the prior justification for not consolidating these operations was that they had different characteristics from those of the parent and its other affiliates. See id. at ¶ 55 (recognizing that although the aggregation, of assets, liabilities and operations from non-homogeneous activities may obscure important information about these activities, the disclosures required by Statement of Financial Accounting Standards No. 14, *Financial Reporting for Segments of a Business Enterprise*, can provide meaningful information about the different operations within a business enterprise).

1987 vs. 1986

Segment I sales increased 22% in 1987 over the 1986 period. The increase included the effect of the acquisition of Corporation T. Excluding this acquisition, sales would have increased by 16% over 1986. Product Line A sales increased by 18% due to a 24% increase in selling prices, partially offset by lower shipments. Product Line B sales increased by 35% due to a 17% increase in selling prices and a 15% increase in shipment volume.

Segment II sales increased 9% due to a 12% increase in selling prices partly offset by a 3% reduction in shipment volumes.

1986 v. 1985

Segment I sales increased 14% in 1986. Product Line A sales increased 22%, in spite of a slight reduction in shipments, because of a 23% increase in selling prices.

Product Line B sales declined 5% due mainly to a 7% decrease in selling prices, partially offset by higher shipments.

The 5% decline in Segment II sales reflected a 3% reduction in selling prices and a 2% decline in shipments.

The substantial increases in selling prices of Product Line A during 1987 and 1986 occurred primarily because of heightened worldwide demand which exceeded the industry's production capacity. The Company expects these conditions to continue for the next several years. The Company anticipates that shipment volumes of Product Line A will increase as its new production facility reaches commercial production levels in 1988.

Segment II shipment volumes have declined during the past two years primarily because of the discontinuation of certain products which were marginally profitable and did not have significant growth potential.

OPERATING PROFIT BY INDUSTRY SEGMENT

Industry segments	1987		1986		1985	
	($ million)	Percent of total	($ million)	Percent of total	($ million)	Percent of total
Segment I	126	75	108	68	67	55
Segment II	42	25	51	32	54	45
Operating profit	168	100	159	100	121	100

1987 vs. 1986

Segment I operating profit was $18 million (17%) higher in 1987 than in 1986. This increase includes the effects of higher sales prices and slightly improved margins on Product Line A, higher shipments of Product Line B and the acquisition of Corporation T. Excluding this acquisition operating profit would have been 11% higher than in 1986. Partially offsetting these increases are costs and expenses of $11 million related to new plant start-up, slightly reduced margins on Product Line B sales and a $9 million increase in research and development expenses.

Segment II operating profit declined $9 million (18%) due mainly to substantially higher costs in 1987 resulting from a 23% increase in average raw material costs which could not be fully recovered through sales price increases. The Company expects that Segment II margins will continue to decline, although at a lesser rate than in 1987 as competitive factors limit the Company's ability to recover cost increases.

1986 vs. 1985

Segment I operating profit was $41 million (61%) higher in 1986 than in 1985. After excluding the effect of the $23 million non-recurring charge for the early retirement program in 1985, Segment I operating profit in 1986 was $18 million (27%) higher than in 1985. This increase reflected higher prices and a corresponding 21% increase in margins on Product Line A, and a 17% increase in margins on Product Line B due primarily to cost reductions resulting from the early retirement program.

Segment II operating profit declined about $3 million (6%) due mainly to lower selling prices and slightly reduced margins in 1986.

2. Participation in High Yield Financings, Highly Leveraged Transactions or Non-Investment Grade Loans and Investments

A registrant, whether a financial institution (such as a bank, thrift, insurance company or finance company), broker-dealer or one of its affiliates, or any other public company, may participate in several ways, directly or indirectly, in high yield financings, or highly leveraged transactions or make non-investment grade loans or investments relating to corporate restructurings such as leveraged buyouts, recapitalizations including significant stock buybacks and cash dividends, and acquisitions or mergers.[42] A registrant may participate

[42] On February 16, 1989 the Federal Reserve Board issued bank examination guidelines regarding highly leveraged transactions. Letter from William Taylor, Director, Division of Banking Supervision and Regulation, to the Officer in Charge of Supervision at each Federal Reserve Bank (February 16, 1989). The guidelines are intended to assist bank examiners in identifying exposures that may warrant closer scrutiny and are not intended to imply criticism of any particular transaction, nor to suggest what is deemed to be an appropriate degree of leverage in any particular industry. In these guidelines, criteria to define a highly leveraged financing include identification of borrowers whose debt to total assets ratio exceeds 75%. Registrants may refer to this guidance or to other recognized criteria that may be developed in defining highly leveraged transactions. In any event, registrants should indicate how highly leveraged transactions are defined for disclosure purposes. In this regard,

Continued

in the financing of such a transaction either as originator, syndicator, lender, purchaser, or secured senior debt, or as an investor in other debt instruments (often unsecured or subordinated), redeemable preferred stock or other equity securities. Participation in high yield or highly leveraged transactions, as well as investment in non-investment grade securities, generally involves greater returns, in the form of higher fees and higher average yields or potential market gains. Participation in such transactions may involve greater risks, often related to credit worthiness, solvency, relative liquidity of the secondary trading market, potential market losses, and vulnerability to rising interest rates and economic downturns.[43]

Similar risk-reward exposure appears to exist when the growing practice by certain registrants of originating low down-payment mortgages without obtaining mortgage insurance. Other registrants have substantial participation in venture capital financings.

In view of these potentially greater returns and potentially greater risks, disclosure of the nature and extent of a registrant's involvement with high yield or highly leveraged transactions and non-investment grade loans and investments may be required under one or more of several MD&A items, and registrants should consider carefully the extent of disclosure required.[44] MD&A analysis is required if such participation has had or is reasonably likely to have a material effect on financial condition or results of operations.

In determining the adequacy of disclosure concerning participation in high yield, highly leveraged and non-investment grade loans and investments, registrants should consider the need to disclose:

1. Relevant lending and investing policies, including credit and risk management policies;

2. The amounts of holdings, stated separately by type if individually material, including guarantees and repurchase or other commitments to lend or acquire such loans and investments, and the potential risks inherent in such holdings;

3. Information regarding the level of activity during the period, *e.g.*, originations and retentions;

4. Amounts of holdings, if any, giving rise to significantly greater risks (that may have material effects on financial condition or results of operations) than are present in other similar transactions and instruments; for example, where the issuer is bankrupt or has issued securities on which interest payments are in default, or where there are significant concentrations (*e.g.*, in an individual borrower, industry or geographic area), particularly where those concentrations are in securities with relatively low trading market liquidity (such as those that depend upon a single market maker for their liquidity); and

5. Analysis of the actual and reasonably likely material effects of the above matters on income and operations, *e.g.*, the amounts of fees recognized and deferred, yields, amounts of realized and unrealized market gains or losses, and credit losses.

Such disclosure may appear in the business discussion, or other appropriate location, but the effects resulting from participation should be analyzed in MD&A.

Similar concerns are raised with regard to investment companies that invest, or are permitted to invest, all or a portion of their portfolios in high-yield or non-investment grade securities. An investment company that seeks high income by investing in other than high-grade bonds (or is permitted to do so, even if it does not currently include such securities in its portfolio) should disclose in its prospectus the risks involved in such investments.[45] These risks include, but are not limited to, the risks described above, such as market price volatility based upon interest rate sensitivity, creditworthiness and relative liquidity of the secondary trading market, as well as the effects such risks may have on the net asset value of the fund. In addition, the board of directors of a fund that invests in such securities should carefully consider factors affecting the secondary market for such securities in determining whether or not any particular security is liquid or illiquid, and whether market quotations are "readily available" for purposes of valuing portfolio securities.[46]

The nature of disclosure required by non-investment companies will vary depending on the type of participation. In the following example the registrant is a bank holding company that participates in highly leveraged transactions as a lender and not as an investor.

> The Company is active in originating and syndicating loans in highly leveraged corporate transactions. The Company generally includes in this category domestic and international loans and commitments made by the Banks in recapitalizations, acquisitions, and leveraged buyouts which result in the borrower's debt to total assets ratio exceeding 75%. As of December 31, 1988, the Company had loans outstanding in approximately 61 highly leveraged transactions in an aggregate principal amount of approximately $900 million, was committed under definitive loan agreements relating to approximately 23 highly leveraged transactions to lend an additional amount of approximately $650 million, and had other highly leveraged transactions at various stages of discussion or preliminary commitment. The Company's equity investments in highly leveraged transactions are not material.
>
> In recent years the Company has not made a loan in excess of $175 million in any individual highly leveraged transaction, and the Company has typically retained, after syndication and sales of loan participations, a principal amount not exceeding approximately $35 million in any such transaction. At December 31, 1988, only two loans had outstanding balances exceeding $35 million ($51 million and $47 million, respectively) and no industry represented more than 15% of the Company's total highly leveraged loan portfolio. Should an economic downturn or sustained period of rising interest rates occur, highly leveraged transaction borrowers may experience financial stress. As a result, risks associated with these transactions may be higher than for more traditional financing.
>
> The Company estimates that its fees for lending and corporate finance activities

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the Commission recognizes that leverage characteristics may vary from industry to industry, and that debt ratios that are appropriate for some industries may be unusually high or low in other industries. Similarly, the Commission does not intend to imply criticism of any particular transaction or to suggest an appropriate degree of leverage in any particular industry or for any particular firm.

[43] *See, e.g.*, P. Asquith, D. Mullins, Jr., and E. Wolff, Original Issue High Yield Bonds: Aging Analyses of Defaults, Exchanges, and Calls (March, 1989).

[44] Other related disclosure includes Schedule 1 of Rule 12-02 of Regulation S-X, 17 CFR 210.12-02, which requires separate disclosure for each particular issue of corporate securities carried on the balance sheet at greater than 2% of total assets, and allows reasonable groupings, *e.g.*, by similar investment risk, of all other securities. Also, for securities with significantly greater investment risk factors than are typical for that class of issuer, such as securities where interest is in default or the issuer is in bankruptcy, separate listing or grouping is required to be accompanied by a brief description of the relevant risk factors. Guide 3, Item III(c)(4) requires bank holding companies to disclose concentrations of loans exceeding 10% of total loans, and defines "concentration" to exist where a number of borrowers are engaged in similar activities that would cause them to be similarly impacted by economic or other conditions. Item II of Guide 3 instructs that consideration should be given to disclosure of the risk characteristics of securities held as investments. Savings and loan holding companies should provide similar disclosures pursuant to Staff Accounting Bulletin Topic 11.K. Insurance companies are also subject to similar requirements under Article 7 of Regulation S-X, Rule 7-03(a)(1), Notes 5-6, 17 CFR 210.7-03(a)(1).

[45] *See* Guide 20 to Form N-1A.

[46] *See* Guide 28 to Form N-1A.

relating to highly leveraged transactions were approximately $64 million during 1988, of which approximately $48 million was recognized as income and $16 million was deferred, compared with $40 million during 1987 of which approximately $32 million was recognized as income and $8 million was deferred. The deferred portion of such fees will be recognized over the terms of the related loans in accordance with Statement of Financial Accounting Standards Number 91.

In recent years, the Company has had no significant charge-offs of loans made in highly leveraged transactions. At December 31, 1988, approximately $25 million (3%) of such outstanding loans were on nonaccrual status, which was not materially greater than that for the Company's other lending activities.

A reduction in the Company's activities relating to highly leveraged transactions could have some negative impact on the Company's results of operations. The size of such impact would depend on the magnitude of the reduction and on the profitability of the activities to which the Company might redirect its resources. Although any estimate of the impact of a total discontinuation of all new highly leveraged transactions depends on various factors that cannot now be determined, the Company believes that such a discontinuation would reduce its gross revenues approximately 6% and net income by approximately 12%.

In the following example, the registrant is an investor in non-investment grade debt securities.

At December 31, 1988, the Company held in its portfolio, net of reserves, $81 million of high yield, unrated or less than investment grade corporate debt securities with an aggregate market value of $75 million. Investments in unrated or less than investment grade corporate debt securities have different risks than other investments in corporate debt securities rated investment grade and held by the Company. Risk of loss upon default by the borrower is significantly greater with respect to such corporate debt securities than with other corporate debt securities because these securities are generally unsecured and are often subordinated to other creditors of the issuer, and because these issuers usually have high levels of indebtedness and are more sensitive to adverse economic conditions, such as recession or increasing interest rates, than are investment grade issuers. In addition, investments by the Company in corporate debt securities of any given issuer are generally larger than its investments in most other securities, thus resulting in a greater impact in the event of default. There is only a thinly traded market for such securities and recent market quotations are not available for some of these securities. Market quotes are generally available only from a limited number of dealers and may not represent firm bids of such dealers or prices for actual sales. As of December 31, 1988, the Company's five largest investments in corporate debt securities aggregated $35 million, none of which individually exceeded $10 million, and had an approximate market value of $31 million.

3. Effects of Federal Financial Assistance Upon Operations

Many financial institutions, such as thrifts and banks, are receiving financial assistance in connection with federally assisted acquisitions or restructurings. Such assistance may take various forms and is intended to make the surviving financial institution a viable entity. Examples of such methods of assistance include: (a) Yield maintenance assistance (which guarantees additional interest on specified interest bearing assets, a level of return on specified non-interest-bearing assets, reimbursement if covered assets are ultimately collected or sold for amounts that are less than a specified amount, or any combination therof); (b) indemnification against certain loss contingencies; (c) the purchase of equity securities issued by the institution for cash or a note receivable from the federal agency; and (d) arrangements designed to insulate the surviving entity from the economic effects of problem assets acquired from the predecessor financial institution (such as a "put agreement" whereby the surviving institution may "put" troubled loans directly or indirectly to the federal agency at higher than their fair value).

If these or any other types of federal financial assistance have materially affected, or are reasonably likely to have a material future effect upon, financial condition or results of operations, the MD&A should provide disclosure of the nature, amounts, and effects of such assistance.[47]

In the following example, a financial institution discloses the material effects of a federally assisted corporate reorganization. Such disclosure was in addition to various disclosures of the existence and effect of such federal assistance in the description of business portions of the filing (pursuant to Industry Guide 3) and in the registrant's financial statements.

During 1988, earnings for the Company included $60 million of assistance income, including (a) $10 million in indemnity from the Federal Agency in respect of litigation costs associated with the Company's predecessor and (b) $50 million related to the 1988 puts of troubled loans to the Federal Agency under the Company's Put Agreement. The assistance income arises from provisions in the Reorganization agreements that are intended to relieve the Company from the adverse economic effects of litigation and problem assets held by its predecessor. These provisions are intended to place the Company in substantially the same position as if such litigation and problem assets had been assumed by the Federal Agency at the time of the Reorganization. Based on existing economic circumstances, management believes that the expiration of the Put Agreement in June 1989 may adversely affect future operations including an increased level of non-performing loans and loan loss provisions which cannot be recovered pursuant to the Put Agreement.

4. Preliminary Merger Negotiations

While Item 303 could be read to impose a duty to disclose otherwise nondisclosed preliminary merger negotiations, as known events or uncertainties reasonably likely to have material effects on future financial condition or results of operations, the Commission did not intend to apply, and has not applied, Item 303 in this manner.[48] As reflected in the various disclosure requirements under the Securities Act and Exchange Act that specifically address merger transactions, the Commission historically has balanced the informational need of investors against the risk that premature disclosure [49] of negotiations may jeopardize completion of the transaction.[50] In general, the Commission's recognition that registrants have an interest in preserving the confidentiality of such negotiations is clearest in the context of a registrant's continuous reporting obligations under the Exchange Act, where disclosure on Form 8–K of acquisitions or dispositions of assets not in the ordinary course of business is triggered by completion of the transaction.[51]

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[47] For a related discussion of the accounting treatment and financial statement disclosure of federal assistance associated with regulatory-assisted acquisitions of banking and thrift institutions, see *EITF Abstracts*, Issue No. 88–19.

[48] *See, e.g.*, Brief for the Securities and Exchange Commission as Amicus Curiae at 7 and note 3, *Basic, Inc.* v. *Levinson, supra* n. 27; *In the Matter of Carnation Company*, Exchange Act Release No. 22214 (July 8, 1985), 33 SEC Docket (CCH) 874.

[49] *See Basic, Inc.* v. *Levinson, supra* n. 27, at 985 ("Arguments based on the premise that some disclosure would be 'premature' in a sense are more properly considered under the rubric of an issuer's duty to disclose. The 'secrecy' rationale is simply inapposite to the definition of materiality.").

[50] *See, e.g.*, Securities Exchange Act Release No. 16384 (November 29, 1979) [44 FR 70326, 70336] (considering these conflicting interests in adopting Item 7 of Schedule 14D–9, 17 CFR 240.101, which requires that the subject company of a public tender offer provide two levels of disclosure: (a) a statement as to whether or not "any negotiation [which would result in certain transactions or fundamental changes] is being undertaken or is underway * * * in response to the tender offer," which disclosure need not include "the possible terms of the transaction or the parties thereto" if in the registrant's view such disclosure would jeopardize the negotiations; and (b) a description of "any transaction, board resolution, agreement in principle, or a signed contract" relating to such transactions or changes).

[51] Item 2 of Form 8–K, 17 CFR 249.308. *See also* Item 8 of Form 10–K, 17 CFR 249.310 (excluding pro

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In contrast, where a registrant registers securities for sale under the Securities Act, the Commission requires disclosure of material probable acquisitions and dispositions of businesses, including the financial statements of the business to be acquired or sold.[52] Where the proceeds from the sale of the securities being registered are to be used to finance an acquisition of a business, the registration statement must disclose the intended use of proceeds. Again, accommodating the need for confidentiality of negotiations, registrants are specifically permitted not to disclose in registration statements the identity of the parties and the nature of the business sought if the acquisition is not yet probable and the board of directors determines that the acquisition would be jeopardized.[53]

The Commission's interpretation of Item 303, as applied to preliminary merger negotiations, incorporates the same policy determinations. Accordingly, where disclosure is not otherwise required, and has not otherwise been made, the MD&A need not contain a discussion of the impact of such negotiations where, in the registrant's view, inclusion of such information would jeopardize completion of the transaction. Where disclosure is otherwise required or has otherwise been made by or on behalf of the registrant, the interests in avoiding premature disclosure no longer exist. In such case, the negotiations would be subject to the same disclosure standards under Item 303 as any other known trend, demand, commitment, event or uncertainty. These policy determinations also would extend to preliminary negotiations for the acquisition or disposition of assets not in the ordinary course of business.

IV. Conclusion

In preparing MD&A disclosure, registrants should be guided by the general purpose of the MD&A requirements: to give investors an opportunity to look at the registrant through the eyes of management by providing a historical and prospective analysis of the registrant's financial condition and results of operations, with particular emphasis on the registrant's prospects for the future. The MD&A requirements are intentionally flexible and general. Because no two registrants are identical, good MD&A disclosure for one registrant is not necessarily good MD&A disclosure for another. The same is true for MD&A disclosure of the same registrant in different years. The flexibility of MD&A creates a framework for providing the marketplace with appropriate information concerning the registrant's financial condition, changes in financial condition and results of operations.

The "Codification of Financial Reporting Policies" announced in Financial Reporting Release 1 (April 15, 1982) [47 FR 21028] is updated:

1. By amending the preamble to section 501 to delete its final three sentences and to substitute the following new language:

In 1988, a project was undertaken to evaluate current compliance with MD&A requirements. This project followed the issuance of a concept release in 1987 requesting public comment on, among other things, the adequacy of the existing MD&A requirements. In 1989, the Commission published Financial Reporting Release No. 36, which summarized the results of the project, included examples of disclosure and set forth the Commission's views regarding several disclosure matters under MD&A. The following excerpts from that release are presented to assist registrants in preparing MD&As. Registrants may wish to refer to the release for a discussion of the results of the project.

2. By deleting §§ 501.01 through 501.03, the first four paragraphs and first two sentences of the fifth paragraph of § 501.04.a, all of § 501.04.b and §§ 501.05.b through 501.05.f, and by redesignating amended § 501.04.a as § 501.03.b, § 501.05.a as § 501.08, and §§ 501.06 through 501.08 as §§ 501.09 through 501.11.

3. By adding the following new Financial Reporting Codification sections consisting of sections from the release as indicated:

(a) Section 501.01. Evaluation of Disclosure—Interpretive Guidance, consisting of section III.A. of the release;

(b) Section 501.02. Prospective Information, consisting of section III.B. of the release;

(c) Section 501.03.a. Liquidity—Capital Resources, consisting of section III.C. of the release;

(d) Section 501.04. Material Changes, consisting of section III.D. of the release;

(e) Section 501.05. Interim Period Reporting, consisting of section III.E. of the release;

(f) Section 501.06. Other Observations (including subsections 501.06.a. Segment Analysis, 501.06.b. Participation in High Yield Financings, Highly Leveraged Transactions or Non-Investment Grade Loans and Investments, 501.06.c. Effects of Federal Financial Assistance Upon Operations, and 501.06.d. Preliminary Merger Negotiations), consisting of section III.F. of the release;

(g) Section 501.07. Conclusion, consisting of section IV of the release.

4. By revising the footnotes from the release which are included in the Codification and which contain the citation form "*supra*," except footnote 35 of the release, to include the complete citation form rather than the "*supra*" form.

5. By renumbering the footnotes from the release which are included in the Codification, to run consecutively from number one through number forty.

6. By revising footnote 35 of the release (footnote 22 and renumbered), to cite *supra* to notes 4–17 rather than to notes 17–30.

The Codification is a separate publication of the Commission. It will not be published in the Federal Register/Code of Federal Regulations Systems.

List of Subjects in Parts 211, 231, 241 and 271

Reporting and recordkeeping requirements, Securities.

Parts 211, 231, 241 and 271 of Title 17, Chapter II of the Code of Federal Regulations are amended by adding this Release No. 33–6835, 34–26831, IC–16961 and FR–36 (May 18, 1989) to the lists of interpretive releases.

Jonathan G. Katz,

Secretary.

May 18, 1989.

[FR Doc. 89–12422 Filed 5–23–89; 8:45 am]

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forma financial information otherwise called for by Article 11 of Regulation S–X from the financial information required); Item 1 of Form 10–Q, 17 CFR 249.308a; and Rule 10–01 of Regulation S–X, 17 CFR 210.10–01.

With respect to the disposal of a segment of a business, however, Accounting Principles Board Opinion 30 requires that results of operations of the segment be reclassified as discontinued operations, and any estimated loss on disposal be recorded, as of the date management commits itself to a formal plan to dispose of the segment (*i.e.*, the "measurement date"). Filings, including periodic reports under the Exchange Act that contain annual or interim financial statements are required to reflect the prescribed accounting treatment as of the measurement date.

[52] Article 11 of Regulation S–X, 17 CFR 210.11–01 *et seq.* (generally requiring the provision of pro forma financial information where a significant acquisition or disposition "has occurred or is probable"). Entry into the continuous reporting system by registration under the Exchange Act also requires the provision of such pro forma financial information. Item 13 of Form 10, 17 CFR 249.210. *See also* Item 14 of Schedule 14A, 17 CFR 240.14a–101 (requiring Article 11 pro forma financial information and extensive other information about certain extraordinary transactions if shareholder action is to be taken with respect to such a transaction).

[53] Item 504 of Regulation S–K, 17 CFR 229.504, Instruction 6.

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

22 CFR Part 212

RIN 0412-AA02

Implementation of the Freedom of Information Act

AGENCY: Agency for International Development (A.I.D.), IDCA.

ACTION: Final rule.

SUMMARY: The Agency for International Development affirms as final its interim Freedom of Information Act (FOIA) regulations to fully implement the provisions of the Freedom of Information Reform Act of 1986 regarding fees and fee waivers as well as exemptions from the publication and disclosure requirements of subparts B, C, and D.

EFFECTIVE DATE: May 24, 1989.

ADDRESSES: Copies of this notice or other information may be obtained from: James Harper, Director, Office of Public Inquiries, Room 4889 NS, A.I.D., Washington, DC 20523.

FOR FURTHER INFORMATION CONTACT: James Harper at (202) 647-4220.

SUPPLEMENTARY INFORMATION: On April 13, 1987, the Agency amended its regulations implementing the Freedom of Information Reform Act of 1986, Pub. L. 99-570, sections 1801-1804 (Reform Act) 52 FR 11817 (April 13, 1987). The Agency invited comments from the public and received comments from four sources. All comments dealt with changes in § 212.35; none with § 212.41 and were discussed throughout the appropriate Offices within the Agency. The terms, definitions and fee schedules were found to be fully consistent with OMB's notice and final request for comments and final publication of fee schedule and guidelines. 52 FR 1992 (January 16, 1987) and 52 FR 1002 (March 27, 1987)

This rule also amended Part 212 to reflect the changes to the law enforcement provisions of the Freedom of Information Act.

This action will not have a significant economic impact on a substantial number of small entities; does not constitute a "major rule" under Executive Order No. 12291; and does not constitute a major Federal action significantly affecting the quality of the human environment.

The Agency therefore adopts the interim rules as final.

List of Subject in 22 CFR Part 22

Public information.

Authority: Section 621 of the Foreign Assistance Act of 1961, as amended, 22 U.S.C. 2381; the Freedom of Information Act, as amended, 5 U.S.C. 552.

Dated: April 24, 1989.

James Harper,

Director, Office of Public Inquiries, Bureau for External Affairs.

[FR Doc. 89-12249 Filed 5-23-89; 8:45 am]

BILLING CODE 6116-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD 05-89-06]

Special Local Regulations for Marine Events, Approaches to Annapolis Harbor, Spa Creek, and Severn River, Annapolis, MD

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: Permanent special local regulations are adopted for the approaches to Annapolis Harbor, Spa Creek, and the Severn River, north to the Route 450 Bridge. This area is the site of several marine events each year, such as the Blue Angels and Insertion/Extraction Demonstrations and the Naval Academy Sailing Squadron Safety-at-Sea Seminar. These regulations govern vessel activities during these events. Notice of the precise dates and times that the regulations are effective will be published in the Local Notice to Mariners and by **Federal Register** Notice. The special local regulations are considered necessary to control vessel traffic and to provide for the safety of life and property on the navigable waters within the immediate vicinity of the events.

EFFECTIVE DATE: This rule becomes effective May 24, 1989.

Compliance with these regulations will be required at different dates and times. The Commander, Fifth Coast Guard District publishes notices in the Local Notice to Mariners and **Federal Register** that announces the times and dates when the regulations are in effect.

FOR FURTHER INFORMATION CONTACT: B. J. Stephenson, Chief, Boating Affairs Branch, Boating Safety Division, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704-5004 (804) 398-6204.

SUPPLEMENTARY INFORMATION: The Coast Guard published a notice of proposed rulemaking in the **Federal Register** on March 13, 1989 (54 FR 10373). Interested persons were requested to submit comments. No comments were received.

Drafting Information

The drafters of this notice are Billy J.Stephenson, project officer, Chief, Boating Affairs Branch, Boating Safety Division, Fifth Coast Guard District, and Lieutenant Commander Robin K. Kutz, project attorney, Fifth Coast Guard District Legal Staff.

Discussion of Comments and Final Rule

No comments were received in response to the notice of proposed rulemaking. The regulated area defined by these regulations is the same as the one covered by the temporary special local regulations issued for several events in 1988 and 1989, such as the Blue Angels and Insertion/Extraction Demonstrations, and the Naval Academy Sailing Squadron Safety-at-Sea Seminar. Federal Aviation Administration regulations require, as a prerequisite to issuing permits for such demonstrations, that the waterway over which aircraft will fly be closed to vessel traffic for the duration of the demonstrations. For this reason, the Commander, Fifth Coast Guard District, will close portions of the regulated area to all vessel traffic during all airshows, airshow practice sessions, and helicopter rescue demonstrations. The special local regulations help provide an additional measure of safety for spectator craft during the events.

Economic Assessment and Certification

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and non-significant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). Because closure of the waterway is not anticipated for any extended period, commercial marine traffic will be inconvenienced only slightly. The economic impact of these regulations is expected to be so minimal that a full regulatory evaluation is unnecessary. Since the impact of these regulations is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

Federalism Assessment

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that

the final rule does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment. Although closure of the regulated area during marine events might have some small negative impact on the city of Annapolis, this impact pales when compared to the loss of revenue the local economy would face if these events could not be held due to a lack of regulations.

Environmental Impact

This final rule has been thoroughly reviewed by the Coast Guard and it has been determined to be categorically excluded from further environmental documentation in accordance with section 2.B.2.c of Commandant Instruction (COMDTINST) M16475.1B. A categorical Exclusion Determination statement has been prepared and has been placed in the rulemaking docket.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Final Regulations

In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations, is amended as follows:

PART 100—[AMENDED]

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. A new § 100.511 is added to read as follows:

§ 100.511 Approaches to Annapolis Harbor, Spa Creek, and Severn River, Annapolis, Maryland.

(a) *Definitions.*—(1) *Regulated area.* The approaches to Annapolis Harbor, the waters of Spa Creek, and the Severn River, shore to shore, bounded on the south by a line drawn from Carr Point, at latitude 38°58'58.0" North, longitude 76°27'40.0" West, thence to Horn Point Warning Light (LLNR 17935), at 38°58'24.0" North, longitude 76°28'10.0" West, thence to Horn Point, at 38°58'20.0" North, longitude 76°28'27.0" West, and bounded on the north by the State Route 450 Bridge.

(2) *Coast Guard Patrol Commander.* The Coast Guard Patrol Commander is a commissioned, warrant, or petty officer of the Coast Guard who has been designated by the Commander, Group Baltimore.

(b) *Special local regulations.*—(1) Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area.

(2) The operator of any vessel in the immediate vicinity of this area shall:

(i) Stop the vessel immediately upon being directed to do so by any commissioned, warrant, or petty officer on board a vessel displaying a Coast Guard ensign.

(ii) Proceed as directed by any commissioned, warrant, or petty officer.

(3) Any spectator vessel may anchor outside of the regulated area specified in paragraph (a) of this section but may not block a navigable channel.

(c) *Effective period.* The Commander, Fifth Coast Guard District, publishes a notice in the **Federal Register** and the Fifth Coast Guard District Local Notice to Mariners that announces the times and dates that the section is in effect.

Dated: May 11, 1989.

A. D. Breed,

Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 89-12397 Filed 5-23-89; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[PP 8F3599/R1012; FRL-3575-1]

Fenoxaprop-Ethyl Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final Rule.

SUMMARY: This document establishes a tolerance for the combined residues of the herbicide fenoxaprop-ethyl and its metabolites in or on the raw agricultural commodities (RACs) cottonseed, peanuts, and peanut hulls. This regulation to establish the maximum permissible level for residues of the herbicide in or on the RACs was requested by the Hoechst Celanese Corp.

EFFECTIVE DATE: May 11, 1989.

ADDRESS: Written objections may be submitted to the: Hearing Clerk (A-110), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Lawrence J. Schnaubelt, Acting Product Manager (PM) 23, Office of Pesticide Programs, Rm. 237, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-557-1830.

SUPPLEMENTARY INFORMATION: EPA issued a notice published in the **Federal Register** of March 9, 1988 (53 FR 7569), which announced that Hoechst Celanese Corp., Rte. 202-206, North Somerville, NJ 08876, had filed with EPA pesticide petition 8F3599 proposing to amend 40 CFR 180.430 by establishing tolerances for the combined residues of the herbicide fenoxaprop-ethyl [(±)-ethyl 2-[4-[(6-chloro-2-benzoxazolyl)-oxy]phenoxy]propanoate] and its metabolites [2-[4-[(6-chloro-2-benzoxazolyl]oxy]phenoxy]propanoic acid and 6-chloro-2,3-dihydrobenzoxazol-2-one], each expressed as fenoxaprop-ethyl, in or on the commodities cottonseed, wheat, peanuts, and peanut hulls at 0.05 part per million (ppm).

No comments were received in response to the notice of filing.

The petitioner subsequently amended the petition by proposing to withdraw, without prejudice to subsequent refiling, the establishment of a tolerance for fenoxaprop-ethyl and its metabolites on wheat.

The data submitted in the petition and all other relevant material have been evaluated. The pesticide is considered useful for the purpose for which the tolerance is sought.

The data considered in support of the tolerance include:

1. Plant and animal metabolism studies.

2. A rat oral median lethal dose (LD_{50}) study with an LD_{50} of 2.357 grams per kilogram (g/kg) or 2,357 milligrams per kilogram (mg/kg).

3. A 90-day rat feeding study with a no-observed-effect level (NOEL) of 20 ppm (1.0 mg/kg/day).

4. A 90-day dog feeding study with a NOEL of 16 ppm (0.4 mg/kg/day).

5. A 2-year dog feeding study with a NOEL of 15 ppm (0.37 mg/kg/day) and a lowest-effect level (LEL) of 75 ppm (1.875 mg/kg/day).

6. A rat teratology study with a NOEL of 32 mg/kg/day for developmental effects and maternal toxicity and an LEL of 100 mg/kg/day (highest dose tested) for developmental effects and maternal toxicity.

7. A rabbit teratology study with a maternal toxicity NOEL of 12.5 mg/kg/day and a maternal LEL (decreased weight gain and reduced food consumption) of 50 mg/kg/day, and a developmental toxicity NOEL of 50 mg/kg/day, and a developmental toxicity LEL of 200 mg/kg/day (highest dose tested) with an increased incidence of rib anomalies and diaphragmatic hernias at this dose level. Two rabbit teratology studies have been submitted for this pesticide. Both of the studies (including the one cited above, with doses of 0, 12.5, 50, and 200 mg/kg) have been classified as supplementary.

8. A two-generation rat reproduction study with a NOEL of 5 ppm (0.25 mg/kg/day).

9. A 2-year dog chronic feeding study with a NOEL of 15 ppm (0.37 mg/kg/day).

10. A rat oncogenicity (28 months)/chronic feeding (24 months) study with no observed oncogenic potential at any dose up to 180 ppm (9.0 mg/kg/day), the highest dose tested and a NOEL for chronic toxicity at 30 ppm (1.5 mg/kg/day).

11. A 2-year mouse oncogenicity study with no observed oncogenic potential at any dose up to 40 ppm (6 mg/kg/day), the highest dose tested.

12. A negative *in vitro* human lymphocyte chromosomal aberration mutagenicity study; a negative unscheduled DNA synthesis study with HeLa cells; a negative (both with and without S9 activation) Ames assay with the appropriate strains of *Salmonella typhimurium*; a negative (with and without S9 activation) DNA repair study in *Saccharomyces cerevisiae*; and a negative mouse micronucleus assay.

Based on a NOEL of 0.25 mg/kg/day in the two-generation rat reproduction study and a hundredfold safety factor, the acceptable daily intake (ADI) has been set at 0.0025 mg/kg/day with a maximum permissible intake (MPI) of 0.15 mg/day for a 60-kg person. The established and proposed tolerances have a theoretical maximum residue contribution (TMRC) of 0.000030 mg/kg/day and would utilize 1.2 percent of the ADI.

There are no regulatory actions pending against the registration of this pesticide. The nature of the residue of the pesticide is adequately understood for use on cotton and peanuts, and an adequate analytical method, gas chromatography with electron capture detector, is available for enforcement purposes. There is no expectation of secondary residues in meat, milk, poultry or eggs.

Because of the long lead-time from establishing these tolerances to publication of the enforcement methodology in the *Pesticide Analytical Manual*, Vol. II, the analytical methodology is being made available to anyone interested in pesticide enforcement when requested from:

William Grosse, Chief, Information Services Branch (H7502C), Program Management and Support Division, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 223, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703) 557-2613.

Based on the information and data considered, the Agency concludes that the tolerances will protect the public health. Therefore, the tolerances are established as set forth below.

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

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

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

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: May 11, 1989.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, 40 CFR Part 180 is amended as follows:

PART 180—[AMENDED]

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

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

2. In § 180.430, by adding and alphabetically inserting the following raw agricultural commodities, to read as follows:

§ 180.430 Fenoxaprop-ethyl; tolerances for residues.

* * * * *

Commodities	Part per million
Cottonseed	0.05
Peanuts	0.05
Peanut hulls	0.05

* * * * *

[FR Doc. 89-12322 Filed 5-23-89; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 271

[FRL-3575-8]

North Carolina; Order To Commence Proceedings To Determine Whether To Withdraw Hazardous Waste Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of correction of hearing dates and location.

SUMMARY: This notice corrects the date and location previously published in the **Federal Register** (54 FR 15940) on April 20, 1989, for the proceedings to determine whether to withdraw North Carolina's Hazardous Waste Program Approval.

DATES: The hearing will now be held on May 31–June 9, 1989. Starting time on each day will be 8:30 a.m., except on May 31 when starting time will be 1:00 p.m.

ADDRESSES: The proceedings will be held at two different locations. On May 31 and June 1, 1989, the hearing will be held at the Jane S. McKimmon Center, Corner of Western Boulevard and Gormand Streets, Raleigh, North Carolina. The hearing will be adjourned on June 2, 1989. The hearing will resume on June 5–9, 1989, and will be moved from the McKimmon Center to the Mission Valley Inn, 2110 Avent Ferry Road, Raleigh, North Carolina.

FOR FURTHER INFORMATION CONTACT: Otis Johnson, Jr., Chief, Waste Planning Section, RCRA Branch, Region IV, at 404-347-3016.

Dated: May 18, 1989.

Don Guinyard,

Acting Regional Administrator.

[FR Doc. 89-12559 Filed 5-23-89; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA 6831]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule, correction.

SUMMARY: This rule corrects the final rule published in the **Federal Register**, Thursday, April 27, 1989 (54 FR 18108). Knox County is erroneously listed in the State of Georgia. The correct State for Knox County is Kentucky. All records should be amended accordingly.

FOR FURTHER INFORMATION CONTACT: Frank H. Thomas, Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration, (202) 646–2717, Federal Center Plaza, 500 C Street, Southwest, Room 417, Washington, DC 20472.

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

Authority: 41 U.S.C. 400 et seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

Harold T. Duryee,

Administrator, Federal Insurance Administration.

Issued: May 18, 1989.

[FR Doc. 89–12433 Filed 5–23–89; 8:45 am]

BILLING CODE 6718–21–M

44 CFR Part 64

[Docket No. FEMA 6832]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

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

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

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

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

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

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

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

List of Subjects in 44 CFR Part 64

Flood insurance—floodplains.

PART 64—[AMENDED]

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

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

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

§ 64.6 List of Eligible Communities.

State	Location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain federal assistance no longer available in special flood hazard areas
Region III Minimal Conversions					
Pennsylvania	Addison, township of, Somerset County.	422508	Jan. 18, 1985, Emerg. June 1, 1989, Reg. June 1, 1989, Susp.	6-1-89	June 1, 1989.
Do	Allegheny, township of, Somerset County.	422509	Aug. 4, 1983, Emerg. June 1, 1989, Reg. June 1, 1989, Susp	6-1-89	Do.
Do	Hopewell, township of, Cumberland County.	421581	Sept. 8, 1982, Emerg. June 1, 1989, Reg. June 1, 1989, Susp.	6-1-89	Do.
Do	Prompton, borough of, Wayne County.	420866	June 25, 1975, Emerg. June 1, 1989, Reg. June 1, 1989, Susp.	6-1-89	Do.
Do	Tyrone, township of, Adams County.	421163	Apr. 26, 1974, Emerg. June 1, 1989, Reg. June 1, 1989, Susp.	6-1-89	Do.
Do	Union, township of, Bedford County.	421352	Apr. 29, 1975, Emerg. June 1, 1989, Reg. June 1, 1989, Susp.	6-1-89	Do.
Do	Wellersburg, borough of, Somerset County.	422526	Apr. 19, 1984, Emerg. June 1, 1989, Reg. June 1, 1989, Susp.	6-1-89	Do.
Virginia	Louisa County, unincorporated areas.	510092	March 1, 1974, Emerg. June 1, 1989, Reg. June 1, 1989, Susp.	6-1-89	Do.
Region II					
New York	Black River, village of, Jefferson County.	361525	July 8, 1976, Emerg. Dec. 19, 1984, Reg. June 5, 1989, Susp.	6-5-89	June 5, 1989.
Do	Fowler, town of, St. Lawrence County.	360698	Aug. 7, 1976, Emerg. Dec. 19, 1984, Reg. June 5, 1989, Susp.	6-5-89	Do.
Do	Philadelphia, town of, Jefferson County.	360347	June 28, 1977, Emerg. Dec. 19, 1984, Reg. June 5, 1989, Susp.	6-5-89	Do.
Region IV					
North Carolina	Elon College, town of, Alamance County.	370411	March 10, 1988, Emerg. June 5, 1989, Reg. June 5, 1989, Susp.	6-5-89	Do.
Region V					
Michigan	Lake, township of, Benzie County.	260744	July 17, 1974, Emerg. June 5, 1989, Reg. June 5, 1989, Susp.	6-5-89	Do.
Do	Wayland, city of, Allegan County.	260030	March 19, 1985, Emerg. June 5, 1989, Reg. June 5, 1989, Susp.	6-5-89	Do.
Region I Regular Conversions					
Maine	China, town of, Kennebec County.	230235	Aug. 6, 1975, Emerg. June 5, 1989, Reg. June 5, 1989, Susp.	6-5-89	Do.
Do	Eliot, town of, York County	230149	Nov. 13, 1974, Emerg. June 5, 1989, Reg. June 5, 1989, Susp.	6-5-89	Do.
Do	Kingfield, town of, Franklin County.	230058	Aug. 21, 1975, Emerg. June 5, 1989, Reg. June 5, 1989, Susp.	6-5-89	Do.
New Hampshire	Newfields, town of, Rockingham County.	330228	July 26, 1978, Emerg. June 5, 1989, Reg. June 5, 1989, Susp.	6-5-89	Do.
Vermont	Newfane, town and village of, Windham County.	500133	July 2, 1975, Emerg. June 5, 1989, Reg. June 5, 1989, Susp.	6-5-89	Do.
Massachusetts	Andover, town of, Essex County.	250076	Feb. 18, 1972, Emerg. August 1, 1978, Reg. June 5, 1989, Susp.	6-5-89	Do.
Do	Dracut, town of, Middlesex County.	250190	May 6, 1974, Emerg. July 2, 1980, Reg. June 5, 1989, Susp.	6-5-89	Do.
Do	Needham, town of, Norfolk County.	255215	June 25, 1971, Emerg. Apr. 13, 1973, Reg. June 5, 1989, Susp.	6-5-89	Do.
Do	Weymouth, town of, Norfolk County.	250257	Dec. 15, 1972, Emerg. Sept. 30, 1980, Reg. June 5, 1989, Susp.	6-5-89	Do.
Do	Royalton, town of, Windsor County.	500153	July 24, 1975, Emerg. Jan. 16, 1981, Reg. June 5, 1989, Susp.	6-5-89	Do.
Region III					
Pennsylvania	Benner, township of, Centre County.	421460	Apr. 7, 1975, Emerg. June 5, 1989, Reg. June 5, 1989, Susp.	6-5-89	Do.
Do	Curtin, township of, Centre County.	421462	Nov. 15, 1974, Emerg. June 5, 1989, Reg. June 5, 1989, Susp.	6-5-89	Do.
Do	Harris, township of, Centre County.	420262	June 6, 1973, Emerg. June 5, 1989, Reg. June 5, 1989, Susp.	6-5-89	Do.
Do	Huston, township of, Centre County.	421195	Sept. 15, 1975, Emerg. June 5, 1989, Reg. June 5, 1989, Susp.	6-5-89	Do.
Do	Liberty, township of, Centre County.	421196	Apr. 13, 1976, Emerg. June 5, 1989, Reg. June 5, 1989, Susp.	6-5-89	Do.
Do	Millheim, borough of, Centre County.	420265	July 3, 1975, Emerg. June 5, 1989, Reg. June 5, 1989, Susp.	6-5-89	Do.
Region VI					
Texas	Bailey's Prairie, Village of, Brazoria County.	480065	May 28, 1982, Emerg. Dec. 15, 1983, Reg. June 5, 1989, Susp.	6-5-89	Do.
Do	Brazoria, city of, Brazoria County.	480066	July 27, 1973, Emerg. Dec. 15, 1983, Reg. June 5, 1989, Susp.	6-5-89	Do.

State	Location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain federal assistance no longer available in special flood hazard areas
Do	Oyster Creek, village of, Brazoria County.	48255	June 17, 1975, Emerg. Nov. 19, 1976, Reg. June 5, 1989, Susp.	6-5-89	Do.
Do	West Columbia, city of, Brazoria County.	480081	July 18, 1973, Emerg. Dec. 15, 1983, Reg. June 5, 1989, Susp.	6-5-89	Do.
Region VIII					
Colorado	Georgetown, town of, Clear Creek County.	080035	Apr. 9, 1974, Emerg. June 5, 1989, Reg. June 5, 1989, Susp.	6-5-89	Do.
Region X					
Washington	Chelan County, unincorporated areas.	530015	Jan. 12, 1973, Emerg. Feb. 4, 1981, Reg. June 5, 1989, Susp.	6-5-89	Do.
Region I					
Massachusetts	Wenham, town of, Essex County.	250107	July 23, 1975, Emerg. June 19, 1989, Reg. June 19, 1989, Susp.	6-19-89	June 19, 1989.
Do	Worthington, town of, Hampshire County.	250175	July 23, 1975, Emerg. June 19, 1989, Reg. June 19, 1989, Susp.	6-19-89	Do.
Maine	Owl's Head, town of, Knox County.	230075	July 30, 1975, Emerg. June 19, 1989, Reg. June 19, 1989, Susp.	6-19-89	Do.
Do	Bristol, town of, Lincoln County	230215	July 15, 1975, Emerg. June 19, 1989, Reg. June 19, 1989, Susp.	6-19-89	Do.
New Hampshire	Gilford, town of, Belknap County.	330004	Aug. 20, 1976, Emerg. June 19, 1989, Reg. June 19, 1989, Susp.	6-19-89	Do.
Vermont	Plymouth, town of, Windsor County.	500151	Nov. 21, 1975, Emerg. June 19, 1989, Reg. June 19, 1989, Susp.	6-19-89	Do.
Do	Winhall, town of, Bennington County.	500022	Sept. 10, 1975, Emerg. June 19, 1989, Reg. June 19, 1989, Susp.	6-19-89	Do.
Region III					
Pennsylvania	Albion, borough of, Erie County	422409	July 24, 1975, Emerg. June 19, 1989, Reg. June 19, 1989, Susp.	6-19-89	Do.
Do	Briar Creek, township of, Columbia County.	421548	Aug. 8, 1975, Emerg. June 19, 1989, Reg. June 19, 1989, Susp.	6-19-89	Do.
Do	Carbon, township of, Huntingdon County.	421685	Dec. 12, 1977, Emerg. June 19, 1989, Reg. June 19, 1989, Susp.	6-19-89	Do.
Do	Center, township of, Butler County.	421417	Feb. 8, 1977, Emerg. June 19, 1989, Reg. June 19, 1989, Susp.	6-19-89	Do.
Do	Cranesville, borough of, Erie County.	421356	Aug. 22, 1975, Emerg. June 19, 1989, Reg. June 19, 1989, Susp.	6-19-89	Do.
Do	Dean, township of, Cambria County.	421440	Apr. 25, 1977, Emerg. June 19, 1989, Reg. June 19, 1989, Susp.	6-19-89	Do.
Do	East Providence, township of, Bedford County.	421336	June 17, 1975, Emerg. June 19, 1989, Reg. June 19, 1989, Susp.	6-19-89	Do.
Do	East St. Clair, township of, Bedford County.	421337	March 3, 1975, Emerg. June 19, 1989, Reg. June 19, 1989, Susp.	6-19-89	Do.
Do	Elder, township of, Cambria County.	422592	Feb. 26, 1976, Emerg. June 19, 1989, Reg. June 19, 1989, Susp.	6-19-89	Do.
Do	Elk Creek, township of, Erie County.	422412	Jan. 20, 1976, Emerg. June 19, 1989, Reg. June 19, 1989, Susp.	6-19-89	Do.
Do	Forward, township of, Butler County.	421419	March 21, 1977, Emerg. June 19, 1989, Reg. June 19, 1989, Susp.	6-19-89	Do.
Do	Lehman, township of, Pike County.	421967	Feb. 3, 1976, Emerg. June 19, 1989, Reg. June 19, 1989, Susp.	6-19-89	Do.
Do	Marianna, borough of, Washington County.	420854	Jan. 21, 1975, Emerg. June 19, 1989, Reg. June 19, 1989, Susp.	6-19-89	Do.
Do	Millville, borough of, Columbia County.	421545	Sept. 6, 1974, Emerg. June 19, 1989, Reg. June 19, 1989, Susp.	6-19-89	Do.
Do	Snow Shoe, township of, Centre County.	421198	Nov. 26, 1975, Emerg. June 19, 1989, Reg. June 19, 1989, Susp.	6-19-89	Do.
Maryland	Brookeville, town of, Montgomery County.	240166	Aug. 4, 1976, Emerg. June 19, 1989, Reg. June 19, 1989, Susp.	6-19-89	Do.
Region IV					
Florida	Orchid, Town of, Indian River County.	120122	July 24, 1975, Emerg. May 4, 1980, Reg. June 19, 1989. Susp.	5-4-89	May 4, 1989.
Georgia	Eatonton, City of, Putnam County.	130218	July 3, 1975, Emerg. June 19, 1989, Reg. July 19, 1989, Susp.	6-19-89	June 19, 1989.
Mississippi	Iuka, City of, Tishomingo County.	280266	Apr. 4, 1975, Emerg. June 19, 1989, Reg. June 19, 1989, Susp.	6-19-89	Do.
Do	Oktibbeha County, Unincorporate Areas.	280277	Apr. 23, 1979, Emerg. June 19, 1989, Reg. June 19, 1989, Susp.	6-19-89	Do.
Region V					
Ohio	Scioto County, Unincorporated Areas.	390496	Nov. 20, 1975, Emerg. June 19, 1989, Reg. June 19, 1989, Susp.	6-19-89	Do.
Wisconsin	Sussex, Village of, Waukesha County.	550490	June 24, 1975, Emerg. June 19, 1989, Reg. June 19, 1989, Susp.	6-19-89	Do.
Do	Montreal, City of, Iron County	550184	Apr. 3, 1975, Emerg. Nov. 4, 1988, Reg. June 19, 1989, Susp.	11-4-88	Nov. 4, 1989.

State	Location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain federal assistance no longer available in special flood hazard areas
Region VIII					
Idaho	Elmore County, unincorporated areas.	160212	Jan. 9, 1980, Emerg. June 19, 1989, Reg. June 19, 1989, Susp.	6-19-89	June 19, 1989.
Region V—Minimal Conversions					
Michigan	Crystal Lake, township of, Benzie County.	260028	Aug. 16, 1974, Emerg. June 19, 1989, Reg. June 19, 1989, Susp.	6-19-89	Do.
Minnesota	Winsted, city of, McLeod County.	270661	Jan. 14, 1988, Emerg. June 19, 1989, Reg. June 19, 1989, Susp.	6-19-89	Do.

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

Harold T. Duryee,
Administrator, Federal Insurance Administration.
Issued: May 18, 1989.

[FR Doc. 89-12435 Filed 5-23-89; 8:45 am]
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Proposed Rules

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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.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 140

RIN 3150-AD13

Indemnification of Licensees That Manufacture, Produce, Possess, or Use Radiopharmaceuticals or Radioisotopes for Medical Purposes

AGENCY: Nuclear Regulatory Commission.

ACTION: Termination of rulemaking proceeding.

SUMMARY: The Nuclear Regulatory Commission is terminating the negotiated rulemaking proceeding on the indemnification of radiopharmaceutical licensees required by section 19 of the Price-Anderson Amendments Act of 1988. Section 19 required the Commission to determine, through use of a negotiated rulemaking proceeding, whether persons licensed by the Commission or Agreement States for the manufacture, production, possession, or use of radioisotopes or radiopharmaceuticals for medical purposes ("radiopharmaceutical licensees") should be indemnified under the Price-Anderson Act. Section 19 required the Convenor of the proceeding to submit a recommendation to the Commission on whether the Commission should enter into indemnity agreements with radiopharmaceutical licensees. The Convenor's report recommended that the Commission not extend indemnity under the Price-Anderson Act to any class of radiopharmaceutical licensees.

ADDRESSES: The Convenor's Report and other documents pertaining to this proceeding may be examined at the NRC's Public Document Room, 2120 L Street NW., lower level, Washington, DC. Single copies of the Convenor's Report may be obtained from Francis X. Cameron, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Francis X. Cameron, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington DC 20555, Telephone: 301-492-1623.

SUPPLEMENTARY INFORMATION: On August 20, 1988, the President signed into law the Price-Anderson Amendments Act of 1988, Pub. L. 100-408. Section 19 of the Act requires the Nuclear Regulatory Commission (NRC) to determine whether to enter into indemnity agreements with persons licensed by the Commission or by an Agreement State for the manufacture, production, possession, or use of radioisotopes or radiopharmaceuticals for medical purposes ("radiopharmaceutical licensees"). For the purpose of making this determination, the NRC was to conduct a "negotiated rulemaking" proceeding. Within thirty days after enactment (September 19, 1988), the NRC was required to designate a Convenor from a list of individuals recommended by the Administrative Conference of the United States (ACUS) to conduct the "negotiated rulemaking". Within seven months after enactment (March 20, 1989), the Convenor was to submit a recommendation to the Commission on whether the Commission should enter into indemnity agreements with radiopharmaceutical licensees. Section 19 provides that if the Convenor recommended that the Commission indemnify any of these licensees, the Convenor must also submit to the Commission a draft proposed rule setting forth the terms and conditions of such indemnity agreements and the procedures for their execution. Further, if the Convenor recommended that indemnity be provided, the Commission is required to publish the recommendations as a notice of proposed rulemaking. However, section 19 does not contain any explicit provisions for the circumstance where the Convenor recommends that the Commission not extend indemnity under the Price-Anderson Act.

The Commission initiated the negotiated rulemaking proceeding on October 14, 1988, with the publication of a notice in the **Federal Register** inviting potentially affected parties to participate in the rulemaking proceeding and designating Howard S. Bellman as the Convenor for the proceeding (53 FR 40233).

The first session of the negotiated rulemaking proceeding was held on November 14, 1988. The National Association of Nuclear Pharmacies (NANP), represented by the firm of Baker & Hostetler, and a group of radiopharmaceutical manufacturers (Mallinckrodt, duPont, Hoffman La Roche), represented by the firm of Ross & Smith, expressed an interest in participating. These groups, as well as the NRC staff, filed the initial position statement required by the Commission of any person or group that desired to participate in the proceeding. These groups were later designated as participants in the proceeding by the Convenor. The first session of the proceeding was devoted principally to a discussion of the initial position statements submitted by the participants in the proceeding.

Th next session of the proceeding was held on December 5 and 6, 1988, and was devoted to testimony and cross-examination on the issue of the adequacy of insurance for radiopharmaceutical licensees.

The remaining sessions of the proceeding (December 19 and 20, 1988; January 10 and 11, 1989; February 9 and 10, 1989) were devoted to attempts to reach consensus on a draft text of a proposed rule for the indemnification of radiopharmaceutical licensees. To the extent that consensus was reached on a regulatory text, the Convenor would use that consensus text if he recommended that indemnity be provided to one or more classes of radiopharmaceutical licensees. The participants agreed that the attempts to develop a consensus on a draft text would not prejudice the position of any participant in the proceeding on the ultimate issue of the need for indemnification.

Convenor's Recommendation

The Convenor has determined and recommended that the NRC not extend Price-Anderson indemnification to radiopharmaceutical licensees. This recommendation was based on the fact that indemnification would not be uniformly extended to the radiopharmaceutical licensees represented in the proceeding because of the varying amounts of naturally occurring and accelerator-produced radioactive material ("NARM") in the possession of these licensees. Most, if not all, of the radiopharmaceutical

licensee facilities contain inventories that include both licensed byproduct material and NARM, which is not licensed by the Commission. Therefore, any damage resulting from the release of radioactive material from these facilities may have been caused by NARM—a radioactive material over which the Commission does not exercise jurisdiction. It was the NRC negotiator's position during the proceeding that the NRC authority to indemnify radiopharmeceutical licensees reaches only byproduct materials for medical purposes and that the NRC "has no licensing or other regulatory jurisdiction over NARM for medical use". Therefore, damage solely caused by releases of NARM cannot be covered by indemnity agreements between licensees and the NRC. As noted by the Convenor—

NANP and the Manufacturers do not contradict the basic conclusion that current law and policy do not extend to NARM. Rather, they urge that there is an issue of causation that must be resolved when a claim is based upon a release from a facility where NARM have been present. That is, they do not see this matter as an obstacle to the indemnification which they seek for non-NARM releases, except in terms of proof and evidence.

In the process of attempting to achieve consensus on a proposed rule, NANP and NRC agreed to conditions for presuming that damages resulting from a nuclear incident at a given location were caused by byproduct material in situations where a mixed inventory of byproduct material and NARM existed at the location. The conditions were such that when the risk of causation from all medical use radioactive materials at a location was evaluated, the relative risk of causation from the byproduct material equalled or exceeded 95 percent at all relevant times. It was believed that under such conditions it would be sound as a scientific and legal matter to presume that the byproduct inventory was the cause of any damage. Under this presumption, the nuclear pharmacies represented by NANP could continue to operate as they are currently operating and maintain such risk percentages.

However, the manufacturers reported that both their manufacturing facilities and their pharmacies could not operate with such a limitation and asserted that a 51 percent byproduct risk presumption would be required to cover a substantial number of their facilities of both types. As noted by the Convenor, a 51 percent presumption would not meet rigorous scientific standards or the legal concept that a presumption should more-than-likely approximate actuality.

In the Convenor's view, the dispute over the NARM presumption is critical. Even if one concludes that government indemnification should be provided, given the inadequacy of private alternatives for liability coverage—

it is still the case that indemnification would only be provided to some pharmacies and no manufacturers unless the NARM presumption is adjusted for the inappropriate purpose of being more inclusive.

Therefore, the extension of indemnity coverage to only certain nuclear pharmacies would not be based on the inability of those firms to obtain commercial liability insurance or because only those firms contributed significantly to the practice of nuclear medicine. The Convenor would not favor coverage for only some pharmacies and no manufacturers, because no broad policy based upon national health or the protection of future plaintiffs would be implemented by such coverage.

Based on the Convenor's recommendation not to extend indemnity coverage to radiopharmaceutical licensees, which the commission finds persuasive, the Commission is terminating the Section 19 rulemaking proceeding.

Dated at Rockville, MD this 17th day of May, 1989.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 89-12366 Filed 5-23-89; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 89-AGL-8]

Proposed Alteration of VOR Federal Airways

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to alter the descriptions of several Federal Airways located in the northeast portion of the United States which lead into and around the Toronto, Ontario, Canada, metropolitan area. These airway changes are the result of an agreement between the United States and Canada to interface with traffic flow reversal plans into and out of Canadian airspace surrounding Toronto International Airport. The Cleveland air route traffic control center's (ARTCC) airspace containing the arrival/departure routes to Toronto, Canada, is being readjusted to alleviate congestion/compression of air traffic in that area. This action would improve traffic flow in the area and reduce controller workload.

DATES: Comments must be received on or before July 7, 1989.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Air Traffic Division, AGL-500, Docket No. 89-AGL-8, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, IL 60018.

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

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

FOR FURTHER INFORMATION CONTACT: Jesse B. Bogan, Jr., Airspace Branch (ATO-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9253.

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, aeronautical, 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-8." 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 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 Inquiry Center, APA-230, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A which describe the application procedure.

The Proposal

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to realign VOR Federal Airways V-37, V-176, V-216, V-276, V-320, V-443, and V-522. In an agreement between the United States and Canada, airways leading into and around the Toronto, Ontario, Canada, metropolitan area are being realigned, established or deleted to allow for improved traffic flow into the area. These changes are also necessary to accommodate requirements developed by Transport Canada as part of their efforts to meet expanded traffic growth in the Toronto, Canada, area. Cleveland ARTCC and Toronto Area Control Center have been engaged in an ongoing effort to maximize safety by adjusting arrival and departure routes into and out of the Toronto metropolitan area. The adjustments of these routes are designed to alleviate congestion/compression of air traffic and to provide for optimum use of the airspace. Section 71.123 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6E dated January 3, 1989.

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, VOR Federal Airways.

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—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE AND REPORTING POINTS

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, 1989); 14 CFR 11.69.

§ 71.123 [Amended]

2. Section 71.123 is amended as follows:

V-37 [Amended]

By removing the words "to Ash, ON, Canada." and substituting the words "INT Erie 010°T(016°M) and Toronto, ON, Canada, 210°T(219°M) radials; to Toronto."

V-176 [Amended]

By removing the words ", excluding the portion within Canada." and substituting the words ". From Aylmer, ON, Canada; via INT Aylmer 060°T(068°M) and Oshawa, ON, Canada, NDB 220°T(230°M) radials; to Oshawa. The airspace within Canada is excluded."

V-216 [Amended]

By removing the words "Kleinburg, ON, Canada." and substituting the words "INT Peck 084°T(091°M) and Toronto, ON, Canada, 248°T(257°M) radials; to Toronto."

V-276 [Revised]

From Erie, PA; via Franklin, PA; Clarion, PA; Tyrone, PA; INT Tyrone 096°T(103°M) and Ravine, PA, 279°T(290°M) radials; Ravine; Yardley, PA; Robbinsville, NJ; INT Robbinsville 112°T(122°M) and Coyle, NJ, 090°T(100°M) radials.

V-320 [Amended]

By removing the words "to Toronto, ON, Canada." and substituting the words "INT Peck 072°T(079°M) and Toronto, ON, Canada, 276°T(285°M) radials; to Toronto."

V-443 [Amended]

By removing the word "Aylmer." and substituting the words "Aylmer; INT Aylmer 051°T(059°M) and Toronto, ON, Canada, 210°T(219°M) radials; to Toronto."

V-522 [Amended]

By removing the words "to Dunkirk, NY." and substituting the words "Dunkirk, NY; INT Dunkirk 356°T(003°M) and Toronto, ON, Canada, 151°T(160°M) radials; to Toronto. The airspace within Canada is excluded."

Issued in Washington, DC, on May 16, 1989.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 89-12428 Filed 5-23-89; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 88-AGL-25]

Proposed Alteration of VOR Federal Airways; Illinois

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to alter the descriptions of several airways located in the Chicago metropolitan area. These changes would improve the flow of traffic in the Chicago, IL, area and provide air traffic controllers with additional flexibility for maneuvering traffic to reduce arrival/departure delays. This action would reduce controller coordination and expedite traffic flow.

DATES: Comments must be received on or before July 3, 1989.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Air Traffic Division, AGL-500, Docket No. 88-AGL-25, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, IL 60018.

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

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

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace Branch (ATO-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9250.

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, aeronautical, 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. 88–AGL–25." 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 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 Inquiry Center, APA–230, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to realign VOR Federal Airways V–24, V–97, V–100, V–217 and V–228 located in the vicinity of the Chicago O'Hare, IL, Airport. These airway changes would improve the northwest arrivals because of one way flow to the terminal area and provide holding fixes for arrivals. In addition, departure traffic delays would be reduced. This action reduces controller coordination and improves the flow of traffic. Section 71.123 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6E dated January 3, 1989.

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, VOR Federal airways.

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—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE AND REPORTING POINTS

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.

§ 71.123 [Amended]

2. Section 71.123 is amended as follows:

V–24 [Amended]

By removing the words "INT Janesville 112° and Northbrook, IL, 290° radials;" and substituting the words "INT Janesville 112°T(109°M) and Northbrook, IL, 291°T(289°M) radials;"

V–97 [Amended]

By removing the words "From INT Northbrook, IL, 290° and Janesville, WI, 112° radials," and substituting the words "From INT Northbrook, IL, 291°T(289°M) and Janesville, WI, 112°T(109°M) radials;"

V–100 [Amended]

By removing the words "INT Rockford 074° and Janesville, WI, 112° radials; INT Janesville 112° and Northbrook, IL, 290° radials;" and substituting the words "INT Rockford 074°T(073°M) and Northbrook, IL, 291°T(289°M) radials;"

V–217 [Amended]

By removing the words "From INT Chicago O'Hare, IL, 316°/Joliet, IL, 360° and Northbrook, IL, 290° radials; INT Chicago O'Hare 316° and Badger, WI, 193° radials;" and substituting the words "From INT Janesville, WI, 112°T(109°M) and Badger, WI, 192°T(190°M) radials;"

V–228 [Amended]

By removing the words "INT Madison 138° and Chicago O'Hare, IL, 316° radials; INT Chicago O'Hare 316° and Northbrook, IL, 290° radials;" and substituting the words "INT Madison 141°T(138°M) and Northbrook, IL, 291°T(289°M) radials;"

Issued in Washington, DC, on May 11, 1989.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 89–12429 Filed 5–23–89; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 88–AGL–9]

Proposed Alteration of VOR Federal Airway; Illinois

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to alter the description of Federal Airway V–24 located in the state of Illinois. This airway is being extended from the Chicago Metropolitan area to Indianapolis to simplify routing.

DATE: Comments must be received on or before July 7, 1989.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Air Traffic Division, AGL–500, Docket No. 89–AGL–9, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, IL 60018.

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

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

FOR FURTHER INFORMATION CONTACT: Jesse B. Bogan, Jr., Airspace Branch

(ATO-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267-9253.

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, aeronautical, 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-9." 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 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 Inquiry Center, APA-230, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the description of VOR Federal Airway V-24 located in the state of Illinois. This airway is being extended from the Chicago Metropolitan area to Indianapolis to simplify routing. Section 71.123 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6E dated January 3, 1989.

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, VOR Federal airways.

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—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE AND REPORTING POINTS

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.

§71.123 [Amended]

2. Section 71.123 is amended as follows:

V-24 [Amended]

By adding to the end of the description of words "From Peotone, IL; INT Peotone 152 °T(150 °M) and Indianapolis, IN, 312 °T(311 °M) radials; to Indianapolis."

Issued in Washington, DC, on May 16, 1989.

Harold W. Becker,

Manager, Airspace—Rules and Aeronautical Information Division.

[FR Doc. 89-12430 Filed 5-23-89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 88-AEA-14]

Proposed Alteration of VOR Federal Airway V-519; West Virginia

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to alter the description of Federal Airway V-519 located in the vicinity of Bluefield and Beckley, WV. The increased use of the airspace between Bluefield and Beckley, WV, by Indianapolis Air Route Traffic Control Center (ARTCC) has created the need for an airway between Bluefield and Beckley, WV. This action would increase air safety, improve flight planning, and reduce controller workload.

DATES: Comments must be received on or before July 7, 1989.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Air Traffic Division, AEA-500, Docket No. 88-AEA-14, Federal Aviation Administration, JFK International Airport, The Fitzgerald Federal Building, Jamaica, NY 11430.

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

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

FOR FURTHER INFORMATION CONTACT: Jesse B. Bogan, Jr., Airspace Branch (ATO-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267-9253.

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, aeronautical, 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. 88-AEA-14." 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 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 Inquiry Center, APA-230, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the description of VOR Federal Airway V-519 located in the vicinity of West Virginia. Controlled airspace is necessary between Bluefield and Beckley, WV, due to the increase of air traffic in that area. The establishment of controlled airspace in that area would also provide Indianapolis ARTCC with additional controlled airspace thereby increasing air safety, improving traffic flow in that area, and reducing controller workload. Therefore, we propose to extend V-519 to include controlled airspace between Bluefield and Beckley, WV. Section 71.123 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6E dated January 3, 1989.

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, VOR Federal airways.

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—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE AND REPORTING POINTS

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.

§ 71.123 [Amended]

1. Section 71.123 is amended as follows:

V-519 [Revised]

From Knoxville, TN; via INT Knoxville 050°T(053°M) and Glade Spring, VA, 246°T(248°M) radials; Glade Spring; Bluefield, WV; to Beckley, WV.

Issued in Washington, DC, on May 16, 1989.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 89-12427 Filed 5-23-89; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 942

[Docket No. 90239-9121]

RIN 0648-AB50

Cordell Bank National Marine Sanctuary

AGENCY: Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Commerce (DOC).

ACTION: Notice of proposed rule.

SUMMARY: The National Oceanic and Atmospheric Administration is today proposing to amend the regulations published today in the **Federal Register** implementing the designation of an area of marine waters encompassing 397.05 square nautical miles surrounding Cordell Bank, which is located approximately 50 nautical miles west-northwest of San Francisco, California, as the Cordell Bank National Marine Sanctuary, and regulating activities in the Sanctuary. The amendment proposed today would extend the regulatory ban on all oil and gas activities on Cordell Bank and in any of the area within the 50-fathom isobath surrounding the Bank (*i.e.*, together, the core area of the Sanctuary, consisting of approximately 18.14 square nautical miles) to the entire Sanctuary. This amendment was suggested in comments received in response to the notice of proposed rulemaking (52 FR 32563, Aug. 28, 1987) for the final rule issued today. It was not adopted in that final rule because the notice of proposed rulemaking and the Draft Environmental Impact Statement/Management Plan (DEIS/MP) did not consider such a ban. Further, a regulatory prohibition of this magnitude should not be imposed without assessing the protection to Sanctuary resources given their special environmental sensitivity that would be afforded by such a prohibition and the effect of such a prohibition on this nation's domestic energy reserve potential and on potential lease revenues to the Treasury of the United States, and without all interested persons having notice and an opportunity to comment. The purpose of this notice is to invite public comments

on the merits of expanding the regulatory prohibition on oil and gas activities in the core area to the entire Sanctuary. Commenters are particularly requested to address the effects of seismic exploration activities, oil discharges from accidental spills which could arise as a result of exploration, development, and production activities, and on-site discharges or drill cuttings and drilling muds on Sanctuary resources and special protection needs in light of the Sanctuary's special environmental sensitivity. Commenters are also particularly requested to address the effect of a prohibition for the entire Sanctuary on domestic energy reserve potentials and potential lease revenues to the United States Treasury.

DATE: Comments are invited and will be considered if received by July 24, 1989.

ADDRESS: Send comments to Joseph A. Uravitch, Chief, Marine and Estuarine Management Division, OCRM, NOS, NOAA, 1825 Connecticut Avenue, NW., Washington, DC 20235. Copies of the Final Environmental Impact Statement and Management Plan (FEIS/MP) for the designation and final regulations published today are available upon request from OCRM. A supplement to the FEIS/MP is being prepared to cover the amendment being proposed today and will be issued in draft for public and other comments required by 40 CFR 1503.1. The availability of the draft and final supplement will be announced in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Joseph A. Uravitch, 202/673–5122.

SUPPLEMENTARY INFORMATION: Today NOAA published a notice in the **Federal Register** under the authority of title III of the Marine Protection, Research, and Sanctuaries Act (hereinafter "Act") (16 U.S.C. 1431 *et seq.*) designating a 397.05 square nautical mile area of marine waters surrounding Cordell Bank, which is located approximately 50 nautical miles west-northwest of San Francisco, California, as the Cordell Bank National Marine Sanctuary, and setting forth regulations implementing that designation and regulating activities in the Sanctuary. Pursuant to section 304(b) of the Act (16 U.S.C. 1434), Congress has 45 days of continuous session beginning today to review the designation and regulations before they take effect. After 45 days, the designation and regulations automatically become final and take effect unless the designation of any of its terms is disapproved by Congress through enactment of a joint resolution.

The regulations published today, upon taking effect, would, among other things, ban all oil and gas activities on Cordell Bank and in the area within the 50-fathom isobath surrounding the Bank (*i.e.*, together, the core area of the Sanctuary, consisting of approximately 18.14 square nautical miles). As discussed in the notice of final rule, imposition of this prohibition was justified even though not proposed in the notice of proposed rule making (52 FR 32563, Aug. 28, 1987) given the special environmental sensitivity of the core area and the fact that this prohibition was considered in the DEIS/MP, upon which public comment was solicited and received. As noted in the DEIS/MP, the United States Department of the Interior's Outer Continental Shelf (OCS) Oil and Gas 5-Year Leasing Plan, in recognition of the unlikelihood of the presence of viable oil and gas reserves in the core area and the core area's special environmental sensitivity, has already excluded the core area from being offered for lease. While the 5-year plan expires in February 1992, it is unlikely that the core area ever would be offered for lease.

Cordell Bank and its surrounding waters, because of a rare combination of oceanic conditions and undersea topography, provide a highly productive marine environment in a discrete, well defined area. Cordell Bank provides a habitat for some twelve endangered and two threatened species, as well as a variety of rare species. The prevailing California Current flows southward along the coast, while the upwelling of nutrient-rich bottom waters brings nutrients and stimulates the growth of planktonic organisms. These nutrients support the entire food chain from small crustaceans to fish, marine mammals and seabirds that form the exceptionally vigorous, ecological community flourishing at Cordell Bank. The area is designated as a National Marine Sanctuary for the purpose of protecting and conserving the area and ensuring the continued availability of the ecological, research, educational, aesthetic, and recreational resources therein. In addition, historical or cultural resources may be present within the Cordell Bank area and its designation as a Sanctuary protects these resources as well.

Hydrocarbon exploration, development and production possibly could threaten Sanctuary resources (impacts from seismic exploration, oil discharges from accidental spills including well blow-outs, and on-site discharges of drill cuttings and drilling muds). The baseline characteristics of the Sanctuary and the threats and expected impacts from oil and gas activities are discussed in detail in the FEIS/MP (Vol. I, pp. 81–91).

The Sanctuary is of special environmental sensitivity. While the probability of a significant oil spill occurring as a result of exploration, development or production is small, should such a spill occur, sensitive resources could be seriously damaged. The probability of serious damage is increased with respect to the Sanctuary because seas over six feet are typically the case in the area of the Sanctuary. Mechanical cleanup equipment for oil spills is typically inoperable in seas over six feet. Further, the use of chemical oil dispersants in an area of special environmental sensitivity may be contraindicated due to their toxicity to marine life.

Drilling muds consist of naturally occurring minerals such as barite, simple chemicals such as sodium hydroxide and potassium chloride, and complex organic compounds such as lignosulfonates and formaldehydes. The United States Department of the Interior forbids the discharge of drilling muds containing toxic substances into marine waters. Further, the Department of the Interior can also prohibit the discharge of any drilling muds.

Fluids and the lighter elements in drilling discharges are rapidly dispersed in the water column. The heavier elements, over 90 percent of the discharged materials, settle to the bottom, usually in a plume extending in the direction of prevailing bottom currents.

While the on-site discharge of drill cuttings and drilling muds can adversely affect benthic biota, the magnitude of such impact is open to scientific debate. In 1983, the Marine Board of the National Research Council conducted a study of drilling discharges. The study recognized that drilling discharges had an adverse impact on the benthic environment in the immediate area of the discharge but concluded that these discharges presented only a minimal risk to the marine environment (National Research Council, Marine Board, 1983). However, more recent by the United States Environmental Protection Agency has shown significant adverse benthic impacts from platform discharges up to two miles from drilling sites (EPA 440/4–85/002, Aug. 1985). Thus, more than a minimal risk may be presented.

The potential impacts on marine organisms resulting from the discharge of drilling muds and cuttings are: (1) Decreased primary production caused by increased turbidity which reduces light levels; (2) interference with filter feeding caused by high particulate loads; (3) burial of benthic communities; and (4) injury resulting from the acute or chronic toxic effects of drilling mud constituents. Commenters are specifically requested to present technical evidence on the above.

Because a great majority of commentators on the proposed rule and on the DEIS/MP recommended adoption of a regulation prohibiting all hydrocarbon exploration and development activities within the Sanctuary and comments received from members of the public and the United States Environmental Protection Agency in response to the publication of the FEIS/MP also recommended that oil and gas activities be banned throughout the Sanctuary, NOAA, in light of the special environmental sensitivity of the Sanctuary, is initiating this rule making to consider expanding the ban on oil and gas activities in the core area to the entire Sanctuary. Initiating a rule making considering expanded the ban to the entire Sanctuary was chosen over taking regulatory action in the notice of final rule designating the Sanctuary and promulgating the implementing regulations, because the notice proposing the designation and implementing regulations and the DEIS/MP did not consider such a ban. A regulatory prohibition of this magnitude should not be imposed without assessing the protection to Sanctuary resources given their special environmental sensitivity that would be afforded by such a prohibition and the effect of such a prohibition on this nation's domestic energy reserve potential and on potential lease revenues to the United States Treasury, and without all interested persons having notice and an opportunity to comment.

Conversely, immediately banning all oil and gas activities in the core area was justified given the special environmental sensitivity of the core area and the fact that a regulatory ban on oil and gas activities in the core area was an alternative examined in the DEIS/MP, upon which public comment was solicited.

Additional Information

Executive Order 12291

NOAA has concluded that the amendment proposed in this notice is not a "major rule" within the meaning of section 1(b) of Executive Order 12291 because it would not result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, state or local government agencies or geographic regions; or,

(3) Significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act

The General Counsel of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that this regulatory amendment, if adopted, will not have a significant economic impact on a substantial number of small entities because there are no oil and gas activities presently ongoing or planned. While the Department of the Interior could offer leases for sale covering areas outside the core but partially or entirely within the Sanctuary, such a possibility is too speculative upon which to base a conclusion that the proposed ban for the entire Sanctuary would have a significant economic impact on a substantial number of small entities. As a result, an initial Regulatory Flexibility Analysis was not prepared.

Paperwork Reduction Act

This proposed regulatory amendment does not contain a collection of information requirement subject to the requirements of the Paperwork Reduction Act (Pub. L. No. 96–511).

National Environmental Policy Act

In accordance with section 304(a)(2) of the Act and the provisions of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370(a)), a DEIS was prepared for the designation and the initial proposed regulations. As required by section 304(a)(2) of the Act, the DEIS included the resource assessment report required by section 303(b)(3) of the Act, maps depicting the boundaries of the proposed designated area, and the existing and potential uses and resources of the area. The DEIS was made available for public review on August 28, 1987, with comments due on October 12, 1987. Public hearings to receive comments on the proposed designation were held in Bodega, California, on September 29, 1987, and in San Francisco, California, on September 30, 1987. All comments were reviewed and, where appropriate, incorporated into the FEIS and the Sanctuary regulations published today. NOAA has determined that preparation of a supplemental EIS is needed to consider banning oil and gas activities in the entire Sanctuary. This supplemental EIS will consider such things as the protection such a ban will afford to Sanctuary resources and the effect of such a ban on this nation's domestic energy reserve potential and on potential lease revenues to the Treasury. It will rank the ban relative to the other options in the FEIS/MP. NOAA is preparing this supplement to the FEIS/MP under the authority of 40 CFR 1502.9(c)(2) to cover the amendment being proposed today and will be issued in draft incorporating by reference the FEIS/MP in accordance with requirements of 40 CFR 1502.21 for public and other comments required by 40 CFR 1503.1. The availability of the draft and final supplements will be announced in the **Federal Register**.

Executive Order 12612

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

Executive Order 12630

This rule does not have takings implications sufficient to require preparation of a Takings Implications Assessent under Executive Order 12630.

List of Subjects in 15 CFR Part 942

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

(Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program)

Dated: May 19, 1989.

John J. Carey,

Acting Assistant Administration for Ocean Services and Coastal Zone Management.

Accordingly, for the reasons set forth in the preamble, it is proposed to amend 15 CFR Part 942 as follows:

PART 942—[AMENDED]

1. The authority citation for 15 CFR Part 942 continues to read as follows:

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

2. Section 942.6(a)(3) is revised to read as follows:

§ 942.6 Prohibited Activities.

(a) * * *

(3) Hydrocaron (Oil and Gas) Activities. Hydrocarbon (oil and gas) exploration, development, and production activities in the Sanctuary.

* * * * *

[FR Doc. 89–12449 Filed 5–23–89; 8:45 am]

BILLING CODE 3510–08–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 904

Arkansas Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Proposed rule; partial withdrawal and revision of proposed amendment and reopening and extension of public comment period for proposed amendment.

SUMMARY: OSMRE is announcing the partial withdrawal of and receipt of a revision to a previously proposed amendment to the Arkansas permanent regulatory program (hereinafter, the "Arkansas program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The withdrawal pertains to the determination of replanting of trees and shrubs as a normal husbandry practice and the revision pertains to criteria for measurement of revegetation success on prime farmland. The revised amendment is intended to make the State program consistent with the corresponding Federal standards.

This notice sets forth the times and locations that the Arkansas program and the revised amendment to that program are available for public inspection, and the reopened comment period during which interested persons may submit written comments on the revised amendment.

DATES: Written comments on the revision must be received by 4:00 p.m., c.d.t. June 8, 1989. The withdrawal is effective May 24, 1989.

ADDRESSES: Written comments should be mailed or hand-delivered to Mr. James H. Moncrief at the address listed below.

Copies of the Arkansas program, the revised amendment, and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSMRE's Tulsa Field Office.

Mr. James H. Moncrief, Director, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 5100 E. Skelly Drive, Suite 550, Tulsa, Oklahoma 74135, Telephone: (918) 581–6430.

Office of Surface Mining Reclamation and Enforcement, 1100 "L" Street NW., Room 5131, Washington, DC 20240, Telephone: (202) 343–5492.

Arkansas Department of Pollution Control and Ecology, Mining Reclamation Division, 8001 National Drive, Little Rock, AR 72209, Telephone: (501) 562–7444.

FOR FURTHER INFORMATION CONTACT: Mr. James H. Moncrief, Director, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 5100 E. Skelly Drive, Suite 550, Tulsa, Oklahoma 74135, Telephone: (918) 581–6430.

SUPPLEMENTARY INFORMATION:

I. Background on the Arkansas Program

On November 21, 1980, the Secretary of the Interior conditionally approved the Arkansas program. General background information on the Arkansas program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Arkansas program can be found in the November 21, 1980, **Federal Register** (45 FR 77003). Subsequent actions concerning Arkansas' program and program amendments can be found at 30 CFR 904.10, 904.12, 904.15, and 904.16.

II. Discussion

By letter dated December 22, 1988 (Administrative Record No. AR–347), Arkansas submitted a proposed amendment to its program pursuant to SMCRA. Arkansas submitted the proposed amendment in response to a November 26, 1985, letter that OSMRE sent in accordance with 30 CFR 732.17(c), and to satisfy required program amendments at 30 CFR 904.16 (a) and (b). OSMRE announced receipt of the proposed amendment in the January 13, 1989, **Federal Register** (54 FR 1398).

Arkansas' proposed amendment included revisions to parts of the Arkansas Surface Coal Mining and Reclamation Code (ASCMRC) pertaining to restriction of financial interest of employees, fish and wildlife information, individual civil penalties, the replanting of trees and shrubs as a normal husbandry practice, and measurement of revegetation success on prime farmland.

Withdrawal of Proposed Amendment

As required by 30 CFR 904.16(a) (53 FR 9885, March 28, 1988), Arkansas proposed to amend ASCMRC 816.116 (b)(3)(ii) and (c)(4), and 816.117 (a)(2)(ii), (b)(1), and (b)(3), regarding the revegetation success criteria for bond release as they relate to the replacement of trees and shrubs as a normal husbandry practice. However, in the September 7, 1988, **Federal Register** (53 FR 34636), OSMRE announced revised Federal regulations on revegetation in response to the District Court's decision (PSMRL II) and lifted the suspensions on 30 CFR 816/817.116. As a result, OSMRE notified Arkansas by letter dated March 15, 1989 (Administrative Record No. AR–354), that Arkansas' existing program was no less effective than the revised Federal regulations regarding revegetation. Therefore, Arkansas, by letter dated April 17, 1989 (Administrative Record No. AR–355), requested withdrawal of the proposed amendment that it submitted in response to the required program amendment at 30 CFR 904.16(a), and that OSMRE announced in the January 13, 1989, **Federal Register**. Arkansas did not withdraw the other provisions of its proposed amendment. OSMRE intends, during the final rulemaking decision on this amendment, to remove the required amendment on Arkansas' program found at 30 CFR 904.16(a).

Submission of Revised Amendment

During its review of Arkansas' December 22, 1988, amendment, OSMRE identified concerns relating to the proposed regulations at ASCMRC 1000 (50). As proposed, ASCMRC 1000 (50) would suspend ASCMRC 823.11(c). ASCMRC 823.11(c) requires the use of actual crop production from reclaimed prime farmlands in determining whether revegetation is successful. OSMRE notified Arkansas of its concerns by letter dated March 15, 1989 (Administrative Record No. AR–354). Arkansas responded in a letter dated April 26, 1989, by submitting a revised amendment package (Administrative Record No. AR–356) in which it documented its intention to remove the suspension of ASCMRC 823.11(c) found at ASCMRC 1000 (50).

III. Public Comment Procedures

OSMRE is reopening the comment period on the revised Arkansas program amendment to provide the public an opportunity to reconsider the adequacy of the amendment in light of the additional materials submitted. In accordance with the provisions of 30 CFR 732.17(h), OSMRE is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Arkansas program.

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations.

Comments received after the time indicated under "**DATES**" or at locations other than the Tulsa Field Office will not be considered in the final rulemaking or included in the administrative record.

List of Subjects in 30 CFR Part 904

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Date: May 16, 1989.

Raymond L. Lowrie,

Assistant Director, Western Field Operations.

[FR Doc. 89-12373 Filed 5-23-89; 8:45 am]

BILLING CODE 4310-05-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3574-6; Docket No. AM075 MD]

Disapproval and Promulgation of Implementation Plans; Disapproval of Revisions to the Maryland State Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency is proposing to disapprove a proposed revision to the Maryland State Implementation Plan (SIP) affecting the General Motors Assembly Plant in Baltimore, Maryland (GM-Baltimore) and three satellite plants located in Metropolitan Baltimore. The propose revision would have allowed GM-Baltimore and those satellite plants to comply with less stringent standards for emissions of volatile organic compounds (VOCs) than the currently approved Reasonably Available Control Technology (RACT) standards. Metropolitan Baltimore is an ozone nonattainment area which did not attain the ozone standard by the statutory date of December 31, 1987. VOCs are regulated as a precursor of ozone.

DATE: Comments must be submitted on or before June 23, 1989.

ADDRESSES: Copies of the applicable documents are available for public inspection during normal business hours at the following locations:

U.S. Environmental Protection Agency, Air Programs Branch, 841 Chestnut Building, Philadelphia, PA 19107.

Maryland Air Management Administration, Department of the Environment, 2500 Broening Highway, Baltimore, Maryland 21224.

All comments on this proposed rulemaking submitted within 30 days of this Notice will be considered and should be addressed to Mr. David L. Arnold, Chief, Program Planning Section at the above EPA Region III address. Please reference the EPA docket number found in the heading of this Notice.

FOR FURTHER INFORMATION CONTACT: Ms. Cynthia H. Stahl, (215) 597-9337, at the Region III address above. The commercial and FTS phone numbers are the same.

SUPPLEMENTARY INFORMATION: On June 30, 1987, the State of Maryland submitted a proposed revision to the Maryland State Implementation Plan regarding VOC emissions from Automotive and Light-duty Truck Coating and Associated Component Supplier Industries (Code of Maryland Regulations, COMAR 10.18. 21.03), which is the subject of this Notice. Also included in the June 30, 1987 submittal were proposed revisions to the following regulations: COMAR 10.18. 01.01 General Administrative Provisions Definitions; COMAR 10.18 .06.06 General Emission Standards, Prohibitions, and Restrictions-Volatile Organic Compound Storage and Handling—Applicability and Exemptions, .04 Loading Operations in Areas III and IV; COMAR 10.18. 21.01 Volatile Organic Compounds from Specific Processes Definitions, .02 Applicability, Determining Compliance, and Reporting, .13 Miscellaneous Metal Coating, and .15 Paint, Resin and Adhesive Manufacturing and Adhesive Application. These other revisions will be addressed in separate Notices.

GM-Baltimore is Maryland's only automobile assembly plant. However, there are three satellite plants which provide specific parts to GM and which could also be subject to this regulation.

The current federally approved SIP provisions applicable to VOC emissions from automobile and light-duty truck coating installation divides those coatings into four categories and imposes the following standards, codified at COMAR 10.18. 21.03.

TABLE 1

Coating	Pounds VOC per gallon of coating applied (minus water)	Kilograms per liter of coating applied (minus water)
Prime coat	1.2	0.14
Primer surfacer	2.8	0.34
Topcoat	2.8	0.34
Final repair	4.8	0.58

COMAR 10.18. 21.13, Miscellaneous Metal Coating, is also part of the federally-approved SIP and is applicable to certain coatings used in the automotive and light-duty truck assembly and associated supplier industries. Any miscellaneous metal coating at these automotive and light-duty truck assembly and associated supplier industry facilities which is not regulated by COMAR 10.18. 21.03 is covered by COMAR 10.18. 21.13. However, in order for 10.18. 21.13 to apply, the coating must be a miscellaneous metal coating as defined in the regulation. The following are the federally approved standards for miscellaneous metal coating in Maryland.

TABLE 2

Coating	Pounds per gallon of coating applied (minus water)	Kilograms per liter of coating applied (minus water)
High performance	3.5	0.42
Clear coating	4.3	0.51
Standard	3.0	0.36

Maryland also regulates all organic compound (VOC) sources in Metropolitan Baltimore and the Maryland portion of the Metropolitan Washington, DC area, which emit greater than 200 lbs/day if built before May 12, 1972 or 20 lbs/day if built after May 12, 1972. This generic VOC "catch all" regulation is approved as part of the Maryland SIP. Sealers, adhesives and plastic parts coatings are currently subject to the generic VOC regulation, COMAR 10.18. 06.06. This regulation requires installations constructed before May 12, 1972 to limit their emissions to less than 200 lbs/day unless these emissions are reduced by 85 percent or more overall, and for installations constructed after May 12, 1972, to limit their emissions to less than 20 lbs/day unless those emissions are reduced by 85 percent or more overall.

Maryland's proposed SIP revision would require that automotive and light-duty truck coating installations meet the following standards instead of those set forth above in COMAR 10.18. 21.03, 10.18. 21.13 and 10.18. 06.06:

TABLE 3

Installation	Maximum VOC		Installation Maximum VOC Emissions	
	lbs/gal.	kg/l	lbs/day	kg/day
A. Body primer (electrodeposition)	1.2	0.14	2,000	907
B. Body base	4.5	0.54	14,000	6,350
Body clear	3.8	0.46		
Body high solids (HS) enamel	3.8	0.46		
C. Repair primer	6.5	0.78	500	227
Stone chip coating	3.5	0.42		
Window blackout (HS enamel)	3.8	0.46		
D. Flexible end cap and bumper-base	4.9	0.59	1,100	499
Flexible end cap and bumper-clear	4.2	0.50		
Flexible end cap and bumper-HS enamel	4.0	0.48		
E. Small parts primer (electrodeposition)	1.2	0.14	200	91
F. Small parts-base	4.5	0.54	300	136
Small parts-clear	3.8	0.46		
Small parts-HS enamel	3.8	0.46		
G. Repair primer	6.5	0.78	300	136
Final repair-base	5.0	0.60		
Final repair-clear	4.0	0.48		
Final repair-HS enamel	4.0	0.48		
H. Wheel HS enamel	3.5	0.42	100	45
I. Chassis, deadener, and underbody coating	3.5	0.42	200	91
J. Sealers and adhesives exceeding 500 gals. (1,892 liters.)/month	0.5	0.06	300	136
500 gallons or less usage	5.5	0.66		
K. Sealer and adhesive primer	6.8	0.81	100	45
L. Plastic parts coating	4.8	0.58		
M. Special coating	(1)	(1)		

[1] May not exceed maximum VOC content of the above applicable standard by more than 10 percent.

Since EPA has determined that certain areas in Maryland, including Metropolitan Baltimore are ozone nonattainment areas, the SIP must provide for the implementation of all reasonably available control measures as expeditiously as practicable and must require, in the interim, reasonable further progress through the adoption, as a minimum, of Reasonably Available Control Technology (RACT) 42 U.S.C. 7502(b). The existing SIP has been determined to constitute RACT. Therefore, the revised SIP proposed by Maryland must be at least as stringent.

The proposed Maryland regulation divides the coatings used by GM-Baltimore into twenty-two different categories with three additional categories for sealers and adhesives. In order to evaluate these requirements against the provisions of the existing Maryland SIP, which has been determined to constitute RACT, EPA here compares these twenty-two categories to the four automotive and light-duty truck standards set forth in COMAR 10.18.21.03, the miscellaneous metal parts standards codified at COMAR 10.18.21.13, and Maryland's "generic" VOC requirements codified at COMAR 10.18.06.06.

Table 4 summarizes how EPA compares the present coating categories to those listed in the Maryland proposal.

TABLE 4

CTG coating category	Applicable MD regulation	Coatings listed in MD proposal
Prime coat	10.18.21.03	Body primer
Primer surfacer	10.18.21.03	
Topcoat	10.18.21.03	Body base, Body clear, Body high solids (HS) enamel, Window blackout, Special coatings [1]
Final repair	10.18.21.03	Final repair-base, Final repair-clear, Final repair-HS enamel, Special coatings [1]
Miscellaneous metal—high performance coating	10.18.21.13	Stone chip coating, Chassis, deadener, and underbody coating
Miscellaneous metal—standard coating	10.18.21.13	Flexible endcap and bumper-base, Flexible endcap and bumper-clear, Flexible endcap and bumper-HS enamel, Wheel HS enamel, Special coatings [1]
Generic VOC regulation (MD)	10.18.06.06	Plastic parts, coating sealers, adhesives sealer and adhesive primers

[1] In accordance with the current Maryland SIP, a "special coating" would be subject to the regulation for the applicable CTG category. CTG (EPA's Control Technique Guidlines) categories were used by Maryland to develop the current federally-approved SIP. Under the proposed revision addressed here, Maryland departs from the CTG categorization which it originally accepted in its SIP and is proposing to specifically define each coating used. Among other coating definitions, Maryland is proposing to define "special coatings" as "a coating other than a normal production color that is applied to not more than 35 automobiles and light-duty trucks per day and that does not meet the coating standard in Table 3 of this notice, Sections A–K."

In reference to Table 4, since GM-Baltimore no longer uses a primer surfacer, the automobile and light-duty truck coating categories that would be affected by the proposed SIP revision are primer, topcoat, final repair, miscellaneous metal parts and the processes subject to the generic VOC regulation.

Table 4 displays the coating categories set forth in the existing Maryland SIP, states the regulation that corresponds to that category, and lists the corresponding coating categories from the Maryland proposal. For example, the "Topcoat" category in the existing SIP is regulated by COMAR 10.18.21.03, and corresponds to the categories "Body base", "Body clear", Body High Solids (HS) enamel and

window blackout (HS) enamel in the Maryland proposal.

With the exception of Maryland's proposed standards for body primer (electrodeposition), small parts primer (electrodeposition), Final repair-clear, Final repair-HS enamel, and the chassis, deadener and underbody coatings, all the proposed standards are less stringent than those currently imposed by the federally-approved SIP for Maryland.

Under the existing SIP, all sources subject to the automotive and light-duty truck and miscellaneous metal parts regulations are required to comply with the applicable standard on a coating-by-coating basis, with the exception of topcoat, which must be based on an arithmetic mean of the VOC content of the coatings available for use in the topcoat spray booth. However, the existing SIP may be interpreted to allow the averaging of colors within a coating line on an instantaneous basis. Maryland has informed EPA that it interprets the proposed revision to require that each and every coating must never exceed the proposed standard. The proposed revision also includes emissions caps which are not presently required in the SIP.

The material supporting the Maryland submittal of this proposed revision does not support a finding that this approach will constitute a control technology at least as effective as that previously approved by EPA as constituting RACT. On its face, the Maryland submittal provides for higher emissions from a number of coating categories. Section 172(b) of the Clean Air Act requires that the State provide for the implementation of all reasonably available control measures as expeditiously as practicable, and, in the interim, requires that the State achieve reasonable further progress "through the adoption, at a minimum, of reasonably available control technology (RACT)."

On May 26, 1988, EPA made a finding of SIP inadequacy for the ozone nonattainment areas in Maryland, including Metropolitan Baltimore. In response, Maryland is required to submit a new SIP in order to expeditiously demonstrate the attainment of the ozone standard in its nonattainment areas.

This submittal also can not be approved as an adequate response to that finding of SIP inadequacy because, among other things, it is not accompanied by any showing that the Maryland ozone SIP, with this revision, can be demonstrated to provide for attainment of the ozone standard as expeditiously as practicable but in no case less than three years from the date of approval of such (revised) plan. CAA § 110(a)(2)(A).

Conclusion

EPA's decision to propose disapproval of this SIP revision regarding surface coating for automobile and light-duty trucks and associated satellite industries is based on a determination that this SIP revision is not consistent with Section 110 and Part D of the Clean Air Act.

The public is invited to submit comments, to the EPA Region III address above, on whether or not this revision should be disapproved.

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

Under Executive Order 12291, this action is "Major." It has been submitted to the Office of Management and Budget (OMB) for review.

List of Subjects in 40 CFR Part 52

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

Authority: 42 U.S.C. 7401–7642.

Date: May 11, 1989.

Stanley L. Laskowski,

Acting Regional Administrator.

[FR Doc. 89–12388 Filed 5–23–89; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 300

[SW–FRL–3574–1]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Notice of intent to delete site from the national priorities list; request for comments.

SUMMARY: The Environmental Protection Agency (EPA) announces its intent to delete the Jibboom Junkyard site from the National Priorities List (NPL) and requests public comment. The NPL is Appendix B to the National Oil and Hazardous Substances Pollution Contingency Plan, 40 CFR Part 300 (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response Compensation, and Liability Act of 1980, as amended (CERCLA).

DATES: Comments concerning the proposed deletion of the site from the NPL must be received on or before June 23, 1989.

ADDRESS: Comments should be submitted to Jeff Zelikson, Director, Hazardous Waste Management Division, EPA Region 9, 215 Fremont Street, San Francisco, California, 94105, ATTN: Carolyn d'Almeida. Requests for documents should be made in writing to this address, or documents may be viewed at the comprehensive public dockets which have been established at the EPA Region 9 Library, 215 Fremont Street, San Francisco, California, 94105 and at the Sacramento Public Library, Reference Desk, 828 I Street, Sacramento, California, 95814.

FOR FURTHER INFORMATION CONTACT: Jeff Zelikson, Director, Hazardous Waste Management Division, EPA Region 9, 215 Fremont Street, San Francisco, California, 94105, ATTN: Carolyn d'Almeida, 415/974–8130.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction

The Environmental Protection Agency (EPA) announces its intent to delete the Jibboom Junkyard site from the National Priorities List (NPL), Appendix B of the National Oil and Hazardous Substances Pollution Contingency Plan, 40 CFR Part 300 (NCP). The EPA identifies sites that appear to present a significant risk to public health, welfare or the environment and maintains the NPL as the list of those sites. Sites on the NPL may be the subject of Hazardous Superfund Fund (Fund) financed remedial actions. Any site deleted from the NPL remains eligible for additional Fund-financed remedial actions in the unlikely event that conditions at the site warrant such action.

The EPA will accept comments on this proposal for 30 days after its publication in the **Federal Register**.

Section II of this notice explains the criteria for deleting sites from the NPL. Section III discusses the procedures that EPA is using for this action. Section IV discusses the history of this site and explains how this site meets the deletion criteria.

II. NPL Deletion Criteria

The 1985 amendments to the NCP established the criteria the Agency uses to delete sites from the NPL. 40 CFR 300.66(o)(7) provides that sites "may be deleted or recategorized on the NPL where no further response is

appropriate." In making this decision, EPA will consider whether any of the following criteria have been met:

(i) EPA, in consultation with the State, has determined that responsible or other parties have implemented all appropriate response actions required:

(ii) All appropriate Fund-financed responses under CERCLA have been implemented and EPA, in consultation with the State, has determined that no further cleanup by responsible parties is appropriate; or

(iii) Based on a remedial investigation, EPA, in consultation with the State, has determined that the release poses no significant threat to public health or the environment and, therefore, taking of remedial measures is not appropriate.

Prior to deciding to delete a site from the NPL, EPA must determine that the remedy, or existing site conditions at sites where no action is required, is protective of public health, welfare and the environment.

Deletion of a site from the NPL does not preclude eligibility for subsequent additional Fund-financed actions if future site conditions warrant such actions. Section 300.66(c)(8) of the NCP states that Fund-financed actions may be taken at sites that have been deleted from the NPL.

Deletion of sites from the NPL does not itself create, alter, revoke any individual's rights or obligations. Furthermore, deletion from the NPL does not in any way alter EPA's right to take enforcement actions, as appropriate. The NPL is designed primarily for informational purposes and to assist in Agency management.

III. Deletion Procedures

Upon determination that at least one of the criteria described in § 300.66(c)(7) has been met, EPA may formally begin deletion procedures. The first steps are the preparation of a Superfund Close Out Report and the establishment of the local information repository and the Regional deletion docket. These actions have been completed. This **Federal Register** notice, and a concurrent notice in the local newspaper in the vicinity of the site, announce the initiation of a 30 day public comment period. The public is asked to comment on EPA's intention to delist the site from the NPL: all critical documents needed to evaluate EPA's decision are generally included in the information repository and deletion docket.

Upon completion of the public comment period, the EPA Regional office will prepare a responsiveness summary to evaluate and address concerns which were raised. The public is welcome to contact the EPA Regional office to obtain a copy of this responsiveness summary, when available. If EPA still determines that deletion from the NPL is appropriate, a final notice of deletion will be published in the **Federal Register**. However, it is not until the next official NPL rulemaking that the site would be actually delisted.

IV. Basis for Intended Site Deletion

The following summary provides the Agency's rationale for intending to delete this site from the NPL.

Jibboom Junkyard Superfund Site, Sacramento, California

The Jibboom Junkyard is a nine acre site located in downtown Sacramento, California. The site is situated along the Sacramento River, approximately 2,000 feet downstream from the confluence of the Sacramento and American Rivers, and approximately 400 feet southeast, and downstream, of the water intake which supplies water for up to 145,000 people in Sacramento.

Between 1950 or 1951 and 1965, the site was operated as a metals salvage business by the Associated Metals Company. All grade of metals were salvaged, including railroad cars, army tanks, batteries, and possibly some transformers. The property was purchased in 1965 by the State of California for easement and construction of Interstate 5 (I–5). Construction began soon thereafter and when completed, 6.7 acres of the site had been covered up by either I–5 or the realigned Jibboom Street.

Between 1981 and 1985, EPA and the State of California Department of Health Services (DHS) performed extensive on- and off-site surface and subsurface soil sampling. Very elevated concentrations of copper, lead, and zinc (up to 6,310 parts per million (ppm), 13,600 ppm, and 19,700 ppm, respectively) were detected at the surface and at four subsurface locations. On February 14, 1985, the draft Feasibility Study was released for a three week public comment period. On May 9, 1985, in accordance with the Initial Remedy Delegation Report, Region 9 approved a Record of Decision (ROD) which selected excavation and off-site disposal of all soil contaminated with lead above 200 ppm, the background level.

An amendment to the ROD, which changed the cleanup level to 500 ppm lead, was signed on October 4, 1985. The new level was determined to provide complete protection of human health and the environment and is in accordance with the Acting Assistant Administrator of the Office of Solid Waste and Emergency Response June 17, 1985 interpretation of the Landfill and Surface Impoundment Requirements of Resource Conservation and Recovery Act of 1976, as amended (RCRA), 40 CFR 264.111.

On May 10, 1985, the U.S. Army Corps of Engineers (USACE) began design of the selected alternative. The design was completed in September, 1985. On July 14, 1986, USACE awarded a contract for the remedial action to U.S. Pollution Control, Inc., for $1.985 million. Extensive revisions to the contractor's remedial action work plan caused site mobilization activities to be delayed until late October, 1986.

Remedial action construction activities continued until May 27, 1987, when a Joint Pre-Final Inspection was conducted by EPA, USACE, and DHS. The inspection determined that the remedial action was complete as specified in the ROD and remedial design, except for the 60 day vegetation establishment period required by the remedial design. The Final Inspection, which was held on July 26, 1987, determined that the revegetation was acceptable. The remedial action was thereby determined to be complete: 12,067 tons of contaminated soils had been removed to the RCRA- and CERCLA-approved hazardous waste landfill in Clive, Utah and construction costs totaled $3,991,315, with 21 change orders and no claims.

Extensive subsurface soil sampling by the USACE during the remedial action confirmed that all lead had been removed to below 500 ppm. In addition, all other contaminants detected were removed to deminimus or non-detectable levels. A summary of the soil sampling is contained in the USACE Final Technical Report, dated March 30, 1988, and the Site Specific Quality Management Plan, dated November 2, 1987 (both documents are available in the deletion docket).

EPA sampled and analyzed ground water twice, one sampling episode occurred on December 22, 1986 and the other occurred during the week of August 10, 1987. The results confirmed that ground water was not contaminated by the Jibboom Junkyard and that there was no ground water contamination at the completion of the remedial action.

For a period of one year, until July 26, 1988, EPA performed operation and maintenance activities at the site. Since that date, the State of California has assumed responsibility for the site.

EPA, in consultation with the State of California, has determined that all appropriate Fund-financed response under CERCLA has been implemented at the Jibboom Junkyard and that no

further cleanup by responsible parties is appropriate. The State of California has given its concurrence on the deletion of this site from the NPL.

Date: December 20, 1988.

Daniel W. McGovern,

Regional Administrator.

[FR Doc. 89-12423 Filed 5-23-89; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Family Support Administration

45 CFR Parts 232, 234, and 235

RIN 0970-AA49

Cooperation To Pursue Third Party Health Coverage

AGENCY: Family Support Administration, HHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: These proposed rules implement section 12304 of the Consolidated Budget Reconciliation Act (COBRA) of 1985 which requires each applicant or recipient to cooperate with the State in identifying and providing information to assist States in pursuing any third party who may be liable to pay for care and services available under State plans for medical assistance under title XIX, unless such individual has good cause for refusing to cooperate as determined by the State agency in accordance with standards prescribed by the Secretary. The regulations are applicable to the AFDC program in all jurisdictions.

DATE: Comments will be considered if we received them no later than June 23, 1989.

ADDRESSES: Comments should be submitted in writing to the Administrator, Family Support Administration, Attention: Ms. Diann Dawson, Director, Division of Policy, Office of Family Assistance, 5th Floor, 370 L'Enfant Promenade SW., Washington, DC 20447, or delivered to the Office of Family Assistance, Family Support Administration, 5th Floor, 370 L'Enfant Promenade SW., Washington, DC 20447 between 8:00 a.m. and 4:30 p.m. on regular business days. Comments received may be inspected during these same hours by making arrangements with the contact person identified below.

FOR FURTHER INFORMATION CONTACT: Ms. Diann Dawson, 5th Floor, 370 L'Enfant Promenade SW., Washington, DC 20447, telephone (202) 252-5119.

SUPPLEMENTARY INFORMATION:

Discussion of Statutory Provision

Section 12304 of COBRA, Pub. L. 99-272, amended section 402(a)(26) of title IV-A of the Social Security Act (the Act) by adding a new subparagraph (C) which requires each applicant or recipient to cooperate with the State in identifying and providing information to assist the States in pursuing any third party who may be liable to pay for the care and services available under the State's plan for medical assistance under title XIX of the Act. An individual may be exempted from this requirement if he or she is determined to have good cause for refusing to cooperate as determined by the State agency in accordance with standards prescribed by the Secretary which take into consideration the best interest of the individuals involved.

The statute also provides that States shall not be subject to any financial penalty in the administration or enforcement of this provision as a result of any monitoring, quality control, or auditing requirements. According to the conference report, this provision is intended to exclude from the calculation of AFDC fiscal sanctions for assistance payments any errors resulting from the application of this policy. These statutory requirements are effective July 1, 1986.

Discussion of Proposed Rule Provisions

These proposed rules require, as a condition of eligibility for AFDC, each applicant and recipient to cooperate with the State in identifying, and providing information to assist the State in pursuing, any third party who may be liable to pay for medical care and services. This is consistent with the Department's initiative to reduce medical costs to States and the Federal government, and with the concept of Medicaid as the payor of last resort. These rules facilitate the pursuit of third party resources and thereby assist in reducing Medicaid expenditures of States and the Federal government. When used in this provision, "third parties" include any individual, entity, or program that may be liable to pay all or part of the costs for medical care and services available under title XIX of the Act. The term may also include any employment-related or other individual or group health insurance available to or through the dependent child's parents.

We have added a new section 45 CFR 232.13 to reflect this new eligibility requirement. We are also adding language to the current regulations at 45 CFR 235.70 to provide for the prompt notification to the title XIX agency of all relevant information to assist in their pursuit of liable third parties.

The statute provides that individuals who refuse to cooperate with the State in the pursuit of third-party liability for medical services must be removed from the assistance unit. The statute also provides that applicants and recipients may be exempted from this new provision if they are determined by the State agency to have good cause for refusing to cooperate in accordance with standards prescribed by the Secretary, which take into consideration the best interests of the individuals involved. This provision is similar in scope to current regulations at 45 CFR 232.12 which provide for such good cause determinations for refusal to cooperate in establishing paternity or obtaining support for an eligible child. Regulations at 45 CFR 232.11 on "Assignment of Rights to Support" currently include standards for making determinations of whether good cause exists for an individual's refusal to comply with child support requirements.

In order to provide for consistency between these similar requirements, we propose to make these same good cause standards applicable to the requirement under this provision. The existing regulations for refusing to cooperate at 45 CFR 232.40-232.49 and 235.70 are being amended, where appropriate, to extend current procedures and policies regarding good cause determinations for child support to this new eligibility requirement. Specifically, we propose to amend 45 CFR 232.40 (a) and (b), 232.42 (a) and (c), 232.44 (a) and (b), 232.45 (a), (b), and (c), 232.48(g), 232.49 (a), (c), and (d), 235.70 (a) and (b), and Appendix A to Part 232, to incorporate those standards, as are appropriate, for use in determining good cause claims for refusal to identify and assist in the pursuit of third parties liable (or potentially liable) for medical services.

These rules would also require that the State must provide assistance to an eligible child in the form of protective payments for cases where the caretaker relative refuses to cooperate. This requirement is consistent with similar restrictions imposed in cases where individuals refused to cooperate in employment-related activities or in establishing paternity or obtaining support payments. In the latter case, Congress was concerned that continued receipt of assistance by the uncooperative adult on behalf of other family members would offset, to some degree, the penalty imposed by the State and may lead to a diversion of funds necessary for the well-being of the child.

The requirement to provide assistance in the form of protective payments has proven to be an effective method in meeting these concerns. Extension of this policy to refusal to cooperate in pursuing third-party liability for medical services is similarly essential for the well-being of the child, and is therefore justified under the authority of section 1102 of the Act, which enables the Secretary to make such rules as are necessary for the efficient administration of the program. Accordingly, we propose to amend 45 CFR 234.60(a) to provide that protective payments are necessary in cases where good cause is not established.

Federal financial participation (FFP) is available for gathering third-party liability information as long as the activity is conducted as part of the administration of the title IV–A State plan. Such activities include making good cause determinations and providing assistance in the form of protective payment, as explained in proposed regulation 45 CFR 232.13(c). FFP is not available under title IV–A for activities outside the scope of the administration of a State plan for AFDC, such as the cost of providing medical care and services.

We consider the information gathering activities prescribed in this rule, such as interviewing clients and contacting collateral sources, as part of the administration of the AFDC program. This is necessary because the statute now requires cooperation in obtaining third party liability for medical care "as a condition of eligibility for aid." Moreover, the State plan must now require the IV–A agency to provide to the State Medicaid agency "all relevant information as prescribed by the State Medicaid agency" as set forth in proposed regulations at 45 CFR 235.70(b)(2). Thus, the information gathering requirement for third-party liability is now part of the larger information gathering requirement for the AFDC eligibility determination—these costs must therefore be claimed under title IV–A.

To some extent, the information gathering activities prescribed in this rule may overlap or even duplicate information gathering activities prescribed in 45 CFR 306.50, "Securing Medical Support Information." Nevertheless, the State must claim the costs under title IV–A, rather than title IV–D, since current regulations at 45 CFR 304.23(a) deny FFP under title IV–D for activities related to the IV–A program. Only where the State IV–A agency fails to provide the information specified under 45 CFR 306.50(a), and the information must be collected and forwarded by the IV–D agency pursuant to that section, is FFP available under title IV–D.

Regulatory Procedures

Executive Order 12291

These proposed rules do not meet any of the criteria specified in Executive Order 12291 for a major regulation because the cost of implementation is expected to be insignificant.

Paperwork Reduction Act

Public reporting burden for the collection of information requirements at 45 CFR 232.48 is estimated to average 60 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate of or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Family Assistance, 5th Floor, 370 L'Enfant Promenade SW., Washington, DC 20447; and to the Office of Management and Budget, Paperwork Reduction Project, Washington, DC 20503.

Regulatory Flexibility Act

The primary impact of these proposed rules is on State governments and individuals. Therefore, we certify that these rules, if promulgated, will not have a significant economic impact on a substantial number of small entities because they affect benefits to individuals and payments to States. Thus, a regulatory flexibility analysis as provided in Pub. L. 96–354, the Regulatory Flexibility Act, is not required.

(Catalogue of Federal Domestic Assistance Program 13.808, Public Assistance.)

List of Subjects

45 CFR Part 232

Aid to families with dependent children, Child support, Grant programs—social programs.

45 CFR Part 234

Grant programs—social programs, Health care, Public assistance programs, Rent subsidies.

45 CFR Part 235

Aid to families with dependent children, Fraud, Grant programs—social programs, Public assistance programs.

Dated: June 29, 1988.

Wayne A. Stanton,

Administrator, Family Support Administration.

Approved: December 2, 1988.

Otis R. Bowen,

Secretary of Health and Human Services.

Part 232 of Chapter II, Title 45, Code of Federal Regulations is proposed to be amended as set forth below:

PART 232—SPECIAL PROVISIONS APPLICABLE TO TITLE IV-A OF THE SOCIAL SECURITY ACT

1. The authority citation for Part 232 is revised to read as follows:

Authority: Sec. 1102 of the Social Security Act, (42 U.S.C. 1302).

2. Part 232 is amended by adding a new § 232.13 to read as follows:

§ 232.13 Cooperation in pursuing liability for medical services.

(a) The State plan must provide that as a condition of eligibility, each applicant for or recipient of AFDC will be required to cooperate (unless good cause for refusing to do so is determined by the Director of the State IV–A agency to exist in accordance with §§ 232.40 through 232.49 with the State in:

(1) Identifying any third party who may be liable for care and services available under the State's title XIX State plan in behalf of the applicant or recipient or in behalf of any other family member (including parents and siblings as required under § 206.10(a)(1)(vii) (A) and (B)) for whom the applicant or recipient is applying for or receiving assistance; and

(2) Providing relevant information to assist the State in pursuing any such potentially liable third parties. Such information shall include, but is not limited to, the name, address, telephone number, type of liability of the third party as well as other pertinent information, such as the third party's employer, type of medical plan, policy number, etc.

(b) The plan shall provide that if the applicant or recipient fails to cooperate as required by this section (unless good cause is determined to exist), the State or local agency shall:

(1) Deny assistance to the applicant or recipient without regard to other eligibility factors; and

(2) Provide assistance to the eligible child in the form of protective payments as described in § 234.60 of this chapter. Such assistance will be determined without regard to the needs of the applicant or recipient.

(c) Federal financial participation (FFP) is available for title IV–A

administrative costs associated with identifying and providing information about a third party provider as part of the eligibility determination for the AFDC program. FFP is also available for IV–A administrative costs associated with determining good cause for failure to cooperate and providing assistance in the form of protective payments.

3. Section 232.40 is amended by revising paragraphs (a), (b)(1), (b)(2)(i)(A), (B), and (C), and (b)(2)(ii)(C), (E), and (F) to read as follows:

§ 232.40 Claiming good cause for refusing to cooperate.

(a) *Opportunity to claim good cause.* The plan shall provide that an applicant for, or recipient of, AFDC will have the opportunity to claim good cause for refusing to cooperate as required by § 232.12 or § 232.13.

(b) * * *

(1) The plan shall provide that: (i) Prior to requiring cooperation under § 232.12 or § 232.13, the State or local agency will notify the applicant or recipient of the right to claim good cause as an exception to the cooperation requirement and of all the requirements applicable to a good cause determination;

(ii) The notice will be in writing, with a copy furnished to the applicant or recipient; and

(iii) The applicant or recipient and the caseworker will acknowledge that the applicant or recipient received the notice by signing and dating a copy of the notice, which will be placed in the case record.

(2) * * *

(i) * * *

(A) Advise the applicant or recipient of the potential benefits the child may derive from the establishment of paternity, security support, and pursuing liability for medical services;

(B) Advise the applicant or recipient that by law, cooperation in establishing paternity, securing support, and pursuing liability for medical services is a condition of eligibility for AFDC;

(C) Advise the applicant or recipient of the sanctions provided by §§ 232.12 and 232.13 for refusal to cooperate without good cause;

* * * * *

(ii) * * *

(C) Inform the applicant or recipient that on the basis of the corroborative evidence supplied and the agency's investigation if necessary, the State or local agency will determine whether cooperation would be against the best interests of the child for whom support or liability for medical services would be sought;

* * * * *

(E) Inform the applicant or recipient that the State Child Support Enforcement agency and the State Medicaid agency may review the State or local agency's findings and basis for a good cause determination and may participate in any hearings concerning the issue of good cause; and

(F) As applicable, (see § 232.49) inform the applicant or recipient that either: The State Child Support Enforcement agency will not attempt to establish paternity and collect support and the State Medicaid agency will not pursue third parties liable for medical services in those cases where the applicant or recipient is determined to have good cause for refusing to cooperate; or the State Child Support Enforcement agency may attempt to establish paternity and collect support and the State Medicaid agency may pursue liable third parties in those cases where the State or local agency determines that this can be done without risk to the applicant or recipient if done without their participation.

* * * * *

5. Section 232.41 is amended by revising paragraph (d)(2) to read as follows:

§ 232.41 Determination of good cause for refusal to cooperate.

* * * * *

(d) * * *

(2) Continued refusal to cooperate will result in imposition of the sanctions provided in § 232.12 or § 232.13.

6. Section 232.42 is amended by revising paragraphs (a) introductory text, (a)(1) introductory text, (a)(2), and (c)(5) to read as follows:

§ 232.42 Good cause circumstances.

(a) Circumstances under which cooperation may be "against the best interests of the child". The plan shall provide that the State or local agency will determine that cooperation in establishing paternity, securing support or pursuing any third party who may be liable to pay for medical services available under the State's Medicaid plan is against the best interests of the child only if:

(1) The applicant's or recipient's cooperation in establishing paternity, securing support, or pursuing third parties potentially liable for medical services is reasonably anticipated to result in:

* * * * *

(2) At least one of the following circumstances exists, and the State or local agency believes that because of the existence of that circumstance proceeding to establish paternity, secure support, or pursue third party liability for medical services would be detrimental to the child for whom support would be sought.

* * * * *

(c) * * *

(5) The extent of involvement of the child in the paternity establishment, support enforcement activity or pursuit of third parties to be undertaken.

7. Section 232.44 is revised to read as follows:

§ 232.44 Participation by the State IV–D or Medicaid Agency.

The plan shall provide that:

(a) Prior to making a final determination of good cause for refusing to cooperate, the State or local agency will:

(1) Afford the IV–D agency or the Medicaid agency, as appropriate, the opportunity to review and comment on the findings and basis for the proposed determination; and

(2) Consider any recommendation from the IV–D agency or the Medicaid agency, as appropriate.

(b) The State or local agency will give the IV–D agency or the Medicaid agency, as appropriate, the opportunity to participate in any hearing (under § 205.10 of this chapter) that results from an applicant's or recipient's appeal of any agency action under §§ 232.40 through 232.49.

8. Section 232.45 is revised to read as follows:

§ 232.45 Notice to the IV–D or Medicaid Agency.

The plan shall provide that:

(a) If the notice, required by § 235.70 of this chapter, has previously been provided to the IV–D agency or Medicaid agency, as appropriate, the State or local agency will promptly report to the IV–D agency or Medicaid agency, as appropriate, that good cause has been claimed;

(b) The State or local agency will promptly report to the IV–D agency or Medicaid agency, as appropriate, all cases in which it has determined that there is good cause for refusal to cooperate and if applicable, its determination whether or not child support enforcement or pursuit of third parties potentially liable for medical services may proceed without the participation of the caretaker relative; and

(c) The State and local agency will promptly report to the IV–D agency or Medicaid agency, as appropriate, all cases in which it has determined that there is not good cause for refusal to cooperate.

9. Section 232.47 is amended by revising paragraph (b) to read as follows:

§ 232.47 Periodic review of good cause determination.

* * * * *

(b) If it determines that circumstances have changed such that good cause no longer exists, it will rescind its findings and proceed to enforce the requirements of § 232.12 or § 232.13 of this chapter.

10. Section 232.48 is amended by revising the introductory text of the section and paragraph (g) to read as follows:

§ 232.48 Record keeping in good cause.

The plan shall provide that the State will maintain separate records of the good cause claims under § 232.12 and the good cause claims under § 232.13 and will make it possible to submit to the Department, upon request, data concerning:

* * * * *

(g) The number of cases in which the applicant or recipient was found to have good cause for refusing to cooperate but there was a determination pursuant to § 232.49 that child support enforcement or the pursuit of third parties potentially liable for medical services, may proceed without the participation of the caretaker relative; and

* * * * *

11. Section 232.49 is amended by revising paragraphs (a), (c) and (d) to read as follows:

§ 232.49 Enforcement without the caretaker's cooperation.

* * * * *

(a) If the State or local agency makes a determination that good cause exists it will also make a determination of whether or not child support enforcement or the pursuit of any third party liable for medical services could proceed without risk of harm to the child or caretaker relative if the enforcement or collection activities did not involve their participation;

* * * * *

(c) If the IV–A agency excuses cooperation but determines that the IV–D agency or the Medicaid agency may proceed to establish paternity, enforce support, or pursue liable third parties, it will notify the applicant or recipient to enable such individual to withdraw his or her application for assistance or have the case closed; and

(d) Prior to making this determination under this paragraph, the State or local agency will afford the IV–D agency or the Medicaid agency an opportunity to review and comment on the findings and basis for the proposed determination and consider any recommendation from the IV–D agency or the Medicaid agency.

12. In Part 232, Appendix A is revised to read as follows:

Appendix A to Part 232—Model Two-Part Good Cause Notice

This suggested two-part notice format meets the notice requirements of § 232.40(b)(2). The first notice should be provided prior to requiring the applicant's or recipient's cooperation. The second notice should be primarily provided if the applicant or recipient so requests or following a claim of good cause. Receipt of the notice will be acknowledged by the applicant's or recipient's and the worker's signature. The signed copy should be placed in the AFDC case record with one copy retained by the applicant or recipient.

Before being used by a State, this model should be adapted by substituting the appropriate agencies' names.

Notice of Requirement to Cooperate and Right to Claim Good Cause for Refusal to Cooperate in Child Support Enforcement and the Pursuit of Third Parties Liable for Medical Services

Benefits of Child Support Enforcement

Your cooperation in the child support enforcement process may be of value to you and your child because it might result in the following benefits:

- Finding the absent parent;
- Legally establishing your child's paternity;
- The possibility that support payments might be higher than your welfare grant; and
- The possibility that you and your children may obtain rights to future social security, veterans, or other government benefits.

What is Meant by Cooperation?

The law requires you to cooperate with the welfare, child support and Medicaid agencies to get any support (financial or medical) owed to you and any of the children for whom you want AFDC, unless you have good cause for not cooperating.

In cooperating with the welfare, child support and Medicaid agencies, you may be asked to do one or more of the following things:

- Name and parent of any child applying for or receiving AFDC, and give information you have to help find the parents;
- Help determine legally who the father is if your child was born out of wedlock;
- Give help to obtain money owed to you or the children receiving AFDC;
- Pay the State any money which is given directly to you by the absent parent (you will continue to get your full AFDC grant from the State); and
- Identify and provide information for the pursuit of any third party who may be liable to pay for medical care and services.

You may be required to come to the welfare office, child support office, court or the State Medicaid agency to sign papers or give necessary information.

What Is Meant by Good Cause?

You may have good cause not to cooperate in the State's efforts to collect child support and payments for medical care from third parties. You may be excused from cooperating if you believe that cooperation would not be in the best interest of your child, and if you can provide evidence to support this claim.

If You Do Not Cooperate and You Do Not Have Good Cause

- You will be ineligible for AFDC.
- Your children will still be eligible for AFDC for their own needs. Your children's grant will go to another person, called a "protective payee."

How and When You May Claim Good Cause

- If you want to claim good cause, you must tell a worker that you think that you have good cause. You can do this at any time you believe you have good cause not to cooperate.
- If you claim "good cause" you must be given another notice. This second notice will explain the circumstances under which the Welfare Agency may find good cause, and the type of evidence or other information the Welfare Agency needs to decide your claim. You may also ask for this second notice to help you decide whether or not to claim good cause.

I have read this notice concerning my right to claim good cause for refusing to cooperate.

(Signature of applicant/recipient)

(Date)

I have provided the applicant/recipient with a copy of this notice.

(Signature of worker)

(Date)

Second Notice of Right to Claim Good Cause for Refusal to Cooperate in Child Support Enforcement and the Pursuit of Third Parties Liable for Medical Services

Good Cause Circumstances

You may claim to have good cause for refusing to cooperate if you believe that such cooperation would not be in the best interests of your child. The following circumstances under which the Welfare Agency may determine that you have good cause for refusing to cooperate:

- Cooperation is anticipated to result in serious physical or emotional harm to the child;
- Cooperation is anticipated to result in physical or emotional harm to you which is so serious it reduces your ability to care for the child adequately;
- The child was born after forcible rape or incest;
- Court proceedings are going on for adoption of the child; or
- You are working with an agency helping you to decide whether to place the child for adoption.

Proving Good Cause

It is your responsibility to:

• Provide the Welfare Agency with the evidence needed to determine whether you have good cause for refusing to cooperate (if your reason for claiming good cause is your fear of physical harm and it is impossible to obtain evidence, the Welfare Agency may still be able to make a good cause determination after an investigation of your claim).

• Give the necessary evidence to the agency within 20 days after claiming good cause. The Welfare Agency will give you more time only if it determines that more than 20 days are required because of the difficulty in obtaining the evidence.

The Welfare Agency may:

• Decide your claim based on the evidence which you give to the agency, or

• Decide to conduct an investigation to further verify your claim. If the Welfare Agency decides an investigation is needed, you may be required to give information, such as the absent parent's name and address, to help the investigation. The agency will not contact the absent parent without first telling you.

Note: If you are an applicant for assistance, you will not receive your share of the grant until you have given the agency the evidence needed to support your claim, and, if requested, the information needed to permit an investigation of your claim.

Examples of Acceptable Evidence

The following are examples of acceptable kinds of evidence the Welfare Agency can use in determining if good cause exists.

If you need help in getting a copy of any of the documents, ask the Welfare Agency. The Welfare Agency will give you reasonable assistance which is needed to help you obtain the necessary documents to support our claim.

• Birth certificates, or medical or law enforcement records, which indicate that the child was conceived as the result of incest or forcible rape;

• Court documents or other records which indicate that legal proceedings for adoption are pending in court;

• Court, medical, criminal, child protective services, social services, psychological, or law enforcement records which indicate that the alleged or absent father might inflict physical or emotional harm on you or the child;

• Medical records which indicate emotional health history and present health status of you or the child for whom support would be sought; or written statements from a mental health professional indicating a diagnosis or prognosis concerning the emotional health of you or the child;

•A written statement from a public or private agency confirming that you are being assisted in resolving the issue of whether to keep or give up the child for adoption; and

• Sworn statements from individuals, including friends, neighbors, clergymen, social workers, and medical professionals who might have knowledge of the circumstances providing the basis of your good cause claim.

Child Support Agency and Medicaid Agency Participation and Enforcement

The Child Support Enforcement Agency or the Medicaid Agency may review the Welfare Agency's findings and the basis for a good cause determination in your case. If you request a hearing regarding this issue of good cause for refusing to cooperate, the Child Support Enforcement Agency or the Medicaid Agency may participate in that hearing.

The Notice must include one of the following statements, as applicable depending on the State plan option chose. See § 232.49.

Option 1. If you are found to have good cause for not cooperating, the Child Support Enforcement Agency may attempt to establish paternity or collect support and the State Medicaid agency may pursue third parties potentially liable for medical services only if the welfare agency determines that this can be done without risk to you or your child. This will not be done without first telling you.

Option 2. If you are found to have good cause for not cooperating, the Child Support Enforcement Agency will not attempt to establish paternity or collect support and, as appropriate, the State Medicaid agency will not pursue third parties potentially liable for medical services.

I have read this notice concerning my right to claim good cause for refusing to cooperate.

_____

(Signature of applicant/recipient)

_____

(Date)

I have provided the applicant the applicant/recipient with a copy of this notice.

_____

(Signature of worker)

_____

(Date)

Part 234 of Chapter II, Title 45, Code of Federal Regulations is proposed to be amended as set forth below:

PART 234—FINANCIAL ASSISTANCE TO INDIVIDUALS

1. The authority citation for Part 234 is revised to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

2. Part 234.60 is amended by revising paragraphs (a)(1) and (a)(13) to read as follows:

§ 234.60 Protective, vendor and two-party payments fo dependent children.

(a) * * * (1) If a State plan for AFDC under title IV–A of the Social Security Act provides for protective, vendor and two-party payments for cases other than failure to participate in WIN, employment search, or Community Work Experience Programs (CWEP), or failure by the caretaker relative to meet the eligibility requirements of § 232.11, 232.12, or 232.13 of this chapter. It must meet the requirements in paragraphs (a)(2) through (11) of this section. In addition, the plan may provide for protective, vendor, and two-party payments at the request of the recipient as provided in paragraph (a)(14) of this section.

(13) For cases in which a caretaker relative fails to meet the eligibility requirements of §§ 232.11, 232.12, or 232.13 of this chapter by failing to assign rights to support or cooperate in determining paternity, securing support, or pursuing third-party liability for medical services, the State plan must provide that only the requirements of paragraphs (a)(7) and (9)(ii) of this section will be applicable. For such cases the entire amount of the assistance payment will be in the form of protective or vendor payments. These protective or vendor payments will be terminated, with return to money payment status, only upon compliance by the caretaker relative with the eligibility requirements of §§ 232.11, 232.12, and 232.13 of this chapter. However, if after making all reasonable efforts, the State agency is unable to locate an appropriate individual to whom protective payments can be made, the State may continue to make payments on behalf of the remaining members of the assistance unit to the sanctioned caretaker relative.

* * * * *

Part 235 of Chapter II, Title 45, Code of Federal Regulations is proposed to be amended as set forth below:

PART 235—ADMINISTRATION OF FINANCIAL PROGRAMS

1. The authority citation for Part 235 is added to read as set forth below, and the authority citations following any section in the part are removed.

Authority: Secs. 2, 3, 402, 403, 1002, 1003, 1102, 1402, 1403, 1602, and 1603, Social Security Act as amended (42 U.S.C. 302, 303, 602, 603, 1202, 1203, 1302, and Part XXIII of Pub. L. 97–35, 1352, 1353, 1382, and 1383)

2. Section 235.70 is amended by revising the section heading and introductory text of paragraph (a) and pargraph (b)(2) to read as follows:

§ 235.70 Prompt notice to IV–D or Medicaid Agency.

(a) A state plan under title IV–A of the Social Security Act must provide for prompt notice to the State or local child support agency designated pursuit to section 454(3) of the Social Security Act and to the State Medicaid agency, as appropriate, whenever:

* * * * *

(b) * * *

(2) "Prompt notice" means written notice including a copy of the AFDC case record, or all relevant information as prescribed by the child support agency. Prompt notice must also include

all relevant information as prescribed by the State Medicaid agency for the pursuant of liable third parties. The prompt notice shall be provided within two working days of the furnishing of aid or the determination that an individual is a recipient under § 233.20(a)(3)(viii)(D). The title IV–A agency, the child support agency and the Medicaid agency may agree to provide notice immediately upon the filing of an application for assistance.

* * * * *

[FR Doc. 89–12179 Filed 5–23–89; 8:45 am]
BILLING CODE 4150–04–M

Notices

Federal Register
Vol. 54, No. 99
Wednesday, May 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.

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

May 19, 1989.

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

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

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from:

Department Clearance Officer, USDA, OIRM, Room 404-W Admin. Bldg., Washington, DC 20250, (202) 447-2118.

Revision

• Food and Nutrition Service
Operating Guidelines, Forms and Waivers
FNS-366A, FNS-366B
Annually
State or local governments; 256 responses; 3,299 hours not applicable under 3504(h)
Cecilia Fitzgerald (703) 756-3385

Extension

• Agricultural Marketing Service
Reporting and Recordkeeping Requirements Under the Egg Research and Consumer Information Act
None
Recordkeeping; Monthly; Annually; One-time application
Farms; Businesses or other for-profit; 11,123 responses; 1,861 hours; not applicable under 3504(h)
Janice L. Lockard (202) 447-3506

• Food and Nutrition Service
Requisition for Food Coupon Books
FNS 260
On occasion
State or local governments; 13,300 responses; 6,650 hours; not applicable under 3504(h)
Asher S. Bryte (703) 756-3545

• Agricultural Stabilization and Conservation Service
Reporting and/or Recordkeeping Requirements under U.S. Warehouse Act and Processed Agricultural Commodities and Regulations
WA-50, -53, -51, 51-2, -54, -99, -220, -222, -302, -303, -308, -125, -561, -570, -137
Recordkeeping; Annually
Businesses or other for-profit; 30,075 responses; 18,008 hours; not applicable under 3504(h)
R. Ford Lanterman

New Collection

• Farmers Home Administration
Questionnaire: FmHA Farm Debt Mediation Roster
None
One time only
Individuals or households; Businesses or other for-profit; Small businesses or organizations; 5,000 responses; 2,500 hours; not applicable under 3504(h)
Jack Holston (202) 382-9736

Larry K. Roberson,
Acting Departmental Clearance Officer.

[FR Doc. 89-12443 Filed 5-23-89; 8:45 am]
BILLING CODE 3410-01-M

Cooperative State Research Service

Small Business Innovation Research Program for Fiscal Year 1990; Solicitation of Applications

Notice is hereby given that under the authority of the Small Business Innovation Development Act of 1982 (Pub. L. 97-219), as amended (15 U.S.C. 638) and section 630 of the Act making appropriations for Agriculture, Rural Development, and Related Agencies programs for fiscal year ending September 30, 1987, and for other purposes, as made applicable by section 101(a) of Pub. L. Number 99-591, 100 Stat. 3341, and U.S. Department of Agriculture (USDA) expects to award project grants for certain areas of research to science-based small business firms through Phase I of its Small Business Innovation Research (SBIR) Program. This program will be administered by the Office of Grants and Program Systems, Cooperative State Research Service. Firms with strong scientific research capabilities in the topic areas listed below are encouraged to participate. Objectives of the three-phase program include stimulating technological innovation in the private sector, strengthening the role of small businesses in meeting Federal research and development needs, increasing private sector commercialization of innovations derived from USDA-supported research and development efforts, and fostering and encouraging minority and disadvantaged participation in technological innovation.

The total amount expected to be available for Phase I of the SBIR Program in fiscal year 1990 is approximately $1,400,000. The solicitation is being announced to allow adequate time for potential recipients to prepare and submit applications by the closing date of September 1, 1989. The research to be supported is in the following topic areas:

1. Forests and Related Resources
2. Plant Production and Protection
3. Animal Production and Protection
4. Air, Water, and Soils
5. Food Science and Nutrition
6. Rural and Community Development
7. Aquaculture

The award of any grants under the provisions of this solicitation is subject to the availability of appropriations.

This program is subject to the provisions found at 7 CFR Part 3403. These provisions set forth procedures to be followed when submitting grant proposals, rules governing the evaluation of proposals and the awarding of grants, and regulations relating to the post-award administration of grant projects. In addition, USDA Uniform Federal Assistance Regulations, as amended, (7 CFR Part 3015) and Governmentwide

Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-free Workplace (Grants), (7 CFR Part 3017) apply to this program. Copies of 7 CFR Part 3403, 7 CFR Part 3015, and 7 CFR Part 3017 may be obtained by writing or calling the office indicated below.

The solicitation, which contains research topic descriptions and detailed instructions on how to apply, may be obtained by writing or calling the office indicated below. Please note that applicants who submitted SBIR proposals for 1989, or who have recently requested placement on the list for 1990, will automatically receive a copy of the 1990 solicitation.

Proposal Services Unit,
Grants Administrative Management,
Cooperative State Research Service,
U.S. Department of Agriculture,
Washington, DC 20250–2200,
Telephone: (202) 475–5048.

Done at Washington, DC, this 17th day of May 1989.

John Patrick Jordan,

Administrator, Cooperative State Research Service.

[FR Doc. 89–12444 Filed 5–23–89; 8:45 am]

BILLING CODE 3410-22-M

Forest Service

Exemption From Appeal of Shady Beach Fire Recovery Project, Willamette National Forest, Oregon

AGENCY: Forest Service, USDA.

ACTION: Notice to exempt decision from administrative appeal.

SUMMARY: During September 1988, the Shady Beach Fire burned 9,163 acres on the Willamette National Forest. This proposed recovery project consists of rehabilitation of National Forest System (NFS) lands damaged by the wildfire and the recovery of dead and dying timber which is still merchantable. Due to the length of time it has taken to develop an acceptable recovery program and to properly evalutate its effects, the time remaining for implementation has become critical. Any additional delays will result in damage to presently unaffected resources and could result in significant loss of the salvable resources. The decision to rehabilitate the Willamette NFS lands and offer salvage timber for sale in the Shady Beach Project area will not be subject to administrative appeal pursuant to 36 CFR 217.4(a)(11).

FOR FURTHER INFORMATION CONTACT: Questions about this notice should be directed to Elton Thomas, Regional Appeal Coordinator, Pacific Northwest Region, Forest Service, USDA, 319 SW. Pine Street (P.O. Box 3623), Portland, OR 97208–3623, Phone (503) 326–2322 or Mike Morris, Environmental Coordinator, Willamette National Forest, P.O. Box 10607, Eugene, OR 97440, Phone (503) 687–6517.

SUPPLEMENTARY INFORMATION: In the aftermath of the Shady Beach fire, which burned 9,163 acres, the Forest Service had to decide if it should leave the burned area to recover naturally, rehabilitate the burned area, and/or provide the opportunity to salvage some or all of the burned trees.

Determining whether to rehabilitate the burned area involved decisions on how to do so, which parts of the burned area should be rehabilitated, and determination of whether to provide the opportunity to salvage, what type of logging systems to use, whether roads should be built.

In order to assist the Forest Service in making this difficult decision, a site-specific, project environmental impact statement (EIS) was prepared. On October 3, 1988, the Willamette National Forest published a Notice of Intent to prepare an EIS for this recovery project (53 FR 38758). Concurrent with the decisions to initiate an EIS, was the Forest Service's commitment to fully involve the public in the decision making process. In order to facilitate the public's involvement, an intense effort was made to initially inform the public and maintain the public's awareness of the Project development process.

Among the first tasks in the EIS process was to develop issues, concerns, and opportunities. From start to final the Shady Beach Recovery Team has worked hard to conduct an open and participative environmental analysis process including both the timber and the environmental communities. This process has been very successful in working through the issues. Two well-publicized public meetings were held (Eugene and Oakridge, Oregon) in October, 1988. Publicity for these meetings included about 2500 notices mailed to individual and groups, and about 20 media organizations (newspapers, television, radio). Special efforts were made to contact local, state, and Federal government personnel and elected officials, and area environmental and industry groups. A tour of the Project, attended by about 75 people from Eugene and Oakridge, was also conducted prior to the meetings. These meetings yielded many ideas, which, along with written comments, were analyzed by the Project Team, and refined to finalize the list of issues, concerns, and opportunities.

Throughout the planning process, Shady Beach "Updates" were distributed to a mailing list of over 400 individuals, groups, and media organizations. In all, 14 "Updates" were sent prior to release of the draft EIS to generally keep the public informed of the Team's progress, and to invite participation at points where review and input by the public was essential.

Development of the draft EIS resulted in considerable public and media interest. The Notice of Availability of the draft EIS was published in the **Federal Register** and made avilable to the public on February 24, 1989 (54 FR 7984). To formally introduce the document and invite comment, a press conference was held in Eugene on February 17, 1989. A public open house was held in Eugene on February 23 to provide interested citizens information about the draft EIS and the review process.

The 45 day public comment period ended April 11, 1989, during which time over 30 presentations were given to Forest Service units, and external interest groups and organizations. A bus tour, involving 21 people from Eugene and Oakridge, was held on April 1. Attention was focuced on issues of most concern to the public: wildlife and corridors, riparian areas, mortality predictions, water monitoring, and methodology for silvicultural prescriptions. The draft EIS has been reviewed and modified as a result of additional analysis and public comments received on the draft during the review period. A timeline has been set and closely adhered to for the completion of the final EIS.

Another important factor in this project planning is the deterioration of fire-killed timber, which would be increased markedly two years after the fire. The desire to minimize this loss was one of the primary reasons the Shady Beach Fire Recovery Project was undertaken and why the final EIS was completed under a relatively short timeline. The importance of this factor has been further emphasized by recent court orders restraining Federal timber sales, thus substantially reducing the normal flow of timber from Forest Service and Bureau of Land Management lands in Washington and Oregon. Prompt availability of Shady Beach fire timber can help alleviate the economic situation brought about by the constricted timber supply.

The Shady Beach Fire Recovery final EIS is scheduled to be released May 26, 1989. This final EIS discloses the environmental effects of all the alternatives considered. Some

environmental effects are probable with the implementation of any of the action alternatives. These effects relate to soil productivity, water quality and fish habitat, air quality, vegetation, fire and fuel, wildlife, cultural resources, recreation, visual quality, development and improvements, minerals and energy, and social and economic factors.

The earliest possible implementation of the Shady Beach Recovery Project decision will minimize losses in value of the timber resource on the site, allow for the most timely rehabilitation and reforestation of the site, and maximize the return to the Treasury for the volume affected by the fire. Processing administrative appeals can cause significant delays in implementing the decision. For example, it could take 45 days to file and appeal, an additional 100 days or more to complete the administrative review and possibly another 15 to 45 to complete a discretionary review. If a Stay were granted during the pendency of the appeal, project implementation could be delayed approximately six months. A six month delay would essentially mean that no activities would commence this logging season. Since the timber sales being proposed in the final EIS will have two year contracts, it is possible that a large portion of the timber volume will not be removed until the third logging season following the decision. Studies indicate that significant deterioration will occur by then and the value of the recovered timber will greatly diminish.

Pursuant to 36 CFR 217.4(a)(11) I have exempted from administrative appeal this Recovery Project. The decision to rehabilitate Willamette NFS land and offer salvage timber for sale in the Shady Beach Project Area will not be subject to administrative appeal.

The environmental analysis for this recovery project is documented in the Shady Beach Fire Recovery Project final EIS available at the Rigdon Ranger District, 49098 Salmon Creek Road, Oakridge, Oregon 97463, phone (503) 782–2283.

Richard A. Ferraro,

Acting Regional Forester.

Date: May 18, 1989.

[FR Doc. 89–12469 Filed 5–23–89; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviews

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of initiation of antidumping and countervailing duty administrative reviews.

SUMMARY: The Department of Commerce has received requests to conduct administrative reviews of vaious antidumpting and countervailing duty orders and findings. In accordance with the Commerce Regulations, we are initiating those administrative reviews.

EFFECTIVE DATE: May 24, 1989.

FOR FURTHER INFORMATION CONTACT: Bernard T. Carreau or Richard W. Moreland, Office of Countervailing Compliance or Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone (202) 377–2786/2104.

SUPPLEMENTARY INFORMATION:

Background

The Department of Commerce ("the Department") has received timely requests, in accordance with 19 CFR 353.22 (a)(1), (a)(2), (a)(3), and 355.22(a)(1), for administrative reviews of various antidumping and countervailing duty orders and findings.

Initiation of Reviews

In accordance with 19 CFR 353.22(c) and 355.22(c), we are initiating administrative reviews of the following antidumpting and countervailing duty orders and findings. We intend to issue the final results of these reveiws no later than May 31, 1990.

Antidumpting duty proceedings and firms	Periods to be reviewed
Italy:	
Spun acrylic yarn (A–475–084)	04/01/88–03/31/89
Manifatura Emmepi	
Gruppo Bertrand	
Lanificio DiNervesa	
Int'l Fiber	
Turiddo Torrachi	
Mister Joe	
Japan:	
Calcium hypochlorite(A–588–401)	04/01/88–03/31/89
Nippon Soda	
Nankai	
Tohoku Tosoh	
Cyanuric Acid (A–588–019)	04/01/88–03/31/89
Shikoku,	
Toyo Menka,	
Mitsubishi	
Dichloro isocyanurates (A–588–019)	04/01/88–11/20/89
Shikoku	
Nissan	
Toyo Menka	
Mitsubishi	
Trichloro isocyanuric acid (A–588–019)	04/01/88–11/20/89
Shikoku	
Nissan	
Toyo Menka	
Mitsubishi	
Roller chain, other than bicycle (A–588–028)	04/01/88–11/31/89
Daido Kogyo/Daido Corp.	
Enuma/Daido Corp.	
Hitachi Metals	
Izumi	
Kaga Kogyo/APC	
Kaga Koken	
Pulton	
Pulton/HIC	
Pulton/I&OC	
Sugiyama/Hokoku	
Sugiyama/I&OC	
Sugiyama/Harima (San Fernando)	
Tokasago	
Tsubakimoto	
Korea:	
Color television receivers (A–580–008)	04/01/88–03/31/89
Tongkook General Electronics	
Samwon Electronics	
Samsung	
Goldstar	
Daewoo	
Cosmos	
Quantronics	
Mexico:	
Fresh cut flowers (A–201–601)	04/01/88–03/31/89
Florex	
Visaflor	
Tzitzic Tareta	
Rancho Mision	
Las Flores de Mexico	
San Marcos	
Agro-Export	
Super Rosa Monrog	
Taiwan:	
Color television receivers (A–583–009)	04/01/88–03/31/89
Action	
AOC	
Capetronic	
Funai	
Hitachi	
Kung Yuan	
Nettek	

Antidumping duty proceedings and firms	Periods to be reviewed
Paramount	
Philips	
Proton (aka Fulet)	
RCA	
Sampo	
Sanyo	
Shinlee	
Shin-Shirasuna	
Tatung	
Teco	
Countervailing Duty Proceedings	**Periods to be Reviewed**
Argentina: Wool (C-357-002)	01/01/88-12/31/89
Malaysia: Carbon steel wire rod (C-557-701)	04/22/88-12/31/89
Mexico: Leather wearing apparel (C-201-001)	01/01/88-12/31/89

Interested parties must submit applications for administrative protective orders in accordance with § 353.34(b) or 355.34(b) of the Commerce Regulations.

These initiations and this notice are in accordance with section 751(a) of the Tariff Act of 1930 (19 U.S.C. 1675(a)) and 19 CFR 353.22(c) and 355.22(c).

Richard W. Moreland,

Acting Deputy Assistant secretary, for Compliance.

Date: May 17, 1989

[FR Doc. 89-12380 Filed 5-23-89; 8:45 am]

BILLING CODE 3510-DS-M

[C-357-404]

Certain Apparel From Argentina; Final Results of Countervailing Duty Administrative Review

AGENCY: International Trade Administration/Import Administration Commerce.

ACTION: Notice of final results of countervailing duty administrative review.

SUMMARY: On September 6, 1988, the Department published the preliminary results of its administrative review of the countervailing duty order on certain apparel from Argentina. We have now completed that review and determine the total bounty or grant to be 0.45 percent *ad valorem* for the period January 1, 1986 through December 31, 1986. The Department considers any rate less than 0.50 percent *ad valorem* to be *de minimis*. The rate of cash deposit of estimated countervailing duties is 8.68 percent *ad valoreum*.

EFFECTIVE DATE: May 24, 1989.

FOR FURTHER INFORMATION CONTACT: Christopher Beach or Ilene Hersher, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On September 6, 1988, the Department of Commerce ("the Department") published in the **Federal Register** (53 FR 34338) the preliminary results of its administrative review of the countervailing duty order on certain apparel from Argentina (48 FR 9846; March 12, 1985). The Department has now completed that administrative review in accordance with section 751(a) of the Tariff Act of 1930 ("the Tariff Act").

Scope of Review

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the United States fully converted to the Harmonized Tariff Schedule (HTS), as provided for in section 1201 et seq. of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered, or withdrawn from warehouse, for consumption on or after that date is now classified solely according to the appropriate HTS item number(s).

Imports covered by this review are shipments of apparel from Argentina, as described under the following items of the 1987 Tariff Schedules of the United States Annotated:

372.7540	384.0805	384.5279
374.2500	384.0810	384.5299
374.3530	384.0815	384.5526
374.6500	384.0820	384.5930
376.2830	384.0825	384.6310
381.0540	384.0905	384.6330
381.0542	384.0943	384.6340
381.0546	384.0945	384.6350
381.4130	384.1000	384.6360
381.4160	384.1319	384.6371
381.4770	384.1321	384.6372
381.5650	384.1611	384.6385
381.6240	384.1612	384.7010
381.6930	384.1613	384.7020
381.9540	384.1680	384.7215
381.9547	384.1920	384.7220
381.9549	384.2105	384.7510
381.9585	384.2115	384.7522
384.0207	384.2120	384.7528
384.0208	384.2125	384.7532
384.0212	384.2205	384.7534
384.0237	384.2216	384.7536
384.0239	384.2816	384.7538
384.0320	384.2818	384.7542
384.0330	384.2821	384.7544
384.0340	384.2850	384.7546
384.0350	384.2910	384.7548
384.0360	384.2914	384.7552
384.0370	384.2915	384.7554
384.0407	384.2930	384.7556
384.0408	384.2934	384.7558
384.0415	384.2950	384.7562
384.0416	384.3752	384.7595
384.0423	384.3753	384.8024
384.0424	384.3777	384.8025
384.0437	384.4614	384.8027
384.0438	384.4647	384.8073
384.0439	384.4765	384.8225
384.0441	384.4925	384.8300
384.0442	384.5234	384.9115
384.0444	384.5375	384.9445 and
384.0451	384.5276	704.6500
384.0497	384.5277	
384.0608	384.5278	

This merchandise is currently classifiable under the following HTS items:

6102.20.00	6111.20.50	6204.33.40
6103.22.00	6111.20.40	6204.39.20
6103.23.00	6111.20.60	6204.41.20
6103.29.10	6111.30.30	6204.42.30
6103.42.10	6111.30.50	6204.43.30
6103.43.20	6111.90.50	6204.44.30
6103.49.20	6112.19.20	6204.51.00
6104.13.20	6112.31.00	6204.52.20
6104.22.00	6112.41.00	6204.53.20
6104.29.10	6112.49.00	6204.53.30
6104.41.00	6114.20.00	6204.59.20
6104.42.00	6115.19.00	6204.59.30
6104.43.10	6115.20.00	6204.61.00
6104.43.20	6115.91.00	6204.62.40
6104.44.10	6115.93.10	6204.63.25
6104.44.20	6115.99.14	6204.69.20
6104.51.00	6115.99.20	6205.10.20
6104.53.10	6116.91.00	6205.20.20
6104.61.00	6116.93.15	6205.30.20
6104.62.10	6117.90.00	6206.20.10
6104.62.20	6201.12.20	6206.20.30
6104.63.10	6201.92.20	6206.30.30
6104.63.15	6202.11.00	6206.40.25
6104.69.10	6202.13.30	6206.40.30
6105.10.00	6202.91.10	6209.10.00
6105.20.20	6202.91.20	6209.20.10
6106.10.00	6202.92.20	6209.20.30
6106.20.10	6202.93.40	6209.30.30
6106.90.10	6203.21.00	6209.90.30
6109.10.00	6203.22.30	6211.12.30
6109.90.10	6203.41.10	6211.41.00
6109.90.20	6203.42.40	6211.42.00
6110.10.10	6203.43.40	6212.10.20
6110.10.20	6204.11.00	6214.30.00
6110.20.20	6204.13.10	6214.40.00
6110.30.15	6204.19.10	6216.00.50
6110.30.30	6204.21.00	6217.10.00 and
6111.10.00	6204.22.30	6217.90.00
6111.20.10	6204.31.20	
6111.20.20	6204.32.20	

The review covers the period January 1, 1986 through December 31, 1986 and ten programs: (1) The reembolso; (2) post-export financing; (3) pre-export financing; (4) incentives for exports from southern ports; (5) tax reductions for investors; (6) regional tax incentives; (7) tax reductions for locating in industrial parks; (8) discounts of foreign currency accounts receivable; (9) low-cost loans for projects outside Buenos Aires; and (10) Banade loan guarantees.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. We received comments from the Argentine government, an exporter, Pulloverfin, S.A.I.C., and an importer, Che Amigo, U.S.A. ("the respondents").

Comment 1: The respondents contend that the Department incorrectly disallowed certain indirect taxes claimed under the reembolso as prior-stage taxes. The Government of Argentina contends that the Department has required an increased level of proof of prior-stage tax incidence in this case and that this is inappropriate and unfair. They maintain that, within the highly competitive textile industry, no exporter of apparel would be able to obtain prior-stage pricing information from its suppliers because of the confidential nature of such information.

Department's Position: In our last review (53 FR 1053; January 15, 1988), we found the requisite linkage for apparel but were unable to establish the level of prior-stage tax incidence. In this review, we preliminarily determined that the Government of Argentina and exporters of apparel could not adequately document the level of prior-stage tax incidence. Therefore, in our preliminary determination, we accepted only the final-stage taxes that we were able to verify.

In general, we do not seek to verify prior-stage taxes when a government is able to produce a well-documented tax incidence study. Appropriate documentation should include questionnaires sent out to exporters and their suppliers regarding the various inputs and taxes at each stage of production, the questionnnaire responses, cost matrices based on those responses, and the laws and decrees establishing the various taxes at all stages of production.

If the government study is not fully documented, we are willing to accept prior-stage taxes if we have other information sufficient to supplement the government study. We would attempt to spot-check information regarding evidence of the various stages involved in the production of the final product, cost structures of each stage, and documentation showing the taxes that apply at each stage. Such information could be obtained from the records of a trade association, supplier invoices obtained by the exporter, or any other reliable source. We would have to be able to trace the selected taxes to the legislation establishing the appropriate rates. If everything in our sample proved to be accurate, we would accept the entire amount of indirect tax incidence reported in the government's study. However, if we were not able to verify all of the prior-stage taxes in our sample, we would accept only those taxes that we verified to be accurate.

In this review the government of Argentina did not provide sufficient information on the level of prior-stage taxes. Therefore, we have not accepted any prior-stage taxes. We have accepted the following final-stage taxes: the turnover tax, the insurance tax, the stamp tax, the bank debit tax, the municipal tax and the foreign exchange tax. On this basis, we determine the amount of allowable tax rebate to be 4.27 percent *ad valorem*.

The tax rebate for apparel exporters was zero through October 1986, when the rate was changed to 12.5 percent. However, since the companies under review did not receive any tax rebates in 1986, we determine that there is no benefit from this program during the period of review (see Comment 3). Apparel exporters began to receive tax rebates of 12.5 percent in 1987. Subtracting the amount of allowable tax rebates from the 12.5 percent yields an overrebate of 8.23 percent. Therefore, for purposes of cash deposits of estimated countervailing duties, we determine the benefit from this program to be 8.23 percent *ad valorem*.

Comment 2: The respondents contend that, after October 1986, the actual amount of the tax rebate received by exporters is the full 12.5 percent of the f.o.b. invoice price less certain banking fees and commissions. They state that since the amounts of tax rebates are less than 12.5 percent, the Department should calculate the benefit using the actual amounts received rather than the absolute 12.5 percent value.

Department's Position: We disagree. Banking fees and commissions are not an allowable offset to the gross subsidy, as defined in section 771(6) of the Act because they are not paid "in order to qualify for, or receive, the benefit." Therefore, we consider the full tax rebate to be the appropriate amount from which to deduct the allowable indirect taxes.

Comment 3: The respondents contend that they received all tax rebates stemming from 1986 exports in 1987. Since the Department considers the benefit from this program to occur at the time of receipt, there should be no benefit from this program in 1986.

Department's Position: We agree. We were able to substantiate from export permits that all tax rebates based on 1986 exports were received in 1987. Therefore, we determine that there was no benefit from this program during the review period. However, because of the program-wide change that took place in October 1986 we determine, for purposes of cash deposits of estimated countervailing duties, the benefit from this program to be 8.23 percent *ad valorem* (see Comment 1).

Comment 4: The respondents argue that in computing the benchmark interest rate for the pre-export financing program, the Department should have used an average of the monthly rates prevailing for only those months in which loans were outstanding.

Department's Position: We disagree. The monthly interest rates did not fluctuate greatly in 1986. Therefore, consistent with our general practice, we have used an annual average rate for our benchmark. (*See, e.g., Non-Rubber Footwear from Argentina; Final Results of Countervailing Duty Administrative Review* (53 FR 46103; November 16, 1988)).

Comment 5: The respondents state that the Department should have weight-averaged the benefit by each company's share of apparel exports to the United States covered by the order, rather than by its share of total apparel exports to the United States, which includes apparel not covered by the order.

Department's Position: We agree and have adjusted our calculations accordingly. We determine the benefit from this program to be 0.45 percent *ad valorem.*

Final Results of Review

After considering all of the comments received, we determine the total bounty or grant to be 0.45 percent *ad valorem* for the period January 1, 1986 through December 31, 1986. The Department considers any rate less than 0.50 percent *ad valorem* to be *de minimis.*

The Department will instruct the Customs Service to liquidate, without regard to countervailing duties, all shipments of this merchandise exported on or after January 1, 1986 and on or before December 31, 1986.

The Department also intends to instruct the Customs Service to collect cash deposits of estimated countervailing duties of 8.68 percent of the f.o.b. invoice price on shipments of this merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice. This deposit requirement shall remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and section 355.22 of the Commerce Regulations published in the **Federal Register** on December 27, 1988 (53 FR 52306) (to be codified at 19 CFR 355.22).

Lisa B. Barry,

Acting Assistant Secretary for Import Administration.

Date: May 17, 1989.

[FR Doc. 89-12381 Filed 5-23-89; 8:45 am]

BILLING CODE 3510-DS-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Request for Bilateral Textile Consultations With the Government of the People's Republic of China to Review Trade in Categories 369-S and 863-S

May 19, 1989.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: May 26, 1989.

FOR FURTHER INFORMATION CONTACT: Jerome Turtola, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 566-6828. For information on embargoes and quota re-openings, call (202) 377-3715. For information on categories on which consultations have been requested, call (202) 377-3740.

SUPPLEMENTARY INFORMATION:

Authority. Executive Order 11651 of March 3, 1972, as amended; Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1986; Bilateral Textile Agreement of February 2, 1988, as amended.

On April 28, 1989, the Government of the United States requested consultations with the Government of the People's Republic of China regarding shop towels in Categories 369-S and 863-S, produced or manufactured in the People's Republic of China.

Summary market statements concerning these categories follow this notice.

Anyone wishing to comment or provide data or information regarding the treatment of Categories 369-S and 863-S, under the agreement with the People's Republic of China, or to comment on domestic production or availability of products included in the categories, is invited to submit 10 copies of such comments or information to James H. Babb, Chairman, Committee for the Implementation of Textile Agreement, U.S. Department of Commerce, Washington, DC 20230.

Because the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, Room H3100, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC.

Further comments may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

The United States remains committed to finding a solution concerning Categories 369-S and 863-S. Should such a solution be reached in consultations with the Government of the People's Republic of China, further notice will be published in the **Federal Register.**

A description of the textile and apparal categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 53 44937, published on November 7, 1988).

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

China—Market Statement

Category 369-S—Cotton Shop Towels

April 1989

Summary and Conclusions

U.S. imports of cotton shop towels—Category 369-S—from China surged to 291,095 kilograms (9.4 million units) during January-February 1989, 43 times the 6,750 kilograms (120 thousand units) imported a year earlier. These January-February 1989 imports represent 63 percent of the total amount imported from China in calendar year 1988. China is the largest supplier of cotton shop towels to the U.S., accounting for 27 percent of the total imports during the first two months of 1989. In calendar year 1988, China accounted for 17 percent of total imports.

Cotton shop towel imports from China enter the U.S. market at an average price 67 percent below the price of domestically produced cotton shop towels and on average 56 percent below the price of other major foreign suppliers of cotton shop towels to the U.S. market.

The sharp and substantial increase of low-valued imports of Category 369-S

cotton shop towels from China is causing a real risk of market disruption.

U.S. Production, Import Penetration, and Market Share

U.S. production of cotton shop towels dropped from 27.5 million units during January-February 1988 to 24.7 million units during January-February 1989, a 10 percent decline. U.S. imports more than doubled during this same period.

U.S. imports of Category 369–S cotton shop towels from all sources increased by 16.7 million units reaching 28.9 million units in the first two months of 1989 compared to the 12.2 million units imported during the same period of 1988. This two month import surge caused imports for the year ending February 1989 to reach 124 million units, 16 percent above the calendar year 1988 level.

The ratio of imports to domestic production nearly tripled, increasing from 44 percent during January-February 1988 to 117 percent during January-February 1989. During this period, the U.S. producers' share of the market for domestically produced and imported cotton shop towels fell from 69 percent to 46 percent.

Duty-Paid Value and U.S. Producers' Price

During the period January-February 1989, China's Category 369–S cotton shop towel imports entered under HTS 6307.10.2005. These towels entered the U.S. at duty-paid landed values 67 percent below U.S. producers' prices for comparable shop towels.

China—Market Statement

Category 863–S—Shop Towels of Silk-Blend and Vegetable Fiber Other Than Cotton

April 1989

Summary and Conclusions

U.S. imports of Category 863–S—shop towels of silk-blend and vegetable fiber other than cotton—from China reached 7.8 million units for the year ending February 1989. China is the number one supplier accounting for 99 percent of total Category 863–S imports. Imports of Category 863–S shop towels from China surged to 6.0 million units during the first two months of 1989. There were no imports from China during January–February 1988. China's Category 863–S imports were 1.8 million shop towels in calendar year 1988.

Imports of silk-blend and vegetable fiber other than cotton shop towels—Category 863–S—compete in the U.S. cotton shop towel market—Category 369–S—with domestically produced cotton shop towels. The sharp and substantial increase of low-valued Category 863–S imports from China is causing a real risk of market disruption.

Import Penetration and Market Share

The ratio of imports to domestic production for Category 369–S, cotton shop towels, increased to 117 percent during January–February 1989. During this same period the domestic manufacturers' share of the cotton shop towel market dropped to 46 percent. Imports of Category 863–S, shop towels of silk blenk and vegetable fiber other than cotton, are exacerbating this deteriorating market situation.

U.S. imports of Category 863–S, shop towels of silk-blend and vegetable fiber other than cotton, surged to 6.0 million towels in January–February 1989; there were no Category 863–S shop towel imports in January–February 1988. Category 863–S shop towel imports were 1.8 million towels in calendar year 1988.

When imports of these directly competitive Category 863–S shop towels are included in the market analysis, the import-to-production ratio increases to 142 percent and the domestic manufacturers' share of the shop towel market falls to 41 percent.

Duty-Paid Import Values and U.S. Producer's Price

During the period January–February 1989, China's Category 863–S, shop towels of silk-blend and vegetable fiber other than cotton, entered under HTS 6307.10.2015. The duty-paid landed values of Category 863–S shop towels from China are well below the U.S. producers' prices for comparable cotton shop towels.

Committee for the Implementation of Textile Agreements

May 19, 1989.

Commissioner of Customs
Department of the Treasury
Washington, D.C. 20229

Dear Mr. Commissioner:

Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further amended on July 31, 1986; pursuant to the Bilateral Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Agreement of February 2, 1988, as amended, between the Governments of the United States and the People's Republic of China; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on May 26, 1989, entry into the United States for consumption and withdrawal from warehouse for consumption of shop towels in Categories 369–S and 863–S, produced or manufactured in China and exported during the period which began on April 28, 1989 and extends through December 31, 1989, in excess of the following levels of restraint:

Category	Restraint limit [1]
369–S [2]	374,085 kilograms
863–S [3]	4,546,784 numbers

[1] The limits have not been adjusted to account for any imports exported after April 27, 1989.
[2] In category 369–S, only HTS number 6307.10.2005.
[3] In category 863–S, only HTS number 6307.10.2015.

Textile products in Categories 369–S and 863–S which have been exported to the United States prior to April 28, 1989 shall not be subject to this directive.

Textile products in Categories 369–S and 863–S which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 89–12412 Filed 5–23–89; 8:45 am]

BILLING CODE 3510–DR–M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

Proposed Consent Order With Occidental Petroleum Corp.

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of proposed consent order and opportunity for public comment.

SUMMARY: The Economic Regulatory Administration (ERA) announces a proposed Consent Order between the Department of Energy (DOE) and Occidental Petroleum Corporation ("Occidental"), including its wholly owned subsidiary OXY USA Inc. (formerly Cities Service Oil and Gas Corporation, successor in interest to Cities Service Company) ("Cities Service"). The agreement proposes to resolve matters relating to Occidental's compliance with the federal petroleum price and allocation regulations for the period October 1, 1979 through January 27, 1981. If this Consent Order is made

final, Occidental would pay to the DOE two hundred five million eighty thousand dollars ($205,080,000). Within ten (10) days of the Effective Date of the Consent Order, Occidental shall make an initial payment to the DOE of forty million dollars ($40,000,000), and thereafter eight (8) equal annual payments of twenty million six hundred thirty-five thousand dollars ($20,635,000) each, including interest. Payments made pursuant to the Consent Order will be distributed by the DOE pursuant to the special refund procedures prescribed by 10 CFR Part 205, Subpart V. This Consent Order would not affect the Consent Order between Cities Service and DOE dated October 31, 1979, which, except as otherwise provided therein, covered the period August 19, 1973, through September 30, 1979.

DOE's Office of Hearings and Appeals (OHA) will be petitioned to implement Special Refund Procedures for distributing moneys received from Occidental. Any persons who claim to have suffered injury from Occidental's alleged overcharges would have the opportunity to submit claims for payment in such proceedings.

Pursuant to 10 CFR 205.199J, ERA will receive written comments on the proposed Consent Order for thirty (30) days following publication of this Notice. ERA will consider all comments received from the public in determining whether to accept the settlement and issue a final Order, renegotiate the agreement and issue a modified agreement as a final Order, or reject the settlement. DOE's final decision will be published in the Federal Register, along with a summary and analysis of the significant written comments, as well as any other considerations that were relevant to the final decision.

FOR FURTHER INFORMATION CONTACT: Dorothy Hamid, Economic Regulatory Administration, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–1699.

SUPPLEMENTAL INFORMATION:

I. Resolution of Regulatory Issues

Occidental is a successor in interest to Cities Service Company (Cities Service), which was a refiner, producer, and reseller subject to the audit jurisdiction of ERA to determine compliance with the Federal Petroleum Price and Allocation Regulations. During the period covered by this proposed Order (October 1, 1979 through January 27, 1981), Cities Service engaged in, among other things, the production, importation, purchase, sale, exchange and refining of crude oil and the purchase and sale of refined product. As a result of its audits, the DOE raised certain issues with respect to certain related purchases and sales of crude oil in which Cities Service sold price-controlled crude oil to resellers and concurrently purchased discounted exempt-certified crude oil from those resellers. On March 5, 1985, ERA issued a Proposed Remedial Order (PRO) to Cities Service alleging overcharges resulting from these transactions. On September 30, 1988, the Department of Energy's Office of Hearings and Appeals (OHA) issued the PRO as a Remedial Order (RO) for $263.8 million, plus interest which would currently total approximately $450 million. The RO is currently on appeal before the Federal Energy Regulatory Commission.

II. Determination of Reasonable Settlement Amount

To discharge in full Occidental's potential liability for the period October 1, 1979 through January 27, 1981 under the price and allocation regulations,[1] the settlement calls for Occidental to pay a total of $205.08 million, including interest at the rate of 10.02 percent per annum.[2] The Consent Order requires Occidental to make an initial payment of $40 million within ten days of the effective date, and eight annual payments of $20.635 million each thereafter. Under the terms of the proposed Consent Order, the ERA would petition the OHA to implement Special Refund Procedures for disposition of the settlement funds pursuant to Subpart V.

ERA has preliminarily agreed to the settlement amount after considering the factual aspects related to the various issues currently in dispute in the litigation, assessing the litigation risks associated with establishing the alleged overcharges, and considering the benefit to the public from a significant settlement of a number of issues which would take years of continued litigation to resolve. Additionally, there are equitable and legal considerations specific to the Cities Service litigation.

The PRO specifically concerns 91 reciprocal crude oil transactions between Cities Service and thirteen crude oil resellers during the periods October 1979 through April 1980, and September 1980 through January 27, 1981. In each of the tied transactions, Cities Service sold a reseller primarily price-controlled crude oil (lower tier, upper tier, or a combination of the two) and purchased from the same reseller an equal volume of stripper-, foreign-, or upper tier-Alaskan North Slope crude oil at substantial below-market discounts. The PRO alleges that Cities Service charged for its price-controlled crude oil a price in excess of that permitted by 10 CFR § 212.183(b), the price rule applicable to crude oil resales by a refiner, through its receipt from its reseller trading partners of discounts on stripper-certified and other entitlements purchase-exempt crude oil. The PRO also alleged that Cities Service's conduct violated the anti-circumvention rules at 10 CFR 210.62(c) and 205.202.[3]

For settlement purposes, the ERA took into consideration those policy issues and litigation risk factors present in all settlement negotiations. The total amount of Occidental's potential liability resulting from the subject transactions could only be recovered by the government if, in litigation, all issues were resolved in the DOE's favor. The risks inherent in such litigation make such an outcome uncertain.

In assessing those litigation risks, the ERA considered Cities Service's contentions that: (1) The enforcement proceeding is barred by (a) judicial estoppel, by reason of the Government's representations to the federal district court in Cities Service's 1981 declaratory judgment action against DOE,[4] and by (b) collateral estoppel, by reason of the DOE General Counsel's position in *Cities Service Co.*, Interpretation 1980–43, 45 Fed. Reg. 82575 (December 15, 1980), that DOE was unable at that time to determine the lawfulness of Cities Service's proposed crude oil transaction outlined in the firm's request for interpretation; (2) ERA delayed in commencing enforcement action against Cities Service due to its inability to determine the lawfulness of the

[1] In a previous Consent Order dated October 31, 1979, and generally covering the period August 19, 1973 through September 30, 1979, Cities Service agreed to price rollback, refund and bank reduction remedies totalling $177.4 million.

[2] At the same per annum discount rate, the present value of the agreement is approximately $150 million.

[3] In April 1988, ERA sought to amend the PRO to charge that Cities Service in the subject transactions also violated 10 CFR 211.66, which governed a refiner's preparation of its Refiner Monthly Reports, and therefore detrimentally impacted the crude oil entitlements program. The OHA, in its RO decision issued on September 30, 1988, granted the motion to amend, but remanded to ERA that portion of the PRO with respect to the issues raised by the amendment. Thus, OHA permitted a new PRO proceeding in which Cities Service would be given further opportunity to fully litigate those issues.

[4] *Cities Service Co.* v. *DOE*, 520 F. Supp. 1132 (D. Del. 1981), *aff'd per curiam*, No. 3–28 (TECA August 27, 1982).

transaction in question; (3) the 91 transactions at issue in the PRO were "matching purchases and sales" in the nature of "exchanges" and therefore not subject to the crude oil resale price regulations in 10 CFR Part 212, Subpart L; (4) DOE regulations did not prohibit "tier trading"; (5) Cities Service's net benefit from its "tier trades" was substantially less than the overcharge amount alleged by ERA.[5]

More recent developments that ERA took into consideration include an adverse Magistrate's report and recommendation (hereinafter Magistrate's report) in another case, *Canal Refining Co.* v. *DOE*, Civil Action No. 87–C–294–E (N.D. Okla.) (hereinafter *Canal*).

The Magistrate's report in the *Canal* case made a determination which, if accepted by the district court, would have found that no violations existed for the same kind of transactions that are at issue between the DOE and Cities Service.[6] The Magistrate refused to accept ERA's position on the application of 10 CFR 212.183(b) to so-called tier trading, and instead recommended that the district court reverse in its entirety the Federal Energy Regulatory Commission's decision upholding the Department's Remedial Order issued to Canal. The Department sought and was granted expunction of the Magistrate's Report on January 5, 1989. While the Department was successful in its efforts to have the Magistrate's report expunged, thereby avoiding the risk that the recommended decision could be cited or relied upon as precedent, the compromise resolution proposed today reflects the DOE's concerns about the implications of such an adverse rationale for the case against Cities Service, which is still in the administrative appeal stage.[7]

[5] Cities Service's "net benefit" argument involves complex econometric models utilizing multiple regression analysis, the expert testimony of economists and statisticians, and extensive documentary materials. While the RO decision issued by OHA rejected Cities Service's arguments in this regard, consideration of the benefit actually received is appropriate in the context of settlement, along with litigation probabilities.

[6] Cities Service had sought intervenor status in the case, but a decision on the request had not been made before the *Canal* matter was resolved between the parties. Nevertheless, the Magistrate relied heavily on the *amicus curiae* briefs filed by Cities Service in making his report and recommendation.

[7] Of related concern is the fact that upon a decision by the FERC favorable to DOE, Cities Service could appeal the decision to the same federal court, the Northern District of Oklahoma.

In its preliminary assessments of reasonable settlement value, the most significant factors considered by the ERA were: the perceived risks in the litigation, including the potential for a lesser remedial award than that sought in the current litigation; the early efforts by Cities Service to obtain clarification of the DOE's legal position regarding the transactions now at issue; the fact that formal action was not initiated for nearly five years after the questions arose; and in the context of this particular case, in which legal clarification was sought and enforcement action did not commence until some years later, the fact that the interest sought in the litigation (calculated at prime rates and compounded quarterly) comprises nearly two-thirds of the total current claims.

Based on all of these factors, ERA's preliminary determination is that Occidental's agreement to the terms of a proposed Consent Order constitutes a settlement which is in the public interest.

III. Terms and Conditions of the Consent Order

If the Consent Order is made final, Occidental will pay DOE a total of $205.08 million. The text of the proposed Consent Order is published herewith. ERA will petition OHA to implement Special Refund Procedures under the provisions of Subpart V of the regulations. In these proceedings, OHA would develop procedures for the receipt and evaluation of applications for refund in order to distribute the settlement moneys. To ensure that OHA has sufficient information to evaluate the claims, the proposed Consent Order requires that Occidental provide customer identification and purchase volume information to OHA upon request.

Occidental and DOE mutually release each other from claims and actions arising under the subject matters covered by the proposed Consent Order. The proposed Order does not affect the right of any other party to take action against Occidental, or of Occidental or the DOE to take action against any other party.

Submission of Written Comments

The proposed Consent Order cannot be made effective until the conclusion of the public review process, of which this Notice is a part.

Interested parties are invited to submit written comments concerning this proposed Consent Order to: Occidental Consent Order Comments, RG–30, Economic Regulatory Administration, 1000 Independence Avenue, SW., Washington, DC 20585.

Any information or data considered confidential by the person submitting it must be identified as such in accordance with the provisions of 10 CFR 205.9(f).

All comments received by the thirtieth day following publication of this Notice in the **Federal Register** will be considered before determining whether to adopt the proposed Consent Order as a final Order. Any modifications of the proposed Consent Order which significantly alter its terms or impact will be published for additional comments. If, after considering the comments it has received, ERA determines to issue the proposed Consent Order as a final Order, the proposed Order will be made final and effective by publication of a Notice in the **Federal Register.**

Issued in Washington, DC, on May 19, 1989.

Chandler L. van Orman,

Administrator, Economic Regulatory Administration.

Consent Order

I. Introduction

101. This Consent Order is entered into between Occidental Petroleum Corporation ("Occidental"), including its wholly owned subsidiary OXY USA, Inc. (formerly Cities Service Oil and Gas Corporation, successor in interest to Cities Service Company) ("Cities Service"), and the United States Department of Energy ("DOE"). Except as otherwise provided herein, this Consent Order settles and finally resolves all civil and administrative claims and disputes, whether or not heretofore asserted, between the DOE, as hereinafter defined, and Occidental, as hereinafter defined, relating to Occidental's compliance with the federal petroleum price and allocation regulations, as hereinafter defined, during the period October 1, 1979, through January 27, 1981 (all the matters settled and resolved by this Consent Order are referred to hereinafter as "the matters covered by this Consent Order"). This Consent Order does not affect the Consent Order between Cities Service and DOE dated October 31, 1979, which, except as otherwise provided therein, covered the period August 19, 1973, through September 30, 1979.

II. Jurisdiction, Regulatory Authority and Definitions

201. This Consent Order is entered into by the DOE pursuant to the authority conferred upon it by sections

301 and 503 of the Department of Energy Organization Act ("DOE Act"), 42 U.S.C. 7151 and 7193, Executive Order No. 12009, 42 FR 46267 (1977); Executive Order No. 12038, 43 FR 4957 (1978); and 10 CFR 205.199J.

202. For purposes of this Consent Order, the phrase "federal petroleum price and allocation regulations" means all statutory requirements and administrative regulations and orders regarding the pricing and allocation of crude oil, refined petroleum products, natural gas liquids, and natural gas liquid products, including the entitlements and mandatory oil import programs, administered by the DOE. The federal petroleum price and allocation regulations include (without limitation) the pricing, allocation, reporting, certification, and recordkeeping requirements imposed by or under the Economic Stabilization Act of 1970, the Emergency Petroleum Allocation Act of 1973, the Federal Energy Administration Act of 1974, the DOE Act, any and all amendments to said acts, Presidential Proclamation 3279, all applicable DOE regulations codified in 6 CFR Parts 130 and 150 and 10 CFR Parts 205, 210, 211, 212, and 213, and all rules, rulings, guidelines, interpretations, clarifications, manuals, decisions, orders, notices, forms, and subpoenas relating to the pricing and allocation of petroleum products. The provisions of 10 CFR 205.199J and the definitions under the federal petroleum price and allocation regulations shall apply to this Consent Order except to the extent inconsistent herewith. Reference herein to "DOE" includes, besides the Department of Energy, the Cost of Living Council, the Federal Energy Office, the Federal Energy Administration, the Office of Special Counsel, the Economic Regulatory Administration and all agencies succeeding to the DOE's authority to administer or enforce the federal petroleum price and allocation regulations. References in this Consent Order to "Occidental" shall include: (1) Occidental Petroleum Corporation, its subsidiaries and affiliates, and its and their predecessors, Cities Service Company and Cities Service Oil and Gas Corporation, and their subsidiaries and affiliates, (2) all of Occidental's petroleum-related activities, whether as a refiner, producer, operator, working interest or royalty interest owner, reseller, retailer, natural gas processor, or otherwise, and (3) Occidental's present and former directors, officers, and employees.

III. Facts

The stipulated facts upon which this Consent Order is based are as follows:

301. During the period covered by this Consent Order, Occidental was a "refiner", "producer" and "reseller" as those terms are defined in the federal petroleum price and allocation regulations and was subject to the jurisdiction of the DOE.

302. On October 31, 1979, Cities Service and the DOE entered into a Consent Order which settled all claims and disputes against Cities Service by the DOE, except as otherwise provided therein, for the period August 19, 1973, through September 30, 1979, with respect to the statutory and regulatory petroleum programs administered and enforced by DOE and its predecessor agencies.

303. Following the 1979 Consent Order, the DOE audited Cities Service's compliance with the federal petroleum price and allocation regulations for the period after September 30, 1979. As a result, the DOE raised certain issues with respect to certain related purchases and sales of crude oil in which Cities Service sold price-controlled crude oil to resellers and purchased exempt-certified crude oil from those resellers. The DOE initiated a formal enforcement action alleging that these transactions violated certain provisions of the federal petroleum price and allocation regulations. Cities Service maintains, however, that its conduct with respect to these transactions was in all respects lawful and in accordance with the federal petroleum price and allocation regulations. The DOE and Cities Service have each asserted its belief that its respective legal and factual positions regarding such transactions are meritorious. These positions were emphasized in the intensive review and exchange of information conducted during the audit, during litigation of those issues, and during the settlement negotiation process. However, in order to avoid the expense of protracted and complex litigation and the disruption of its orderly business functions, Occidental has agreed to enter into this Consent Order, which, among other things, resolves both the principal and interest component of the claims that the DOE has asserted against Cities Service in connection with the above-described transactions. The DOE believes this Consent Order constitutes a satisfactory resolution of the matters covered herein and is in the public interest.

IV. Remedial Provisions

401. In full and final settlement of all matters covered by this Consent Order and in lieu of all other remedies which have been or might be sought by the DOE against Occidental for such matters under 10 CFR 205.199I or otherwise, Occidental shall pay a total amount, including interest, of two hundred five million eighty thousand dollars ($205,080,000.00) to the DOE in the manner specified in paragraphs 402, 403, 404, and 405.

402. Within ten (10) days of the Effective Date of this Consent Order, Occidental shall make an initial payment to the DOE of forty million dollars ($40,000,000.00).

403. Beginning one year after the Effective Date of this Consent Order, Occidental shall make eight (8) equal annual payments to the DOE of twenty million six hundred thirty-five thousand dollars ($20,635,000.00) each, which amounts include the payment of interest calculated at the rate of 10.02 percent per annum. The foregoing payments shall be made on successive anniversaries of the Effective Date of this Consent Order, unless any such anniversary is not a business day, in which event payment shall be due on the first business day following such anniversary.

404. Payments received after the due date shall include additional interest, calculated at the rate of 10.02 percent per annum for the first fifteen (15) days after the due date and 20.04 percent per annum thereafter.

405. The payments pursuant to paragraphs 402 through 404 shall be made by wire transfer in accordance with instructions furnished to Occidental by the DOE in a timely manner.

406. Payments made pursuant to this Consent Order shall be distributed by the DOE pursuant to the special refund procedures prescribed by 10 CFR Part 205, Subpart V.

V. Issues Resolved

501. All pending and potential civil and administrative claims, whether or not known, demands, liabilities, causes of action or other proceedings by the DOE against Occidental regarding Occidental's compliance with and obligations under the federal petroleum price and allocation regulations during the period covered by this Consent Order, whether or not heretofore raised by an issue letter, Notice of Probable Violation, Notice of Proposed Disallowance, Proposed Remedial Order, Remedial Order, actions in court or otherwise, are resolved and extinguished as to Occidental by this Consent Order. This Consent Order, however, does not resolve, extinguish, or otherwise affect DOE's claims against any other party.

502. (a) Except as otherwise provided herein, compliance by Occidental with this Consent Order shall be deemed by the DOE to constitute full compliance for administrative and civil purposes with all federal petroleum price and allocation regulations for matters covered by this Consent Order. In consideration for performance as required under this Consent Order by Occidental, the DOE hereby releases Occidental completely and for all purposes from all administrative and civil judicial claims, demands, liabilities or causes of action, including, without limitation, claims for civil penalties that the DOE has asserted or might otherwise be able to assert against Occidental before or after the date of this Consent Order for alleged violations of the federal petroleum price and allocation regulations with respect to matters covered by this Consent Order. The DOE will not initiate or prosecute any such administrative or civil judicial matter against Occidental or cause or refer any such matter to be initiated or prosecuted, nor will the DOE or its successors directly or indirectly aid in the initiation of any such administrative or civil judicial matter against Occidental or participate voluntarily in the prosecution of such actions. The DOE will not assert voluntarily in any administrative or civil judicial proceeding that Occidental has violated the federal petroleum price and allocation regulations with respect to the matters covered by this Consent Order or otherwise take any action with respect to Occidental in derogation of this Consent Order. However, nothing contained herein shall preclude the DOE from defending the validity of the federal petroleum price and allocation regulations.

(b) This Consent Order settles and finally resolves all aspects of Occidental's potential liability to the DOE under the federal petroleum price and allocation regulations, including but not limited to its capacity as an operator or working interest or royalty interest owner of a crude oil producing property. In addition, if Occidental was the operator of a property that produced crude oil for all or part of the period covered by this Consent Order, the DOE shall not initiate or prosecute any enforcement action against any person for noncompliance with the federal petroleum price and allocation regulations during such period relative to such property. Otherwise, the DOE reserves the right to initiate and prosecute enforcement actions against any person other than Occidental for noncompliance with the federal petroleum price and allocation regulations, including suits against operators for overcharges for crude oil when Occidental is a working interest or royalty interest owner in such crude oil production. In that connection, Occidental and the DOE agree that the amount paid to the DOE pursuant to this Consent Order is not attributable to Occidental's activities as a working interest or royalty interest owner on properties on which it is not the operator.

Furthermore, Occidental and the DOE agree that the Consent Order and the payments hereunder do not resolve, reduce or release the liability of any other person for violations on properties of which (but only for the times during which) Occidental is or was a working interest or royalty interest owner (and not the operator) or affect any rights or obligations between Occidental and the operator or any other working interest or royalty interest owner.

(c) The DOE will not seek or recommend any criminal fines or penalties based on information or evidence presently in its possession for the matters covered by this Consent Order, provided, however, that nothing in this Consent Order precludes the DOE from (1) seeking or recommending such criminal fines or penalties if information subsequently coming to its attention indicates, either by itself or in combination with information or evidence presently known to DOE, that a criminal violation may have occurred or (2) otherwise complying with its obligations under law with regard to forwarding information of possible criminal violations of law to appropriate authorities. Nothing contained herein may be construed as a bar, estoppel or defense against any criminal or civil action brought by an agency of the United States other than the DOE under (i) section 210 of the Economic Stabilization Act of 1970 or (ii) any statute or regulation other than the federal petroleum price and allocation regulations. Finally, this Consent Order does not prejudice the rights of any third party or Occidental in any private action, including an action for contribution by or against Cities Service.

(d) Occidental releases the DOE completely and for all purposes from all administrative and civil judicial claims, liabilities or causes of action that Occidental has asserted or may otherwise be able to assert against the DOE relating to the DOE's administration of the federal petroleum price and allocation regulations. This release, however, does not preclude Occidental from asserting any factual or legal position or argument as a defense to any action, claim, or proceeding brought by the DOE, the United States, or any agency of the United States. Nor does it preclude Occidental from asserting a defense, counterclaim or offset to any action, claim or proceeding brought by any other person. Further, Occidental waives all claims that it has asserted or may assert in proceedings before the Office of Hearings and Appeals ("OHA") pursuant to 10 CFR Part 205, Subpart V. Occidental also agrees that, within fifteen (15) days following the Effective Date of this Consent Order, it shall (1) cause the withdrawal of the request made by its attorneys Phillips, Nizer, Benjamin, Krim & Ballon, on July 20, 1988, for documents pursuant to the Freedom of Information Act, 5 U.S.C. section 552, *et seq.*; and (2) provide to the Permian Corporation or its successor in interest ("Permian"), in a form acceptable to DOE, written notice to Permian that Occidental will not assert against Permian, in response to a claim by Permian for reimbursement or indemnification for any judgment that might be entered against it, or any settlement that might be reached, in *Amber Refining, Inc., et al.* v. *The Permian Corporation*, No. C.A. 4-83-443-K (N.D. Tex.), that Fermian should have sought reimbursement or indemnification from the escrow fund established in the Consent Order entered into on March 5, 1982, between Permian and the DOE and made effective on June 25, 1982.

503. (a) Within fifteen (15) days after the execution of the Consent Order by both parties, DOE agrees to join with Occidental in written notification to the Federal Energy Regulatory Commission ("FERC") of the fact of such execution, which notice shall request that said administrative tribunal stay all further action in the proceeding styled *Cities Service Oil and Gas Corporation*, No. RO-89-2-000, until such time as the Consent Order has become effective or has been withdrawn pursuant to Article IX of this Consent Order.

(b) Within fifteen (15) days after the Effective Date of this Consent Order, Occidental and the DOE will file or cause to be filed appropriate pleadings and will take all other steps necessary to withdraw all claims and dismiss with prejudice all proceedings covered by this Consent Order then pending before the DOE's OHA or the FERC, and to dismiss with prejudice any court proceeding then pending involving an appeal from or seeking review of a decision by the OHA or the FERC in any such proceeding.

504. Execution of this Consent Order constitutes neither an admission by Occidental nor a finding by the DOE of any violation by Occidental of any statute or regulation. The DOE has determined that it is not appropriate to seek to impose civil penalties for the matters covered by this Consent Order, and the DOE will not seek any such civil penalties. None of the payments or expenditures made by Occidental pursuant to this Consent Order are to be considered for any purpose as penalties, fines, or forfeitures or as settlement of any potential liability for penalties, fines or forfeitures.

505. Notwithstanding any other provision herein, with respect to the matters covered by this Consent Order, the DOE reserves the right to initiate an enforcement proceeding or to seek appropriate penalties for any newly discovered regulatory violations committed by Occidental, but only if Occidental has concealed facts relating to such violations. The DOE also reserves the right to seek appropriate judicial remedies, other than full rescission of this Consent Order, for any misrepresentation of fact by Occidental material to this Consent Order during the course of the audit or the negotiations that preceded this Consent Order or upon discovery of information that is materially inconsistent with the information which has been furnished by Occidental upon which this agreement is based.

VI. Recordkeeping, Reporting and Confidentiality

601. Occidental shall maintain such records as are necessary to demonstrate compliance with the terms of this Consent Order. Except for such records, Occidental is relieved of its obligation to comply with the recordkeeping requirements of the federal petroleum price and allocation regulations relating to the matters settled by this Consent Order.

602. Except for formal requests for information regarding compliance by other firms with the federal petroleum price and allocation regulations, Occidental will not be subject to any audit requests, report orders, subpoenas, or other administrative discovery by DOE relating to Occidental's activities subject to such regulations relating to the matters settled by this Consent Order.

603. The DOE shall treat all sensitive commercial and financial information provided to it by Occidental pursuant to negotiations which were conducted with respect to this Consent Order as confidential and proprietary and will not disclose such information unless required to do so by law, including pursuant to a request duly authorized by a committee or subcommittee of Congress. If a request or demand for release of any such information is made pursuant to law, the DOE shall claim any privilege or exemption reasonably available to it. The DOE shall provide Occidental with ten (10) days' actual notice, if possible, in advance of any pending disclosure of such information, unless prohibited or precluded from doing so by law or request of Congress. The DOE will retain the audit information which it has acquired during its review of Occidental's compliance with the federal petroleum price and allocation regulations in accordance with the DOE's established records retention procedures. Notwithstanding the confidential treatment that might otherwise be afforded such information by the terms of this Consent Order, the DOE will make such information available to the Department of Justice ("DOJ") in response to a request pursuant to the DOJ's statutory authority by a duly authorized representative of the DOJ. If requested by the DOJ, the DOE shall not disclose that such a request has been made. Nothing in this paragraph shall be deemed to waive or prejudice any right Occidental may have independent of this Consent Order regarding the disclosure of sensitive commercial and financial information.

VII. Contractual Undertaking

701. It is the understanding and express intention of Occidental and the DOE that this Consent Order constitutes a legally enforceable contractual undertaking that is binding on the parties and their successors and assigns. Notwithstanding any other provision herein, Occidental (and its successors and assigns) and the DOE agree that the sole and exclusive remedy for a breach of this Consent Order shall be the filing of a civil action in an appropriate United States district court, and the DOE also reserves the right to seek appropriate penalties and interest for any failure to comply with the terms of this Consent Order. The DOE will undertake the defense of the Consent Order, as made effective, in response to any litigation challenging the Consent Order's validity in which the DOE is named a party. Occidental agrees to cooperate with the DOE in the defense of any such challenge.

VIII. Final Order

801. Upon becoming effective, this Consent Order shall be a final order of the DOE having the same force and effect as a remedial order issued pursuant to section 503 of the DOE Act, 42 U.S.C. 7193, and 10 CFR 205.199B. Occidental hereby waives its right to administrative or judicial review of this Order, but Occidental reserves the right to participate in any such review initiated by a third party.

IX. Effective Date

901. This Consent Order shall become effective as a final order of the DOE upon notice to that effect being published in the **Federal Register**. Prior to that date, the DOE will publish notice in the **Federal Register** that it proposes to make this Consent Order final and, in that notice, will provide not less than thirty (30) days for members of the public to submit written comments. The DOE will consider all written comments in deciding whether to adopt the Consent Order as a final order, to withdraw agreement to the Consent Order, or to attempt to renegotiate the terms of the Consent Order.

902. Until the Effective Date, the DOE reserves the right to withdraw consent to this Consent Order by written notice to Occidental, in which event this Consent Order shall be null and void. If this Consent Order is not made effective on or before the one hundred fiftieth (150th) day following execution by Occidental, Occidental may, at any time thereafter until the Effective Date, withdraw its agreement to this Consent Order by written notice to the DOE, in which event this Consent Order shall be null and void.

I, the undersigned, a duly authorized representative of Occidental Petroleum Corporation, hereby agree to and accept on behalf of Occidental Petroleum Corporation, the foregoing Consent Order.

Douglas G. Robinson,

Attorney for Occidental Petroleum Corporation.

Dated: January 31, 1989.

I, the undersigned, a duly authorized representative of DOE, hereby agree to and accept on behalf of the DOE the foregoing Consent Order.

Milton C. Lorenz,

Chief Counsel, Office of Enforcement Litigation, Economic Regulatory Administration, U.S. Department of Energy.

Dated: January 31, 1989.

[FR Doc. 89-12447 Filed 5-23-89; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. ER89-301-000 et al.]

Montaup Electric Co. et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

May 16, 1989.

Take notice that the following filings have been made with the Commission:

1. Montaup Electric Company

[Docket No. ER89-301-000]

Take notice that on May 3, 1989, Montaup Electric Company (Montaup) tendered for filing a supplement to a letter agreement filed in this docket on March 29, 1989, under which charges related to a radial line used to serve the Town of Middleborough, Massachusetts, will be billed under an existing formula rate without annual update filings with the Commission. The Staff requested that the March 29, 1989 filing be supplemented to include the computerized statement of the formula which shows the development of annual charges and which has been designated "Exhibit A" in Montaup's past annual update filings. The Staff asked that all numbers be deleted from Exhibit A except income tax rates and return on common equity, which cannot be changed without a filing and that Exhibit A as so modified be filed with the Commission.

Montaup's filing consists of an Exhibit A conforming with the Staff's requirements.

The Company asks that the original submittal as supplemented be made effective, as originally requested, as of 1988, so that no update filings will be required for 1988 and beyond.

Copies of the supplemental filing were served on the recipients of the original filing.

Comment date: May 30, 1989, in accordance with Standard Paragraph E at the end of this notice.

2. Ohio Power Company

[Docket Nos. ER82-553-006 and ER82-554-006]

Take notice that on May 8, 1982, Ohio Power Company tendered for filing its revised compliance filing pursuant to the Commission's order issued February 22, 1989.

Comment date: May 30, 1989, in accordance with Standard Paragraph E at the end of this notice.

3. Soyland Power Cooperative, Inc. v. Central Illinois Public Service, Company

[Docket No. EL89-30-000]

Take notice that on April 28, 1989 Soland Power Cooperative, Inc. (Soyland) tendered for filing a complaint against Central Illinois Public Service Company (CIPS) in accordance with Section 206 of the Federal Power Act and Rule 206 of the Commission's Rules of Practice and Procedure. Soyland requests, that the Commission (1) institute an investigation to determine that certain formulary rates and charges and components thereof contained in the Power Supply Agreement and the Transmission Services Agreement between Soyland and CIPS are unjust and unreasonable, and (2) modify such formulary rates to establish lower, just and reasonable rates for the power and transmission services provided under those Agreements.

Comment date: June 15, 1989, in accordance with Standard Paragraph E at the end of this notice.

4. Northern States Power Company (Minnesota Company)

[Docket No. ER88-574-000]

Take notice that on August 18, 1988, Northern States Power Company (Minnesota Company) (NSP-MN) tendered for filing a Power Sales Agreement dated July 29, 1988 among NSP-MN, Northern States Power Company (Wisconsin Company), and Northwestern Wisconsin Electric Company. Take further notice that on May 1, 1989, NSP-MN submitted additional information to supplement the original filing.

The Interconnection and Interchange Agreement dated April 25, 1989 among the above named parties, as submitted, provides for interconnection electrical operation between the parties; systems, as well as for the interchange of electrical power and energy between the parties. This agreement supersedes and replaces the original Power Sales Agreement named above in its entirety.

NSP-MN requests that the Commission make the effective date of the proposed rate schedules retroactive to August 1, 1988 to coincide with the terms of the Service Schedules attached to the Interconnection and Interchange Agreement named above.

Copies of this filing have been provided to the respective parties and to the State Commissions of Minnesota, North Dakota, South Dakota, Wisconsin, and Michigan.

Comment date: May 30, 1989, in accordance with Standard Paragraph E at the end of this notice.

5. Carolina Power & Light Company

[Docket No. ER89-203-000]

Take notice that on May 4, 1989, Carolina Power & Light Company (CP&L) filed an amendment to its filing in this docket. The amendment contains support information requested by the Commission Staff for CP&L's projections of 1989 costs and load projections. These costs and loads projections were used to determine the proposed 1989 rates for wheeling services under provisions of two contracts CP&L has entered into with the Southwestern Power Administration (SEPA) for wheeling power from the John H. Kerr Dam to SEPA's preference customers in CP&L's eastern area and for wheeling power from the Cumberland Projects to SEPA's preference customers in CP&L's western area.

Comment date: May 30, 1989, in accordance with Standard Paragraph E at the end of this notice.

6. Pacific Gas and Electric Company

[Docket No. ER89-298-000]

Take notice that on May 4, 1989, Pacific Gas and Electric Company (PG&E) tendered for filing an amended filing for the City of Santa Clara's Rate Schedu1e No. 108. PG&E states that included in this filing are Revised Attachment 2, Test Year 1989 Estimated Statements BK and BL, and Revised Attachment 3, 1989 Estimated Cost of Service and resulting allocated Cost and Energy and Demand Rates to Santa Clara.

Comment date: May 30, 1989, in accordance with Standard Paragraph end of this notice.

7. Kansas Gas and Electric Company

[Docket No. ER89-372-000]

Take notice that Kansas Gas and Electric Company on April 24, 1989, tended for filing a proposed change in its FERC Electric Service Tariff No. 93. The proposed KPL Letter of Intent specifies the amount of transmission capacity requirements for four Delivery Points for the period June 1, 1989 through May 31, 1990.

The KPL Letter of Intent is required by the terms of the service schedule.

Copies of this filing were served upon the Kansas Power and Light Company and the Kansas Corporation Commission.

Comment date: May 30, 1989, in accordance with Standard Paragraph E at the end of this notice.

8. Wisconsin Electric Power Company

[Docket No. ER89-397-000]

Take notice that on May 1, 1989, Wisconsin Electric Power Company (Wisconsin Electric) tendered for filing a notice of cancellation of FERC Rate Schedule No. 17 between Wisconsin Electric and the City of Elkhorn, Wisconsin.

Wisconsin Electric requests an effective date of June 16, 1989.

Comment date: May 30, 1989, in accordance with Standard Paragraph E at the end of this notice.

9. Unitil Power Corporation

[Docket No. ER89-396-000]

Take notice that on May 1, 1989, Unitil Power Corporation (UNITIL) tendered for filing pursuant to Schedule II Section H of Supplement No. 1 to Rate Schedule FERC Number l, the UNITIL System Agreement, the following material:

A. Statement of all sales and billing transactions for the period January 1, 1988 through December 31, 1988 along with the actual costs incurred by Power Corp. by FERC account.

B. UNITIL Power Corp. rates billed from January 1, 1988 to December 31, 1988 and supporting rate development.

Comment date: May 30, 1989, in accordance with Standard Paragraph end of this notice.

10. Tampa Electric Company

[Docket No. ER89-400-000]

Take notice that on May 2, 1989, Tampa Electric Company (Tampa Electric) tendered for filing a Letter Agreement that amends an existing Letter of Commitment providing for the sale by Tampa Electric to Seminole Electric Cooperative, Inc. (Seminole) of electric capacity and energy. The Letter Agreement amends the Letter of Commitment by extending the term, increasing the capacity commitment to 100 megawatts, and adjusting the energy charges.

Tampa Electric states that the Letter Agreement is submitted as a supplement to Service Schedule J (negotiated interchange service) under the existing agreement for interchange service between Tampa Electric and Seminole, designated as Tampa Electric Rate Schedule FERC No. 22.

Tampa Electric proposes an effective date of May 1, 1989, for the amendments to the Letter of Commitment, and therefore requests waiver of the Commission's notice requirements.

Copies of the filing have been served on Seminole and the Florida Public Service Commission.

Comment date: May 30, 1989, in accordance with Standard Paragraph E at the end of this notice.

11. Northern States Power Company

[Docket No. ER89-399-000]

Take notice that on May 3, 1989, Northern States Power Company (Minnesota Company) tendered for filing an Interconnection Agreement dated April 25, 1989 among NSP-MN, Northern States Power Company (Wisconsin Company), and North Central Power Co., Inc., and requested termination of the Firm Power Sale for Resale Service from Northern States Power Company (Wisconsin Company) to North Central Power Company, Inc.

The Interconnection and Interchange Agreement provides for interconnected electrical operation between the parties' systems, as well as for the interchange of electrical power and energy between the parties.

NSP-MN requests that the Commission make the effective date of the proposed rate schedules retroactive to September 1, 1988 to coincide with the terms of the Service Schedules attached to the Interconnection and Interchange Agreement named above.

Copies of this filing have been provided to the respective parties and to the State Commissions of Minnesota, North Dakota, South Dakota, Wisconsin, and Michigan.

Comment date: May 30, 1989, in accordance with Standard Paragraph E at the end of this notice.

12. Tampa Electric Company

[Docket No. ER89-403-000]

Take notice that on May 3, 1989, Tampa Electric Company (Tampa Electric) tendered for filing a Letter Agreement that amends an existing Letter of Commitment providing for the sale by Tampa Electric to the City of Tallahassee, Florida (Tallahassee) of 50 megawatts of capacity and energy. The Letter Agreement amends the Letter of Commitment by extending the term, providing for the sale of supplemental capacity in excess of 50 megawatts, and adjusting the energy charges.

Tampa Electric states that the Letter Agreement is submitted as a supplement to Service Schedule J (negotiated interchange service) under the existing agreement for interchange service between Tampa Electric and Tallahassee, designated as Tampa Electric Rate Schedule FERC No. 20.

Tampa Electric proposes an effective date of April 29, 1989, for the amendments to the Letter of Commitment, and therefore requests waiver of the Commission's notice requirements.

Copies of the filing have been served on Tallahassee and the Florida Public Service Commission.

Comment date: May 30, 1989, in accordance with Standard Paragraph E at the end of this notice.

13. Southern California Edison Company

[Docket No. ER89-404-000]

Take notice that on May 4, 1989 Southern California Edison Company (Edison) tendered for filing pursuant to § 35.13 of the Federal Energy Regulatory Commission's Regulations, as a supplemental rate schedule, the following Letter Agreement (Agreement) which has been executed by Edison and the United States of America, Department of Energy, acting by and through the Bonneville Power Administration (BPA).

The Agreement is for a purchase of firm energy by Edison from BPA subject to recall by BPA and was executed August 31, 1988, the Agreement commenced on September 1, 1988 and terminated Apri1 15, 1989. Under this Agreement (i) for the period September 1, 1988 through December 31, 1988, BPA made available and Edison purchased 251,000 MWh of firm energy from BPA and (ii) from January 1, 1989 to Apri1 15, 1989, BPA had the right to recall any or all of the energy previously delivered to Edison. BPA exercised its recall rights in February 1989 and Edison returned the recalled energy that month.

Edison requests waiver of the notice provisions under § 35.3 of the Commission's Regulations. Edison further requests the assignment of an effective date of February 1, 1989, because BPA first recalled the energy previously delivered to Edison in February and, thus, triggered Edison's obligation to return the recalled energy.

Copies of this filing were served upon the public Utilities Commission of the State of California and BPA.

Comment date: May 30, 1989, in accordance with Standard Paragraph E at the end of this notice.

14. Arkansas Power & Light Company

[Docket No. ER89-405-000]

Take notice that on May 3, 1989, Arkansas Power & Light Company (AP&L) submitted for filing the Fourteenth Amendment to the Power Coordination, Interchange and Transmission Service Agreement between AP&L and Arkansas Electric Cooperative Corporation (AECC). The Amendment provides for the addition of one point of delivery, the transfer of capacity at two points of delivery, an increase in capacity at eight points of delivery, and the modification of names,

effective delivery dates or locates for eight points of delivery.

AP&L requests that the Commission waive any requirements with which AP&L has not already complied.

Comment date: May 30, 1989, in accordance with Standard Paragraph E at the end of this notice.

15. Public Service Company of New Hampshire

[Docket No. ER89-406-000]

Take notice that on May 3, 1989, Public Service Company of New Hampshire (PSNH) tendered for filing with the Commission revised rate schedule sheets providing for an additional delivery point to Concord Electric Company (Concord) under a Firm Transmission Service Agreement with Unitil Power Corp., and affiliate of Concord. PSNH proposes an effective date of April 15, 1989.

PSNH states that the additional delivery point is required in order to interconnect a qualifying facility whose output is purchased by PSNH, to the Concord and PSNH electrical systems.

PSNH further states that no changes are proposed to the rates charged to Unitil under the rate schedule, that Unitil concurs with the proposed change, and that a copy of the filing has been served upon Unitil.

Comment date: May 30, 1989, in accordance with Standard Paragraph E at the end of this notice.

16. Southern California Edison Company

[Docket No. ER89-407-000]

Take notice that on May 4, 1989 Southern California Edison Company (Edison) tendered for filing pursuant to § 35.13 of the Federal Energy Regulatory Commission's Regulations, as a supplemental rate schedule, data regarding Edison's return of energy recalled by Washington Water and Power Company (WWP) pursuant to an October 6, 1988 Letter Agreement (Agreement) between Edison and WWP. Edison requests an effective date of October 1, 1988 to coincide with the effective date of the Agreement.

Copies of this filing were served upon the Public Utilities Commission of the State of California and WWP.

Comment date: May 30, 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 available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-12394 Filed 5-23-89; 8:45 am]

BILLING CODE 6717-01-M

[Project Nos. 3253-009 et al.]

Hydroelectric Applications, Mad River Power Assoc. et al. Applications Filed

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection:

1a. Type of Application: Amendment of License.

b. Project No: 3253-009.

c. Date Filed: November 15, 1988.

d. Applicant: Mad River Power Associates.

e. Name of Project: Campton Dam.

f. Location: The project is located at Campton Dam on the Mad River, a tributary of the Pemigewasset River, in Grafton County, New Hampshire.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Applicant Contact: Mr. John C. Ransmeier, Esq., Ransmeier & Spellman, One Capitol Street, P.O. Box 1378, Concord, NH 03301, (603) 228-0477.

i. FERC Contact: Ken Fearon, (202) 376-9789.

j. Comment Date: June 20, 1989.

k. Description of Amendment: The licensee proposes to add 1 foot-high wooden flashboards to the crest of the Campton Dam, which is owned by the U.S. Forest Service.

l. This notice also consists of the following standard paragraphs: B, C, and D2.

2a. Type of Application: Amendment of License to Increase Capacity.

b. Project No: 9709-007.

c. Date Filed: February 17, 1989.

d. Applicant: Trafalgar Power, Inc.

e. Name of Project: Herkimer Hydroelectric Project.

f. Location: On the West Canada Creek in Herkimer County, New York.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Applicant Contact: Mr. Charles Casselman, Trafalgar Power, 5115 Ave De Gaspe, Suite 120, Montreal, Quebec, Canada H2T 3B7, (514) 273-8691.

i. FERC Contact: Lawrence Marquez, (202) 376-1942.

j. Comment Date: June 21, 1989 .

k. Description of Project: The licensee proposes to increase the licensed generating capacity from 1,050 kW to 1,680 kW. The licensee maintains that used generators were purchased in order to meet Niagara Mohawk deadlines by December 31, 1987, and that it will not operate above the licensed capacity of 1,050 kW until such a time as the amendment is approved or denied.

l. This notice also consists of the following standard paragraphs: B, C, and D2.

3 a. Type of Filing: Preliminary Permit.

b. Project No.: 10754-000

c. Date Filed: March 21, 1989.

d. Applicant: La Madre Mountain South Pumped Storage Power Company, Inc.

e. Name of Project: La Madre Mountain South Water Power Project.

f. Location: In Clark County, Nevada.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 91(a)-825(r).

h. Applicant Contact: R. Steave Creamer, Creamer and Noble, Inc., 435 East Tabernacle, St. George, Utah 84770, (801) 673-4677.

i. Commission Contact: Nanzo T. Coley, (202) 376-9416

j. Comment Date: June 23, 1989.

k. Description of Project: The proposed project would utilize, in part, lands under the jurisdiction of the Bureau of Land Management. The proposed pumped storage project would consist of: (1) A proposed storage pond that would function as a forebay with a surface area of 52 acres and a storage capacity of 1,190 acre-feet at elevation 4,520 feet m.s.l.; (2) a proposed 144-inch-diameter, 18,500-foot-long penstock that would extend from the forebay, through the powerhouse, to the afterbay at elevation 3,300 feet, which is the same size as the forebay; (3) a proposed powerhouse with a generating capacity of 100 MW and a pumping capacity of 151 MW; (4) a proposed 6.1 mile-long, 132-KV transmission line; and (5) appurtenant facilities. The estimated average annual energy output for the project for peaking power is 219,000 MWh and the pumping power needed is 330,690 MWh. The applicant estimates that the cost of the work to be performed under the preliminary permit would be $150,000.

l. Purpose of Project: Power produced at the project would be sold to the Nevada Power Company.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

4a. Type of Filing: Preliminary Permit.

b. Project No.: 10755–000

c. Date Filed: March 21, 1989.

d. Applicant: La Madre Mountain North Pumped Storage Power Company, Inc.

e. Name of Project: La Madre Mountain North Water Power Project.

f. Location: In Clark County, Nevada

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: R. Steave Creamer, Creamer and Noble, Inc., 435 East Tabernacle, St. George, Utah 84770, (801) 673–4677.

i. Commission Contact: Nanzo T. Coley, (202) 376–9416

j. Comment Date: June 23, 1989.

k. Description of Project: The proposed project would utilize, in part, lands under the jurisdiction of the Bureau of Reclamation. The proposed pumped storage project would consist of: (1) A proposed storage pond that would function as a forebay with a surface area of 52 acres and a storage capacity of 1,220 acre-feet at elevation 3,950 feet m.s.l.; (2) a proposed 144-inch-diameter, 31,100-foot-long penstock that would extend from the forebay, through the powerhouse, to the afterbay at elevation 2,750 feet, which is the same size as the forebay ; (3) a proposed powerhouse with a generating capacity of 100 MW and a pumping capacity of 155 MW; (4) a proposed 6.6-mile-long, 132–KV transmission line; and (5) appurtenant facilities. The estimated average annual energy output for the project for peaking power is 219,000 MWh and the pumping power needed is 339,450 MWh. The applicant estimates that the cost of the work to be performed under the preliminary permit would be $150,000.

l. Purpose of Project: Power produced at the project would be sold to the Nevada Power Company.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

5a. Type of Filing: Preliminary Permit.

b. Project No.: 10757–000

c. Date Filed: March 21, 1989.

d. Applicant: Brown Stone Canyon Pumped Storage Power Company, Inc.

e. Name of Project: Brown Stone Canyon Water Power Project.

f. Location: In Clark County, Nevada.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: R. Steave Creamer, Creamer and Noble, Inc., 435 East Tabernacle, St. George, Utah 84770, (801) 673–4677.

i. Commission Contact: Nanzo T. Coley, (202) 376–9416.

j. Comment Date: June 23, 1989.

k. Description of Project: The proposed pumped storage project would consist of: (1) A proposed storage pond that would function as a forebay with a surface area of 52 acres and a storage capacity of 1,200 acre-feet at elevation 4,420 feet m.s.l.; (2) a proposed 144-inch-diameter, 23,000-foot-long penstock that would extend from the forebay, through the powerhouse, to the afterbay at elevation 3,220 feet, which is the same size as the forebay; (3) a proposed powerhouse with a generating capacity of 100 MW and a pumping capacity of 153 MW; (4) a proposed 4-mile-long, 132–kV transmission line; and (5) appurtenant facilities. The estimated average annual energy output for the project for peaking power is 219,000 MWh and the pumping power needed is 335,000 MWh. The applicant estimates that the cost of the work to be performed under the preliminary permit would be $150,000.

l. Purpose of Project: Power produced at the project would be sold to the Nevada Power Company.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

6a. Type of Filing: Preliminary Permit.

b. Project No.: 10758–000.

c. Date Filed: March 22, 1989.

d. Applicant: Blue Diamond North Pumped Storage Power Company, Inc.

e. Name of Project: Blue Diamond North Water Power Project.

f. Location: In Clark County, Nevada.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. §§ 791 (a)–825(r).

h. Applicant Contact: R. Steave Creamer, Creamer and Noble, Inc., 435 East Tabernacle, St. George, Utah 84770, (801) 673–4677.

i. Commission Contact: Nanzo T. Coley, (202) 376–9416.

j. Comment Date: June 23, 1989.

k. Description of Project: The proposed project would utilize, in part, lands under the jurisdiction of the Bureau of Land Management. The proposed pumped storage project would consist of: (1) A proposed storage pond that would function as a forebay with a surface area of 52 acres and a storage capacity of 1,000 acre-feet at an elevation of 4,820 feet m.s.l.; (2) a proposed 144-inch-diameter, 7,700-foot-long penstock that would extend from the forebay, through the powerhouse, to the afterbay, which is the same size as the forebay. The gross head would be 1,420 feet; (3) a proposed powerhouse with a generating capacity of 100 MW and a pumping capacity of 145 MW; (4) a proposed 5.7-mile-long, 132-kv transmission line; and (5) appurtenant facilities. The estimated average annual energy output for the project for peaking power is 219,000 MWh and for pumping power is 317,550 MWh. The applicant estimates that the cost of the work to be performed under the preliminary permit would be $150,000.

1. Purpose of Project: Power produced at the project would be sold to the Nevada Power Company.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

7a. Type of Filing: Preliminary Permit.

b. Project No.: 10759–000.

c. Date Filed: March 22, 1989.

d. Applicant: Arrow Mountain Pumped Storage Power Company, Inc.

e. Name of Project: Arrow Mountain Water Power Project.

f. Location: In Clark County, Nevada.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791 (a)–825(r).

h. Applicant Contact: R. Steave Creamer, Creamer and Noble, Inc., 435 East Tabernacle, St. George, Utah 84770, (801) 673–4677.

i. Commission Contact: Nanzo T. Coley, (202) 376–9416.

j. Comment Date: June 23, 1989.

k. Description of Project: The proposed project would utilize, in part, lands under the jurisdiction of the Bureau of Land Management. The proposed pumped storage project would consist of: (1) A proposed storage pond that would function as a forebay with a surface area of 52 acres and a storage capacity of 1,070 acre-feet at elevation 4,500 feet m.s.l.; (2) a proposed 132-inch-diameter, 12,300-foot-long penstock that would extend from the forebay, through the powerhouse, to the afterbay at elevation 3,160 feet, which is the same size as the forebay; (3) a proposed powerhouse with a generating capacity of 100 MW and a pumping capacity of 148 MW; (4) a proposed 16.9-mile-long, 132-kV transmission line; and (5) appurtenant facilities. The estimated average annual energy output for the project for peaking power is 219,000 MWh and the pumping power needed is 324,120 MWh. The applicant estimates that the cost of the work to be performed under the preliminary permit would be $150.000.

1. Purpose of Project: Power produced at the project would be sold to the Nevada Power Company.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

8a. Type of Filing: Preliminary Permit.

b. Project No.: 10760–000.

c. Date Filed: March 22, 1989.

d. Applicant: Lee Canyon Pumped Storage Power Company, Inc.

e. Name of Project: Lee Canyon Water Power Project.

f. Location: In Clark County, Nevada.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791 (a)–825(r).

h. Applicant Contact: R. Steave Creamer, Creamer and Noble, Inc., 435 East Tabernacle, St. George, Utah 84770, (801) 673–4677.

i. Commission Contact: Nanzo T. Coley, (202) 376–9416.

j. Comment Date: June 23, 1989.

k. Description of Project: The proposed project would utilize, in part, lands under the jurisdiction of the Bureau of Land Management. The proposed pumped storage project would consist of: (1) A proposed storage pond that would function as a forebay with a surface area of 52 acres and a storage capacity of 1,200 acre-feet at elevation 5,180 feet m.s.l.; (2) a proposed 144-inch-diameter, 22,100-foot-long penstock that would extend from the forebay, through the powerhouse, to the afterbay at elevation 3,920 feet, which is the same size as the forebay; (3) a proposed powerhouse with a generating capacity of 100 MW and a pumping capacity of 153 MW; (4) a proposed 5.9-mile-long, 132-kV transmission line; and (5) appurtenant facilities. The estimated average annual energy output for the project for peaking power is 219,000 MWh and the pumping power needed is 335,070 MWh. The applicant estimates that the cost of the work to be performed under the preliminary permit would be $150,000.

l. Purpose of Project: Power produced at the project would be sold to the Nevada Power Company.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

9a. Type of Filing: Preliminary Permit.

b. Project No.: 10761–000.

c. Date Filed: March 22, 1989.

d. Applicant: Kyle Canyon Water Pumped Storage Power Company, Inc.

e. Name of Project: Kyle Canyon Water Water Power Project.

f. Location: In Clark County, Nevada.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: R. Steave Creamer, Creamer and Noble, Inc., 435 East Tabernacle, St. George, Utah 84770, (801) 673–4677.

i. Commission Contact: Nanzo T. Coley, (202) 376–9416.

j. Comment Date: June 23, 1989.

k. Description of Project: The proposed project would utilize, in part, lands under the jurisdiction of the Bureau of Land Management. The proposed pumped storage project would consist of: (1) A proposed storage pond that would function as a forebay with a surface area of 52 acres and a storage capacity of 1,220 acre-feet at elevation 4,800 feet m.s.l.; (2) a proposed 144-inch-diameter, 30,900-foot-long penstock that would extend from the forebay, through the powerhouse, to the afterbay at elevation 3,600 feet, which is the same size as the forebay; (3) a proposed powerhouse with a generating capacity of 100 MW and a pumping capacity of 155 MW; (4) a proposed 4-mile-long, 132-kV transmission line; and (5) appurtenant facilities. The estimated average annual energy output for the project for peaking power is 219,000 MWh and the pumping power needed is 339,450 MWh. The applicant estimates that the cost of the work to be performed under the preliminary permit would be $150,000.

l. Purpose of Project: Power produced at the project would be sold to the Nevada Power Company.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

10a. Type of Filing: Preliminary Permit.

b. Project No.: 10762–000.

c. Date Filed: March 22, 1989.

d. Applicant: Frenchman Mountain Pumped Storage Power Company, Inc.

e. Name of Project: Frenchman Mountain Water Power Project.

f. Location: In Clark County, Nevada.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: R. Steave Creamer, Creamer and Noble, Inc., 435 East Tabernacle, St. George, Utah 84770, (801) 673–4677.

i. Commission Contact: Nanzo T. Coley, (202) 376–9416.

j. Comment Date: June 23, 1989.

k. Description of Project: The proposed project would utilize, in part, lands under the jurisdiction of the Bureau of Land Management. The proposed pumped storage project would consist of: (1) A proposed storage pond that would function as a forebay with a surface area of 52 acres and a storage capacity of 1,200 acre-feet at elevation 2,660 feet m.s.l.; (2) a proposed 144-inch-diameter, 35,700-foot-long penstock that would extend from the forebay, through the powerhouse, to the afterbay at elevation 1,660 feet, which is the same size as the forebay; (3) a proposed powerhouse with a generating capacity of 81 MW and a pumping capacity of 128 MW; (4) a proposed 5.4-mile-long, 132-kV transmission line; and (5) appurtenant facilities. The estimated average annual energy output for the project for peaking power is 177,390 MWh and the pumping power needed is 280,320 MWh. The applicant estimates that the cost of the work to be performed under the preliminary permit would be § 150,000.

l. Purpose of Project: Power produced at the project would be sold to the Nevada Power Company.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

11a. Type of Filing: Preliminary Permit.

b. Project No.: 10763–000.

c. Date Filed: March 22, 1989.

d. Applicant: Indian Ridge Pumped Storage Power Company, Inc.

e. Name of Project: Indian Ridge Water Power Project.

f. Location: In Clark County, Nevada.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: R. Steave Creamer, Creamer and Noble, Inc., 435 East Tabernacle, St. George, Utah 84770, (801) 673–4677.

i. Commission Contact: Nanzo T. Coley, (202) 376–9416.

j. Comment Date: June 23, 1989.

k. Description of Project: The proposed project would utilize, in part, lands under the jurisdiction of the Bureau of Land Management. The proposed pumped storage project would consist of: (1) A proposed storage pond that would function as a forebay with a surface area of 52 acres and a storage capacity of 1,200 acre-feet at elevation 5,120 feet m.s.l.; (2) a proposed 144-inch-diameter, 28,500-foot-long penstock that would extend from the forebay, through the powerhouse, to the afterbay at elevation 3,920 feet, which is the same size as the forebay; (3) a proposed powerhouse with a generating capacity of 100 MW and a pumping capacity of 153 MW; (4) a proposed 3.9-mile-long, 132-kV transmission line; and (5) appurtenant facilities. The estimated average annual energy output for the project for peaking power is 219,000 MWh and the pumping power needed is 335,070 MWh. The applicant estimates that the cost of the work to be performed under the preliminary permit would be $150,000.1.

l. Purpose of Project: Power produced at the project would be sold to the Nevada Power Company.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

12a. Type of Filing: Preliminary Permit.

b. Project No.: 10764–000.

c. Date Filed: March 22, 1989.

d. Applicant: Boulder Pumped Storage Power Company, Inc.

e. Name of Project: Boulder Water Power Project.

f. Location: In Clark County, Nevada.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: R. Steave Creamer, Creamer and Noble, Inc., 435 East Tabernacle, St. George, Utah 84770, (801) 673–4677.

i. Commission Contact: Nanzo T. Coley, (202) 376–9416.

j. Comment Date: June 23, 1989.

k. Description of Project: The proposed project would utilize, in part, lands under the jurisdiction of the Bureau of Land Management. The proposed pumped storage project would consist of: (1) A proposed storage pond that would function as a forebay with a surface area of 52 acres and a storage capacity of 1,200 acre–feet at elevation 2,880 feet m.s.l.; (2) a proposed 144-inch-diameter, 29,200-foot-long penstock that would extend from the forebay, through the powerhouse, to the afterbay at elevation 1,820 feet, which is the same size as the forebay; (3) a proposed powerhouse with a generating capacity of 87 MW and a pumping capacity of 134 MW; (4) a proposed 4.8-mile-long, 132-kV transmission line; and (5) appurtenant facilities. The estimated average annual energy output for the project for peaking power is 190,530 MWh and the pumping power needed is 293,460 MWh. The applicant estimates that the cost of the work to be performed under the preliminary permit would be $150,000.

l. Purpose of Project: Power produced at the project would be sold to the Nevada Power Company.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

13a. Type of Filing: Preliminary Permit.

b. Project No.: 10765–000.

c. Date Filed: March 22, 1989.

d. Applicant: Lucky Strike Pumped Storage Power Company, Inc.

e. Name of Project: Lucky Strike Water Power Project.

f. Location: In Clark County, Nevada.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: R. Steave Creamer, Creamer and Noble, Inc., 435 East Tabernacle, St. George, Utah 84770, (801) 673–4677.

i. Commission Contact: Nanzo T. Coley, (202) 376–9416.

j. Comment Date: June 23, 1989.

k. Description of Project: The proposed project would utilize, in part, lands under the jurisdiction of the Bureau of Land Management. The proposed pumped storage project would consist of: (1) A proposed storage pond that would function as a forebay with a surface area of 52 acres and a storage capacity of 1,200 acre-feet at elevation 5,200 feet m.s.l.; (2) a proposed 144-inch-diameter, 21,600-foot-long penstock that would extend from the forebay, through the powerhouse, to the afterbay at elevation 4,000 feet, which is the same size as the forebay; (3) a proposed powerhouse with a generating capacity of 100 MW and a pumping capacity of 153 MW; (4) a proposed 3.6-mile-long, 132-kV transmission line; and (5) appurtenant facilities. The estimated average annual energy output for the project for peaking power is 219,000 MWh and the pumping power needed is 335,070 MWh. The applicant estimates that the cost of the work to be performed under the preliminary permit would be $150,000.

l. Purpose of Project: Power produced at the project would be sold to the Nevada Power Company.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

Standard Paragraphs

A5. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b)(1) and (9) and 4.36.

A7. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before the specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A9. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, include an unequivocal statement of intent to submit, if such an application may be filed, either (1) a preliminary permit application or (2) a development application (specify which type of application), and be served on the applicant(s) named in this public notice.

A10. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to Dean Shumway, Director, Division of Project Review, Federal Energy Regulatory Commission, Room 203–RB, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application

may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Dated: May 18, 1989, Washington, DC.

Lois D. Cashell,

Secretary.

[FR Doc. 89-12393 Filed 5-23-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ89-2-1-001]

Alabama-Tennessee Natural Gas Co.; Proposed PGA Rate Adjustment

May 18, 1989.

Take notice that on May 15, 1989, Alabama-Tennessee Natural Gas Company (Alabama-Tennessee), Post Office Box 918, Florence, Alabama, 35631, tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheet:

Substitute Twelfth Revised Sheet No. 4

Alabama-Tennessee states that Substitute Twelfth Revised Sheet No. 4 is being filed for informational purposes only to correct an administrative error in the original filing, which was filed on March 1, 1989. Alabama-Tennessee further states that it has requested such waivers of the Commission's regulations as may be necessary to allow this tariff sheet to be substituted.

Alabama-Tennessee states that copies of the tariff filing have been mailed to all of its jurisdictional customers and affected State Regulatory Commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 or Rule 214 of the Comission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such protests should be filed on or before May 25, 1989. 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. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-12399 Filed 5-23-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP86-41-003]

Algonquin Gas Transmission Co., Compliance Filing

May 18, 1989.

Take notice that Algonquin Gas Transmission Company ("Algonquin") on May 15, 1989, in compliance with the April 14, 1989 order ("April 14 Order") of the Federal Energy Regulatory Commission ("Commission") tendered for filing to its FERC Gas Tariffs, Second Revised Volume No. 1 and Original Volume No. 2 certain tariff sheets proposed to be effective July 1, 1989.

Algonquin states that on January 29, 1986, Algonquin filed with the Commission revised tariff sheets designed to increase Algonquin's jurisdictional revenues by approximately $2,177,000 per year based upon Algonquin's cost of service for the twelve-month period ended September 30, 1985, as adjusted for known and measurable changes through June 30, 1986. Such increased rates became effective on August 1, 1986, subject to refund after a five month suspension. A hearing was held July 22, 1986 through July 30, 1986. The Presiding Administrative Law Judge issued an initial decision on May 12, 1987. A Stipulation and Agreement was filed on November 4, 1987 subsequent to the issuance of the initial decision. The Commission issued the April 14 Order approving the contested settlement with certain modifications.

Algonquin further states that this instant filing is to reflect on a prospective basis the changes in the tariff and rates of Algonquin in compliance with the Commission's April 14 Order as more fully described in said filing.

Algonquin notes that copies of this filing were served upon all parties on the official service list, each affected party and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with § 385.214 and § 385.211 of the Commission's Rules and regulations. All such protests should be filed on or before May 25 1989. 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. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-12401 Filed 5-23-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-127-001]

ANR Pipeline Co; Proposed Changes in FERC Gas Tariff

May 18, 1989.

Take notice that ANR Pipeline Company ("ANR") on May 12, 1989 tendered for filing as a part of its FERC Gas Tariff Original Volume No. 1 Substitute First Revised Sheet No. 90.

ANR states that a Commission Order issued on April 28, 1989 in Docket No. RP89-127-000 directed ANR to refile a tariff sheet reflecting the eliminating of the last paragraph of § 18.4 of the General Terms and Conditions of its Volume 1. This paragraph dealt with ANR's right to reallocate to its remaining customers all fixed monthly charges relative to buyout and buydown costs in the event any buyer is relieved of its obligation to pay such charges, by a Commission or court order.

While ANR has filed this sheet to comply with the Commission's Order as stated above, this filing has been made under protest, and with full reservation of all rights of ANR to seek rehearing of the Commission's Order.

ANR has requested that the Commission accept this filing to become effective as of May 1, 1989.

Any person desiring to protest said filing should file a protest with the Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Such protests must be filed on or before May 25, 1989. 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. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-12400 Filed 5-23-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP89-1339-000]

Long Island Lighting Co.; et al; Petition for Declaratory Order

May 18, 1989.

Take notice that on May 8, 1989, Long Island Lighting Company (LILCO), 175 East Old County Road, Hicksville, New York 11801; The Brooklyn Union Gas Company (Brooklyn Union), 195 Montague Street, Brooklyn, New York 11201; and Consolidated Edison Company of New York, Inc. (ConEd), 4 Irving Place, New York, New York 10003 (collectively, Petitioners) jointly and severally filed in Docket No. CP89-1339-000 a petition for declaratory order disclaiming Commission jurisdiction under the Natural Gas Act with respect to the use of Petitioners' facilities and other operations to secure deliveries of certain quantities of natural gas by Iroquois Gas Transmission System (IGTS) to three local distribution companies located in the State of New Jersey (Elizabethtown Gas Company, New Jersey Natural Gas Company, and Public Service Electric and Gas Company (collectively, the New Jersey Shippers), all as more fully set forth in the petition which is on file with the Commission and open to public inspection.

Petitioners state that their petition is being filed in connection with the submission of IGTS and Tennessee Gas Pipeline Company of a Joint of Settlement providing for the construction of new interstate natural gas pipeline capacity to serve the New York-New Jersey and New England areas of the Northeastern United States. Petitioners further state that their petition directly relates to ongoing proceedings concerning IGTS in Docket No. CP89-634-000 and to an Abbreviated Application for a Certificate of Public Convenience and Necessity filed in Docket No. CP89-1263-000 by Texas Eastern Transmission Corporation (Texas Eastern) on April 24, 1989.

Petitioners represent that each is a local distribution company operating solely within the State of New York, that each is fully regulated by the Public Service Commission of the State of New York (New York PSC), and hence that each is exempt from the Commission's jurisdiction under the Natural Gas Act by reason of 1(b) and 1(c), 15 U.S.C. 717(b) and (c). Petitioners note that they separately own and cooperatively operate a system of high and medium pressure natural gas mains and related facilities known as the New York Facilities System, through which they receive natural gas supplies delivered by interstate pipelines serving the New York metropolitan area. Petitioners state that the New York Facilities System is located wholly within the State of New York and is subject to the jurisdiction of the New York PSC.

Petitioners relate that each has contracted with IGTS for firm transportation of natural gas volumes which each has arranged to purchase through Alberta Northeast Gas, Limited. IGTS will deliver volumes it transports for petitioners into LILCO facilities at South Commack, in Nassau County, Long Island, New York. Volumes thus delivered will be made available through the New York Facilities System to Brooklyn Union and ConEd. Petitioners further state that the IGTS proposal contemplates the transportation to and delivery at South Commack of Canadian natural gas quantities for the account of the New Jersey Shippers. Petitioners represent that in order to effect deliveries of IGTS volumes to the New Jersey Shippers, IGTS, Texas Eastern, Petitioners, and the New Jersey Shippers have agreed to an exchange arrangement by which IGTS quantities delivered to South Commack will be made available to the New Jersey Shippers.

Petitioners state that, pursuant to that arrangement, Texas Eastern will amend existing sales and transportation service agreements with Petitioners to establish South Commack as an additional Texas Eastern delivery point to Petitioners supplementing Texas Eastern's existing Staten Island delivery point. According to Petitioners, the arrangement further provides that the New Jersey Shippers will release their respective IGTS quantities to Texas Eastern at South Commack. Petitioners state that Texas Eastern then will deliver or cause to be delivered at South Commack quantities of natural gas released by the New Jersey Shippers in satisfaction of its obligations to deliver to Petitioners gas which Texas Eastern would otherwise have delivered at Staten Island. According to Petitioners, Texas Eastern will redeliver by displacement to the New Jersey Shippers at their existing delivery points in New Jersey quantities equivalent to those it otherwise would have delivered to Petitioners at Staten Island.

Petitioners claim that the net result of this arrangement is that Petitioners will physically receive from Texas Eastern quantities equivalent to New Jersey Shippers' IGTS volumes, while the New Jersey Shippers will physically receive from Texas Eastern volumes that otherwise would be delivered to Petitioners. Petitioners state that they will neither charge any rate nor receive any fee from the New Jersey Shippers for their participation in this arrangement.

Petitioners jointly and severally petition the Commission for an order finding and declaring that LILCO, Brooklyn Union, and ConEd will not lose their status as entities exempt from the provisions of the Natural Gas Act pursuant to 1(b) and 1(c) of that Act by reason of their participation in the arrangement they describe. Petitioners further request that the Commission act on their petition no later than the date on which it acts on the Joint Offer of Settlement and related Application for Certificate of Public Convenience and Necessity filed by IGTS on January 17, 1989, in Docket No. CP89-634-000.

Any person desiring to be heard or to make any protest with reference to said petition should on or before June 8, 1989, 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 384.214 or 385.211). 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.

Lois D. Cashell,

Secretary.

[FR Doc. 89-12402 Filed 5-23-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-49-004]

National Fuel Gas Supply Corp.; Proposed Changes in FERC Gas Tariff

May 18, 1989.

Take notice that on May 15, 1989, National Fuel Gas Supply Corporation ("National") tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets:

Substitute Fifth Revised Sheet No. 1
Substitute Second Revised Sheet No. 1-A
Substitute Eighteenth Revised Sheet No. 4
Second Revised Sheet No. 14
First Revised Sheet No. 84
Fourth Revised Sheet No. 282
Substitute Seventh Revised Sheet No. 302
Substitute Fifth Revised Sheet No. 321
Substitute Fifth Revised Sheet No. 341
Substitute Fourth Revised Sheet No. 538

National states that its filing is in compliance with Ordering Paragraph (B) of the Commission's order issued March 30, 1989, at Docket No. RP89-49-002. The compliance filing reflects the cancellation of the T-2 Rate Schedule,

the elimination of the variable costs included in the minimum bill provision of the X Rate Schedules, and the elimination from rate base of the deferred taxes related to company-owned production property.

Copies of National's filing were served on National's jurisdictional customers and on the interested State Commissions.

Any person desiring to protest said filing should file a 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. All such motions or protests should be filed on or before May 25, 1989. 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. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-12403 Filed 5-23-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP89-1310-000]

Texas Gas Transmission Corp.; Request Under Blanket Authorization

May 12, 1989.

Take notice that on May 4, 1989, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP89-1310-000 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 an interruptible transportation service for Bridgeline Gas Distribution Company (Bridgeline) under the blanket certificate issued to Texas Gas in Docket No. CP88-686-000 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.

Texas Gas requests authorization to transport on a peak day up to 200,000 MMBtu equivalent of natural gas for Bridgeline, with an estimated average daily quantity of 50,000 MMBtu equivalent of natural gas. On an annual basis, it is stated that Bridgeline estimates a volume of 18,250,000 MMBtu equivalent of natural gas. Texas Gas states that the transportation service is being rendered through the use of Texas Gas' existing facilities. The location of points of receipt and delivery, as proposed, are specified in Exhibits B and C, respectively, of the gas transportation agreement dated January 30, 1989, of the application.

Texas Gas states that transportation service for Bridgeline commenced March 30, 1989, under the 120-day automatic provisions of § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST89-2946.

Any person or the Commission's staff may, within 45 days after 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. 89-12404 Filed 5-23-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-119-002]

Texas Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

May 18, 1989.

Take notice that on May 12, 1989, Texas Gas Transmission Corporation (Texas Gas) tendered for filing the following revised tariff sheets to its FERC Gas Tariff:

FERC Gas Tariff, Original Volume No. 1

Seventh Revised Sheet No. 12A
Fifth Revised Sheet No. 117
Substitute Third Revised Sheet No. 118

FERC Gas Tariff, Original Volume No. 2-A

Substitute First Revised Sheet No. 104

The revised tariff sheets are being filed to reflect the proper captions pursuant to Ordering Paragraph (B) of the "Order Accepting for Filing and Suspending Tariff Sheets and Establishing Hearing Procedures" (Order) issued by the Commission on April 28, 1989, in Docket No. RP89-119-000. The revised tariff sheets also correct a reference of the Commodity Take-or-Pay Surcharge as found in the language of the General Terms and Conditions.

Texas Gas states that this filing responds to the Order directives regarding working papers verifying Texas Gas's methodology for the separate Take-or-Pay Commodity Surcharge applicable to its Zone SL transportation and whether Texas Gas made firm sales to non-jurisdictional customers during the base and deficiency periods.

Copies of the filing are being mailed to Texas Gas's jurisdictional sales and transportation customers, and interested state commissions, as well as all parties on the official service list of RP89-119.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before May 25, 1989. 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. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Filings are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 89-12405 Filed 5-23-89; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPP-36170; FRL-3574-9]

Standard Evaluation Procedure; Request for Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice requests public comment on a draft, prior to its publication, of a Standard Evaluation Procedure (SEP) entitled: "Residues in Meat, Milk, Poultry, and Eggs: Feeding Studies/Feed-throughs." The SEPs are a standard set of guidance documents on how the Health Effects Division (HED), Office of Pesticide Programs, evaluates studies and scientific data to ensure consistency of scientific review of studies submitted by registrants in support of pesticide registrations. This will increase the efficiency of pesticide

registration and other regulatory activities.

DATE: Comments, identified by the document control number [OPP-36170], should be received on or before June 23, 1989.

ADDRESS: Submit three copies of written comments, by mail to:

Public Document and Freedom of Information Section, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (703-557-2805).

In person, deliver comments to: Room 244, Crystal Mall Building #2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

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

Copies of the draft SEP are also available at the above address.

FOR FURTHER INFORMATION CONTACT:

By mail: Maxie Jo Nelson, Health Effects Division (H7509C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Office location and telephone number: Room. 810, Crystal Mall Building #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703-557-7484).

SUPPLEMENTARY INFORMATION: The SEPs are a standard set of guidance documents on how HED evaluates studies and scientific data to ensure consistency of scientific reviews. Not only will the SEPs serve as valuable internal reference documents and training aids for new staff, these documents will also inform the public and regulated community of important considerations in the evaluation of test data for determining chemical hazards.

The SEPs ensure a comprehensive, consistent treatment of major scientific topics in the Agency's reviews and provide interpretive policy guidance where appropriate, but are not so detailed that they inhibit creativity and independent thought. Within this fiscal year, HED will be publishing three additional SEPs in the scientific discipline of chemistry. Fourty-four SEPs have been published thus far and are available from the National Technical Information Service (NTIS), which is responsible for distribution of all SEPs after they have been completed. Prior to publication, each of the SEPs must undergo extensive peer review including Division, Office, Intra-Agency, FIFRA Scientific Advisory Panel, and public comment.

This announcement serves to solicit public comment on the draft document.

Dated: May 4, 1989.

W. L. Burnam,

Acting Director, Health Effects Division, Office of Pesticide Programs.

[FR Doc. 89-12321 Filed 5-23-89; 8:45 am]

BILLING CODE 6560-50-M

[OPP-180811; FRL-3574-5]

Emergency Exemptions; Zinc Phosphide etc.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted specific exemptions for the control of various pests to the eleven States and two to the United States Department of Agriculture, as listed below. Three crisis exemptions were initiated by various States, and a quarantine exemption was granted to United States Department of Agriculture/APHIS. These exemptions, issued during the months of January and February, are subject to application and timing restrictions and reporting requirements designed to protect the environment to the maximum extent possible. EPA has also denied an exemption request from the Nebraska Department of Agriculture. Information on these restrictions is available from the contact persons in EPA listed below.

DATES: See each specific, crisis, and quarantine exemption for its effective date.

FOR FURTHER INFORMATION CONTACT: See each emergency exemption for the name of the contact person. The following information applies to all contact persons: By mail:

Registration Division (H7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 716, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-1806).

SUPPLEMENTARY INFORMATION: EPA has granted specific exemptions to the:

1. California Department of Food and Agriculture for the use of zinc phosphide on sugarbeets to control meadow mice. California had initiated a crisis exemption for this use. February 10, 1989, to April 30, 1989. (Libby Pemberton)

2. California Department of Food and Agriculture for the use of metalaxyl on blackberries, boysenberries, evergreen thornless berries, and youngberries to control downy mildew; January 3, 1989, to April 30, 1989. (Gene Asbury)

3. California Department of Food and Agriculture for the use of fosetyl-al (Aliette) on head and leaf lettuce to control downy mildew (*Bremia lactucae*); January 1, 1989, to December 31, 1989. (Gene Asbury)

4. California Department of Food and Agriculture for the use of methidathion on kiwi fruit to control San Jose, oleander, and greedy scales; January 13, 1989, to March 31, 1989. (Libby Pemberton)

5. Florida Department of Agriculture and Consumer Services for the use of avermectin B_1 on fresh market tomatoes to control leafminers; January 1, 1989, to July 31, 1989. A notice of receipt was published in the Federal Register of November 9, 1988 (53 FR 45382); no comments were received. The exemption was granted on the basis that there are no registered alternative pesticides which will provide adequate control of these pests on tomatoes. A significant economic loss may result if an effective pesticide is not made available. This loss may be as great as $34 million. Combined residues of avermectin B_1 and its delta 8,9 isomer are not likely to exceed 0.005 ppm in or on tomatoes as a result of the proposed use. This residue level can be toxicologically supported and will not pose a threat to the public health. The proposed use should not pose an unreasonable hazard to the environment or endangered species. (Libby Pemberton)

6. Florida Department of Agriculture and Consumer Services for the use of Tilt (propicanozole) on sweet corn to control *Puccinia* Sps; January 13, 1989, to July 31, 1989. (Jim Tompkins)

7. Florida Department of Agriculture and Consumer Services for the use of thiobencarb on lettuce, celery, and endives to control broadleaf weeds; January 11, 1989, to August 31, 1989. (Jim Tompkins)

8. Florida Department of Agriculture and Consumer Services for the use of thiophanate-methyl on potatoes to control white mold (*Sclerotinia sclerotiorum*); January 3, 1989, to March 31, 1989. (Gene Asbury)

9. Florida Department of Agriculture and Consumer Service for the use of iprodione on cabbabe to control white mold; February 10, 1989, to April 30, 1989. Florida had initiated a crisis exemption for this use. (Libby Pemberton)

10. Florida Department of Agriculture and Consumer Services for the use of avermectin B_1 on celery to control two-spotted spider mites; January 9, 1989, to July 31, 1989. (Libby Pemberton)

11. Florida Department of Agriculture and Consumer Services for the use or propiconazole on celery to control early blight; February 20, 1989, to July 31, 1989. Florida had initiated a crisis exemption for this use. (Jim Tompkins)

12. Hawaii Department of Agriculture for the use of methyl bromine on ginger root to control root knot nematodes; January 3, 1989, to December 31, 1989. (Robert Forrest)

13. Idaho Department of Agriculture for the use of clopyralid on mint to control a variety of weeds; February 17, 1989, to June 1, 1989. (Gene Asbury)

14. Montana Department of Agriculture for the use of fenoxaprop-ethyl on hard red spring wheat to control foxtail; February 16, 1989, to July 15, 1989. (Libby Pemberton)

15. New Jersey Department of Environmental Protection for the use of imazethapyr (Pursuit) on lima beans and snap beans to control broadleaf weeds; January 19, 1989, to July 30, 1989. (Robert Forrest)

16. New Jersey Department of Environmental Protection for the use of imazethapyr (Pursuit) on green beans to control broadleaf weeds; January 19, 1989, to July 1, 1989. (Robert Forrest)

17. New Mexico Department of Agriculture for the use of chlorpyrifos on winter wheat to control Russian wheat aphid; February 2, 1989, to March 30, 1989. (Robert Forrest)

18. Oregon Department of Agriculture for the use of clopyralid on mint to control a varity of weeds; February 17, 1989, to June 1, 1989. (Gene Asbury)

19. Pennsylvania Department of Agriculture for the use of imazethapyr (Pursuit) on lima beans, snap beans, and green beans to control broadleaf weeds; January 24, 1989, to September 30, 1989. (Robert Forrest)

20. Texas Department of Agriculture for the use of cypermethrin on dry bulb onions to control onion thrip; February 15, 1989, to September 15, 1989. (Gene Asbury)

21. Texas Department of Agriculture for the use of fenvalerate on kale, kohlrabi, and mustard greens to control cabbage loopers; January 13, 1989, to November 30, 1989. (Libby Pemberton)

22. Texas Department of Agriculture for the use of chlorpyrifos on winter wheat to control Russian wheat aphid; January 19, 1989, to May 31, 1989. Texas had initiated a crisis exemption for this use. (Robert Forrest)

23. Virginia Department of Agriculture for the use of imazethapyr (Pursuit) on snap beans and peas to control broadleaf weeds; February 16, 1989, to August 31, 1989. (Robert Forrest)

24. Washington Department of Agriculture for the use of clopyralid on mint to control a variety of weeds; February 17, 1989, to June 1, 1989. (Gene Asbury)

25. Washington Department of Agriculture for the use of cyfluthrin on pears and interplanted apples to control pear psylla; February 15, 1989, to June 1, 1989. (Gene Asbury)

26. United States Department of Agriculture for the use of methyl bromide on logs for export to control oak wilt fungus; January 27, 1989, to January 26, 1990. (Libby Pemberton)

Crisis exemptions were initiated by the:

1. California Department of Food and Agriculture on January 27, 1989, for the use of methyl bromide on watermelons to control nematodes, pythium, and weeds. Since it was anticipated that this program would be needed for more than 15 days, California has requested a specific exemption to continue it. This program will last until April 30, 1989. (Libby Pemberton)

2. Florida Department of Agriculture and Consumer Services on February 14, 1989, for the use of vinclozolin on blueberries to control gray mold. Since it was anticipated that this program would be needed for more than 15 days, Florida has requested a specific exemption to continue it. The need for this program is expected to last until June 30, 1989. (Libby Pemberton)

3. Puerto Rico Department of Agriculture on February 23, 1989, for the use of triadimefon on coffee to control coffee rust. Since it was anticipated that this program would be needed for more than 15 days, Puerto Rico has requested a specific exemption to continue it. The need for this program is expected to last until February 22, 1990. (Libby Pemberton)

EPA has denied requests from the Nebraska Department of Agriculture for the use of Accent (2-[[[[(4,6-dimethoxy-2-pyrimidinyl)amino carbonylaminosulfonyl-*N,N*-dimethyl-3-pyridine carboxamide) and Beacon (3-[4,6-Bis(difluoromethoxy)-pyrimidin-2-yl]-(2-methoxy carbonylphenylsulfonyl urea) on field corn to control shattercane. A notice published in the **Federal Register** on January 4, 1989 (54 FR 183), and no comments were received. The Agency has denied requests on the basis that Accent and Beacon are unregistered pesticides and, therefore, these exemptions are subject to the Agency's policy of "close scrutiny" to prevent abuse of section 3 registration requirements and early market entry. Furthermore, the complete data base for both chemicals has not been fully reviewed. (Robert Forrest)

EPA has granted a quarantine exemption to the United States Department of Agriculture/APHIS for the use of ethylene oxide to sterilize seed being imported for use as a bird feed; February 17, 1989, to February 16, 1992. USDA had initiated a crisis exemption for this use. A Special Review for use on spices is still pending. (Jim Tompkins)

Authority: 7 U.S.C. 136.

Dated: May 4, 1989.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 89-12183 Filed 5-23-89; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Technical Subgroup of Radio Advisory Committee

May 19, 1989.

The Technical Subgroup of the Advisory Committee on Radio Broadcasting will reconvene at 10 a.m. on Wednesday, June 14, 1989, in the Vincent Wasilewski Room of the National Association of Broadcasters, 1771 N Street, NW., Washington, DC.

As decided and announced at the May 10, 1989 meeting of the Subgroup, this next session will be a continuation of that meeting, and will address the same agenda, which is set out below.

At the forthcoming June 14, 1989 session, the Subgroup will continue its consideration of:

—Adjacent channel interference standards for AM stations;

—Engineering standards for FM broadcasting; and

—Other business relating to radio broadcasting.

The Subgroup's meetings are continuing ones, and may be resumed after each session as decided by the participants. All meetings of the Radio Advisory Committee and the Technical Subgroup, are open to the public. All interested persons are invited to participate.

For further information, please call Wallace Johnson, Chairman of the Technical Subgroup, at (703) 824–5660.

Federal Communications Commission.

Donna R. Searcy.

[FR Doc. 89–12456 Filed 5–23–89; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–827–DR]

North Carolina; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of North Carolina (FEMA–827–DR), dated May 17, 1989, and related determination.

DATED: May 17, 1989.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646–3614.

NOTE: Notice is hereby given that, in a letter dated May 17, 1989, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*, Pub. L. 93–288, as amended by Pub. L. 100–707), as follows:

I have determined that the damage in certain areas of the State of North Carolina, resulting from tornadoes on May 5–6, 1989, is of sufficient severity and magnitude to warrant a major disaster declaration under Pub. L. 93–288, as amended by Pub. L. 100–707. I, therefore, declare that such a major disaster exists in the State of North Carolina.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and Public Assistance in the designated areas. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under Pub. L. 93–288, as amended by Pub. L. 100–707, for Public Assistance will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Paul E. Hall of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of North Carolina to have been affected adversely by this declared major disaster:

The counties of Catawba, Cleveland, Davidson, Davie, Durham, Forsyth, Granville, Guilford, Iredell, Lincoln, and Union for Individual Assistance.

The counties of Davidson, Davie, Durham, and Forsyth for Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Julius W. Becton, Jr.,

Director, Federal Emergency Management Agency.

[FR Doc. 89–12434 Filed 5–23–89; 8:45 am]

BILLING CODE 6718–21–M

FEDERAL HOME LOAN BANK BOARD

[No. 89–1471]

Delegation of Authority To Appoint the Federal Savings and Loan Insurance Corp. as Receiver and Replace the Federal Savings and Loan Insurance Corp. as Conservator With the Federal Savings and Loan Insurance Corp. as Receiver

Date: May 15, 1989.

AGENCY: Federal Home Loan Bank Board.

ACTION: Notice.

SUMMARY: The Federal Home Loan Bank Board ("Board") is authorizing the performance of the Board's functions of (i) appointing the Federal Savings and Loan Insurance Corporation ("FSLIC") as receiver and (ii) replacing the FSLIC as conservator by appointing the FSLIC as receiver for Federally-chartered and other insured institutions. The authority to effect the replacement is being conferred upon the Executive Director of the FSLIC and the Executive Director of the Office of Regulatory Activities, acting jointly and with the concurrence of the General Counsel of the Bank Board, upon certain conditions and in accordance with specified procedures. The delegated authority may not be exercised in cases in which it is determined that a significant issue of law or policy is involved. The Board is also permitting further, limited subdelegations of its authority to appoint a receiver or replace a conservator with a receiver.

EFFECTIVE DATE: May 15, 1989.

FOR FURTHER INFORMATION CONTACT: Lawrence W. Hayes, Deputy General Counsel for FSLIC, (202) 906–6428; Catherine A. Shepard, Attorney, Office of General Counsel, (202) 906–7275; Marsh McJunkin, Office of General Counsel, (202) 906–6744; Federal Home Loan Bank Board, 1700 G. Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: The Board has adopted the following resolution: *Resolved,* That, pursuant to section 17(a) of the Federal Home Loan Bank Act, 12 U.S.C. 1437(a), the Federal Home Loan Bank Board ("Board") hereby authorizes the performance of the Board's functions of (i) appointing a receiver and (ii) replacing the conservator of federally chartered and other insured institutions with the Federal Savings and Loan Insurance Corporation ("FSLIC") as receiver as follows:

1. The Executive Director of the FSLIC and the Executive Director of the Office of Regulatory Activities, with the concurrence of the General Counsel of the Board (each an "Executive Director" and collectively, "Executive Directors") may jointly exercise the authority of the Board to appoint a receiver for a Federal association and to replace the conservator of a Federal association with another conservator or with the FSLIC as receiver pursuant to section 5(d)(6)(A), (B), or (D) of the Home Owners' Loan Act of 1933, as amended ("HOLA"), 12 U.S.C. 1464(d)(6)(A), (B), or (D) or to appoint the FSLIC as receiver or replace the FSLIC as conservator of an insured institution other than a Federal association with the FSLIC as receiver pursuant to section 406(c)(1), (c)(2) or (c)(3)(A) of the National Housing Act, as amended ("NHA"), 12 U.S.C. 1729(c)(1), (c)(2) or (c)(3)(A), *provided,* however, that such authority shall not be exercised unless a finding of insolvency is made with respect to such institution in orders or resolutions appointing a receiver or replacing a conservator with the FSLIC as receiver, and *provided,* further, that such authority shall not be exercised if any Executive Director determines that a significant issue of law or policy is involved in the appointment or replacement, the determination of a ground or a finding with respect to the appointment or replacement, or the issuance of an order or resolution concerning the terms of the appointment or replacement. The authority granted by this resolution includes the authority to appoint a receiver for the purpose of liquidation, to replace a conservator

with another conservator or with a receiver for the purpose of liquidation, to determine or opine that a ground or basis for such appointment or replacement, as the case may be, exists, and to issue orders and resolutions, each in the form of an order or resolution previously issued by the Board in appointing a receiver or replacing a conservator, or in substantially similar form, that effect and implement such appointment or replacement, including, but not limited to, orders and resolutions providing for the notification of State officials, the exercise of powers by a conservator or receiver, and the compensation and indemnification of persons acting on behalf of the FSLIC as receiver or conservator. The authority granted by this resolution also includes the authority to modify the powers of receivers who have been appointed by the Executive Directors pursuant to delegated authority; *provided,* however, that the authority to modify the powers of such receivers shall not be exercised if any Executive Director determines that a significant issue of law or policy is involved;

2. In connection with the exercise of authority pursuant to numbered paragraph 1 of this Resolution, the Executive Directors may authorize and approve the organization of a federal association ("new federal") pursuant to section 406(a), (b) and (c) of the NHA, and issue orders or resolutions to implement such organization, including orders or resolutions authorizing the transfer of assets and liabilities by a receiver appointed pursuant to paragraph 1, the appointment of a conservator or a board of directors for a new federal, the FSLIC indemnification of persons acting on behalf of the conservator of new federal and of directors, advisory directors, officers, or managers of a new federal, and the authorization of an FSLIC guarantee of Federal Home Loan Bank advances for the benefit of a new federal pursuant to section 406(f)(1) of the NHA, *provided,* that all findings necessary for the issuance of such guarantees under section 406 of the NHA are included in such orders or resolutions and that the amount of any such guarantee shall not exceed the amount of collateral securing such guaranteed Bank advance or advances as determined by the Executive Directors. The Executive Directors may issue such other orders and resolutions as are usual and appropriate in connection with purchase and assumption transactions of a receiver and a newly organized federal association including the payment of incidental expenses by the FSLIC.

3. Each Executive Director may further designate no more than two subordinate officers, each of whom may exercise the authority conferred upon such Executive Director by this resolution. An Executive Director shall file with the Secretary or an Assistant Secretary to the Board the name of any subordinate designated pursuant to the previous sentence and the revocation of any such designation by such Executive Director; and such designation or revocation shall be effective only upon such filing;

4. An Executive Director who determines that a significant issue of law or policy would be involved in the replacement of a conservator or the appointment of the FSLIC as receiver for a Federal association or an insured institution shall file with the Secretary or an Assistant Secretary a statement setting forth such determination;

5. Any Board resolution issued pursuant to this resolution shall state in such resolution, but above its first paragraph, "Issued Under Delegated Authority;" and a resolution or a group of resolutions issued on the same date to appoint the FSLIC as receiver, replace a conservator with another conservator or with the FSLIC as receiver and implement such appointment under numbered paragraph 1 or 2 shall be preceded by a statement signed by or on behalf of the Executive Directors that the resolution is or the resolutions are issued under the authority of this resolution;

6. Each member of the Board, or an Assistant designated by a Board member to act on his or her behalf, shall be informed of any proposed exercise of joint authority under this resolution to appoint a receiver or to replace a conservator with another conservator or with a receiver prior to the exercise of such authority, *provided* however, that a failure to so inform a Board member or his or her designated Assistant shall not impair the effectiveness of a resolution issued under authority granted by this resolution; and

7. The Board reserves the power to appoint a receiver or to replace a conservator with another conservator or with a receiver in any instance in which the Board determines to exercise such power directly and not through this resolution; and

Resolved further, That this Resolution shall be effective immediately upon its adoption by the Board; and

Resolved further, That the Secretary to the Board shall immediately forward this notice for publication in the **Federal Register.**

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 89-12370 Filed 5-23-89; 8:45 am]

BILLING CODE 6720-01-M

[No. AC-767; FHLBB No. 3775]

Mid-West Federal Savings Bank Evansville, IN; Final Action Approval of Conversion Application

Date: May 12, 1989.

Notice is hereby given that on May 10, 1989, the Office of General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the applications of Mid-West Federal Savings Bank, Evansville, Indiana, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Office of the Secretariat at the Federal Home Loan Bank Board, 1700 G Street, N.W., Washington, DC 20552, and at the Office of the Supervisory Agent at the Federal Home Loan Bank of Indianapolis, 1350 Merchants Plaza, South Tower, 115 West Washington Street, Indianapolis, Indiana 46204.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 89-12371 Filed 5-23-89; 8:45 am]

BILLING CODE 6720-01-M

[No. AC-769; FHLBB No. 2787]

Pioneer Savings Bank Lynwood, WA; Final Action Approval of Conversion Application

Date: May 17, 1989.

Notice is hereby given that on May 15, 1989, the office of the General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of Pioneer Savings Bank, Lynwood, Washington, for permission to convert to the stock form of organization. Copies of the Application are available for inspection at the office of the Secretariat at the Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552, and at the Office of the Supervisory Agent at the Federal Home Loan Bank of Seattle, 1501 4th Avenue, 19th Floor, Seattle, Washington, 98101-1693.

By the Federal Home Loan Bank Board.

Nadine Y. Washington,

Assistant Secretary.

[FR Doc. 89-12372 Filed 5-23-89; 8:45 am]

BILLING CODE 6720-01-M

FEDERAL RESERVE SYSTEM

General Educational Fund, Inc., et al.; Applications to Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 7, 1989.

A. Federal Reserve Bank of Boston (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *General Educational Fund, Inc.*, Burlington, Vermont, and its subsidiary, Merchants Bancshares, Inc., Burlington, Vermont; to engage *de novo* through their subsidiary, Merchants Properties, Inc., Burlington, Vermont, in making equity and debt investments in a business organization and project whose objective is primarily to promote community welfare, by commencing construction of rental housing units in Colchester, Vermont, for rent mainly to low and moderate income families pursuant to § 225.25(b)(6) of the Board's Regulation Y. These activities will be conducted in the State of Vermont.

B. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Colorado National Bankshares, Inc.*, Denver, Colorado; to engage *de novo* through its subsidiary, Colorado National Life Insurance Company, Inc., Denver, Colorado, in credit-related insurance agency activities pursuant to § 225.25(b)(8)(i) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, May 18, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-12407 Filed 5-23-89; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

[Announcement No. 911]

Pilot and Epidemiologic Studies To Determine the Relationship Between Human Exposure to Hazardous Substances and Adverse Health Outcomes

Introduction

The Agency for Toxic Substances and Disease Registry (ATSDR) announces that cooperative agreement and/or grant applications are to be accepted to conduct pilot and epidemiologic studies to determine the relationship between human exposure to hazardous substances in the environment and adverse health outcomes.

Authority

This program is authorized in section 104(i)(15) of the Comprehensive Environmental Response, Compensation, and Liability Act as amended by the Superfund Amendments and Reauthorization Act (42 U.S.C. 9604 (i)(15)).

Eligible Applicants

Eligible applicants are the official public health agencies of the States, including the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Federated State of Micronesia, the Republic of the Marshall Islands, the Republic of Palau, the Northern Mariana Islands, and American Samoa. Local health jurisdictions may apply with the concurrence of the State Health Officer.

Availability of Funds

Approximately $2,000,000 is available in Fiscal Year 1989 to fund approximately 20 awards. It is anticipated that awards will be for a 12-month budget period with a proposed project period ranging from 1 to 5 years. Funding estimates may vary and are subject to change. Continuation awards within the project period will be made on the basis of satisfactory progress and the availability of funds.

Purpose

The purpose of this program is to assist the recipients' capability to characterize the relationship between exposure to hazardous substances and adverse health outcomes through the development and use of site-specific health study protocols, studies at multiple sites with similar hazardous substances, and the implementation of site-specific or multiple-site health investigations.

Project Types

Assistance, both financial and technical, will be provided to the recipients for conducting the following types of projects:

A. Pilot Studies

1. Exposure studies consist of the biological sampling of persons at potentially high risk of exposure to determine if exposure can be verified. Test results will be compared with published normal values or with results from unexposed reference populations. The biological tests may include direct assay of chemicals or their metabolites or an indirect assay testing for other biological markers of exposure. If exposure to hazardous substances can be verified, additional investigations to determine if adverse health effects are occurring may be recommended. Follow-up recommendations may include public education, additional environmental sampling, additional biological exposure studies, epidemiologic studies, registries, surveillance projects, or remedial actions.

2. Cluster investigation studies are investigations of putative disease clusters to determine if the cases represent an unexpected excess in the number of cases in the concerned community. Investigations are designed to confirm the case reports; determine if they represent an unusual disease occurrence; and, if possible, explore possible etiologic and environmental factors. Follow-up recommendations may include public education, additional environmental sampling, biological exposure studies, epidemiologic studies, registries, surveillance projects, or remedial actions.

3. Symptom and disease prevalence studies are designed to measure the occurrence of self-reported diseases which may be validated through medical records, if available. In these studies, investigators collect citizens' health concerns in a standardized manner and determine if a health problem exists in the community that requires further investigation. If unusual disease occurrence is discovered, additional investigations to determine etiologic factors may be undertaken. The recommendations developed for identified health problems may include public education, additional environmental sampling, biological exposure studies, epidemiologic studies, registries, surveillance projects, or remedial actions.

B. Epidemiologic Studies

Epidemiologic studies are analytic investigations designed to evaluate the possible causal relationships between exposure to hazardous substances and disease outcome by testing a scientific hypothesis. Information such as the strength of the association between two factors and biological plausibility of the outcome is to be considered. Case-control, cohort, cross-sectional, survival, or other scientifically valid study designs may be considered. Recommendations may include public education, additional environmental sampling, registries, surveillance projects, or remedial actions.

Program Requirements

A. Cooperative Agreements

In a Cooperative Agreement, the funding agency will assist the collaborator in conducting the studies to determine the relationship between exposure to hazardous substances and illness. The application should be presented in a manner that demonstrates the applicant's ability to address the health problem in a collaborative manner with the funding agency.

The Cooperative Activities of the recipient agency and the funding agency are as follows:

1. Recipients Activities

a. *Background review*—Review environmental sampling information, human disease surveillance information, and other appropriate information to identify populations potentially exposed to hazardous substances.

b. *Study design and implementation*—Design, develop, and implement a protocol to conduct the necessary pilot or epidemiologic study.

c. *Peer review*—Recipient, with assistance from the funding agency, will conduct a peer review of the proposed study protocol prior to implementation of the pilot or epidemiologic study and at the completion of the study prior to submission to the funding agency. The peer review should be conducted by a scientific committee with appropriate representation to objectively evaluate the study findings. The pear review group should have three to seven disinterested scientific experts selected on the basis of their reputation for scientific objectivity. Members of the committee must be individuals not employed by the grantee or funding agency and must not have institutional ties with any person involved in the conduct of the study under review.

The committee should be appointed by the grantee, with collaboration from the funding agency. As a part of the final report to be submitted to the funding agency, the peer review process should be documented, including peer reviewers' comments and the disposition of any issues raised.

d. Recipient is expected to maintain accurate and timely accounting records with proper classification of expenditures in order to allow a full cost recovery of funds awarded under the grant or cooperative agreement.

e. Recipient is required to provide proof by way of citation to state code or regulation or other state pronouncement given the authority of law, that medical information obtained pursuant to the agreement, pertaining to an individual and therefore considered confidential, will be protected from disclosure when the consent of the individual to release identifying information is not obtained.

2. ATSDR Activities

a. Assist in the development of the pilot or epidemiologic study.

b. Assist in the analysis of information on background morbidity and mortality rates for the study area.

c. Provide epidemiologic and other technical assistance in both the planning and implementation phases of the field work called for under the study protocol.

d. Consult with and assist in monitoring the collection and handling of information and the sampling and testing activities.

e. Participate in the statistical and epidemiologic analysis.

f. Collaborate in the interpretation of the study findings.

g. Collaborate with recipient in organizing and conducting a peer review of study protocol and the results of the study prior to publication and submission of the final report.

B. Grants

A grant application should be presented in a manner that demonstrates the applicant's ability to address the environmental health problem. In addition to financial aupport requested, the application should include a protocol to conduct the pilot or epidemiologic study. The protocol should contain consent forms and questionnaires, baseline morbidity and mortality information, the procedure to collect biologic and environmental specimens, laboratory analysis and medical evaluation of test results of biologic specimens, statistical and epidemiologic analysis of study information, and a description of the safeguards to protect the confidentiality of individuals on whom data is collected.

The applicant must conduct a peer review of the pilot or epidemiologic study as stated under cooperative agreement (A.lc above).

C. Determination of Which Instrument to Use

Applicants must specify the type of award for which they are applying, either grant or cooperative agreement. The funding agency will review the applications in accordance with the appropriate criteria. Projects funded through a cooperative agreement that involves collection of information from 10 or more individuals will be subject to review under the Paperwork Reduction Act.

D. Pre-Applications

Formal applications will be solicited by the Grants Management Officer only after a pre-application for a grant or cooperative agreement is received, reviewed, and approved by ATSDR. The pre-application should be a concise description of: (a) The problem to be studied, background of site or group of sites, hazardous wastes identified, population potentially affected, etc.; (b) the methodology to be used to address

the problem; (c) the study hypothesis; and (d) the proposed budget with justification. A full study protocol is not necessary as part of the pre-application. The Applicant should utilize the pre-application as a means of notifying ATSDR that a potential public health problem exists in their State that meets the specific criteria as listed below for conducting a health study.

The applicant should clearly state the type of study to be performed (i.e., exposure study, cluster investigation, symptom/disease prevalence study, or epidemiologic study).

Evaluation Criteria

A. Criteria for Pre-Applications

The pre-application will be reviewed by a Pilot Study Review Group who will review and evaluate the proposal to determine if it meets the criteria listed below.

1. Specific Criteria Necessary to Initiate an Exposure Study

a. Human exposure is believed to be occurring or may have occurred in the past because of human interaction (such as direct contact, inhalation, or ingestion) with a pathway of exposure known to be contaminated by a hazardous substance; and

b. People potentially exposed along this pathway can be identified and located for testing; and

c. An adequate quality controlled and sensitive laboratory test is available to detect the presence of the hazardous substance, its metabolite, or other biological marker known to be closely associated with exposure that is measurable in some biological tissue or fluid; and

d. The applicant should also indicate whether previous experience and scientific knowledge are inadequate or insufficient to predict if biological uptake of hazardous substances or illness would occur under the environmental conditions present at the site; and

e. Adequate resources are available; and

f. Local cooperation is available.

2. Specific Criteria Necessary to Initiate a Cluster Investigation Study

a. A human population is located in the vicinity of a hazardous substance site; and

b. Exposure of humans to a hazardous substance(s) has been documented, or a reasonable concern exists for the potential of a yet undefined route of exposure; and

c. A reasonable concern for public health has been generated by reports of disease occurrences in the community; and

d. Case information can be located or collected to verify the disease and document the geographic and temporal occurrence of the cases; and

e. Biological plausibility exists between the hazardous substance(s) at the site and the disease cases being reported; and

f. Adequate resources are available; and

g. Adequate local cooperation is available.

3. Specific Criteria Necessary to Initiate a Symptom/Disease Prevalence Study

a. A human population is located in the vicinity of a hazardous substance site; and

b. Exposura of humans to a hazardous substance(s) has been documented, or a reasonable concern exists for the potential of a yet undefined route of exposure; and

c. A reasonable concern for public health has been generated by reports of disease occurrences in the community; and

d. If verification of disease reports is planned, case information can be located or collected to verify the disease and document the geographic and temporal occurrence of the cases; and

e. Adequate resources are available; and

f. Adequate local cooperation is available.

4. Specific Criteria Necessary to Initiate an Epidemiologic Study

a. Human exposure is believed to be occurring or may have occurred in the past because of human interaction (such as direct contact, inhalation, or ingestion) with a pathway of exposure known to be contaminated by a hazardous substance; and

b. People potentially exposed along the pathway can be identified; and

c. A measure of exposure for the population being studied is available or can be obtained either as biological testing or other appropriate predictive surrogate measure; and

d. The possible health effects of the hazardous substance(s) are known or biologically plausible; and

e. The health effects under study are relatively specific to the exposures of interest and can be postulated to be caused by the exposure at the concentrations observed; and

f. Enough people are exposed to allow statistically valid conclusions for the study; and

g. If the study design requires interaction with the study participants, the people potentially exposed along the pathway of exposure can be located; and

h. Adequate resources are available; and

i. Adequate local cooperation is available.

B. Criteria for Applications

The application will be reviewed and evaluated by a ATSDR convened ad hoc committee based on the following criteria:

1. Scientific and Technical Review Criteria of New Applications

a. Relevance of the proposal to the objective of this program.

b. Training and experience of staff to be assigned to and/or hired for the project.

c. Suitability of facilities and equipment available or to be purchased for the project.

d. Appropriateness of the requested budget relative to the work proposed.

e. Capability of the applicant and its consultants to carry out the tasks involved in the project.

f. Soundness and innovation of the proposed approach to the range of activities presented in the project.

g. Capability of the applicant's administrative structure to foster successful scientific and administrative management of a study as described in the application.

h. Adequacy of the proposed time frame for completion of studies.

2. Review of Continuation Applications

Continuation awards within the project period will be made on the basis of the following criteria:

a. Satisfactory progress in meeting project objectives;

b. Objectives for the new budget period are realistic, specific, and measurable;

c. Proposed changes in described long-term objectives, methods of operation, need for grant/cooperative agreement support, and/or evaluation procedures will lead to achievement of project objectives; and

d. The budget request is clearly justified and consistent with the intended use of cooperative agreement/grant funds.

Executive Order 12372 Review

Applications are subject to review as governed by Executive Order 12372 entitled "Intergovernmental Review of Federal Programs."

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance number is 13.161.

Application Submission and Deadline Dates

A. Pre-Applications

The original and two copies of the pre-application using PHS Form 5161–1 (revised 11–88) muat be submitted to: Henry S. Cassell III, Grants Management Officer, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., Room 300, Atlanta, Georgia 30305.

B. Applications

The original and two copies of the application PHS Form 5161–1 (revised 11–88) must be submitted to Henry S. Cassell III, Grants Management Officer, Grants Management Office, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., Room 300, Atlanta, Georgia 30305. Applications will be accepted throughout the fiscal year only after the applicant has been informed in writing by the Grants Office that the pre-application has been reviewed and ATSDR will consider a formal application.

Where To Obtain Additional Information

Information on application procedures, copies of application forms, and other material may be obtained from Harvey Rowe, 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) 842–6797.

Announcement Number 911, "Pilot and Epidemiologic Studies to Determine the Relationship Between Human Exposure to Hazardous Substances and Adverse Health Outcomes" must be referenced in all requests for information pertaining to these projects.

Technical assistance may be obtained from Jeffrey A. Lybarger, M.D., Chief, Epidemiology and Medicine Branch, Agency for Toxic Substances and Disease Registry, 1600 Clifton Road, NE., Atlanta, Georgia 30333, (404) 488–4600.

Dated: May 18, 1989.

George E. Hardy, Jr.,

Acting Administrator, Agency for Toxic Substances and Disease Registry.

[FR Doc. 89–12416 Filed 5–23–89; 8:45 am]

BILLING CODE 4160–70–M

Health Resources and Services Administration

Advisory Council; Establishment

Pursuant to the Federal Advisory Committee Act, Public Law 92–463 (5 U.S.C. Appendix II), the Health Resources and Service Administration (HRSA) announces the establishment of the following advisory committee.

Designation: Advanced General Dentistry Review Committee

Purpose: Provides advise to the Director, Bureau of Health Professions, on the technical merit of grant applications for graduate training in advanced general dentistry.

The Committee reviews applications from public or nonprofit private schools of dentistry or accredited postgraduate dental training institutions that plan, develop and operate an approved residency programs or advanced education program in the general practice of dentistry, including the support of trainees in such programs who plan to specialize or work in the practice of general dentistry.

Structure: Consists of the 10 members who are not officers or regular full-time employees of the Federal Government. Members are appointed by the Administrator, HRSA, from appropriately qualified persons in clinical practice, education and program administration to provide broad coverage in the area of postdoctoral education in advanced general dentistry.

Authority for this Committee will terminate in two years unless the Administrator, HRSA, formally determines that continuance is in the public interest.

Date: May 16, 1989.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 89–12409 Filed 5–23–89; 8:45 am]

BILLING CODE 4160–15–M

Availability of Funds for the National Health Service Corps Loan Repayment Program and Grants for State Loan Repayment Programs

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Health Resources and Services Administration (HRSA) announces that it anticipates that up to $4 million will be available in Fiscal Year (FY) 1989 for awards for health professions educational loan repayment under the National Health Service Corps (NHSC) Loan Repayment Program (Section 338B of the Public Health Service Act) and up to $4 million will be available for grants to States to support the establishment of State programs similar to the NHSC Loan Repayment Program (Section 338H of the Public Health Service Act). It is anticipated that up to $3 million of the $8 million appropriated for the Loan Repayment Programs (NHSC and State) will be for nurses, including nurse midwives and nurse pediatric practitioners.

The HRSA, through this notice, invites health professionals to apply for participation in the NHSC Loan Repayment Program and invites States to apply for grants to operate State Loan Repayment Programs. With these levels of funds, the HRSA estimates that approximately 125 Loan Repayment awards may be made to physicians and nurses under the NHSC Loan Repayment Program, and up to 20 grants may be awarded to States for their State Loan Repayment Programs.

Part A of this notice contains specific information concerning the NHSC Loan Repayment Program, and Part B contains specific information concerning grants for State Loan Repayment Programs.

Part A—NHSC Loan Repayment Program

DATE: Potential applicants should request application packages by July 18, 1989. Completed applications, to receive consideration, must be delivered by 5:00 p.m. on August 15, 1989, to the address below or be postmarked on or before August 15, 1989, and received in time for orderly processing. Applicants should request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier. Private metered postmarks shall not be acceptable as proof of timely mailing. Applications not submitted on time will be returned.

ADDRESS: Application material may be obtained by calling or writing, and completed applications should be returned to, Mr. Joseph Hayden, Director, Division of Health Services Scholarships, Bureau of Health Care Delivery and Assistance, HRSA, Room 7–34, 5600 Fishers Lane, Rockville, Maryland 20857 (301–443–6354). The application has been approved under Office of Management and Budget (OMB) Number 0915–0127.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph Hayden, Director, Division of Health Services scholarships, at the above address and phone number.

SUPPLEMENTARY INFORMATION: Public Law 100–177, the Public Health Service

Amendments of 1987, amended section 338B of the Public Health Service Act (42 U.S.C. 2541–1) to authorize the Secretary to establish the National Health Service Corps (NHSC) Loan Repayment Program, to help in assuring an adequate supply of trained health professionals for the NHSC. The NHSC is used by the Secretary to improve the delivery of health services to designated Health Manpower Shortage Areas (HMSA).

Under the NHSC Loan Repayment Program, the Secretary will repay educational loans incurred by health professionals to pay for their health professions education in amounts up to $20,000 per year for each year of obligated service, if an individual who is selected to participate in this program agrees to serve for either 3 or 4 years in a designated HMSA. If the service is performed in a HMSA serving Indian populations, up to $25,000 may be repaid for each year. In addition to these amounts, loan repayment receipients will be employed and paid by the Federal government or the private entity to which they have been assigned. The Secretary will identify annually those HMSAs which will be available for service repayment under the NHSC Loan Repayment Program. These areas for services under the NHSC Loan Repayment Program will be selected based on the needs of the areas and priorities determined by the Secretary.

If a participant agrees to serve for only 2 years in a designated HMSA, the Secretary will repay up to a maximum of $13,333 per year of the health professions educational loans of such individual for each year of agreed service (up to $16,667 per year for service to Indian populations in specified sites). The loan repayment for a 2 year commitment is provided at a lower annual level as an incentive for program participants to make service commitments of 3 of 4 years.

The Secretary may, upon written request, make tax liability payments not to exceed 20 percent of the annual amounts of the loans being repaid to reimburse the Program participants for increased tax liability resulting from loan repayments received under this Program.

The Secretary will select applicants for consideration for participation in the NHSC Loan Repayment Program according to the following selection criteria:

(1) Consideration will be given to individuals whose training is in a health profession or specialty determined by the Secretary to be needed by the NHSC. From time to time, the Secretary will publish a notice detailing the professions and specialties most needed by the NHSC. Current professional and specialty priorities are outlined at the end of Part A of this notice.

(2) Consideration will be given to individuals who the Secretary determines are committed to serve in HMSAs.

(3) Consideration will be given to individuals according to the length of time which will be required before such individuals will be available for service. Thus, individuals who have a degree, have completed all necessary postgraduate training in their professions and specialties (i.e., in the case of physicians, are certified or eligible to sit for the certifying examinations of a specialty board), have a current and unrestricted valid license to practice their profession in a State, and are immediately available to serve, will receive highest consideration.

(4) Greater consideration will be given to persons who agree to serve for longer periods of time.

(5) The academic standing, prior professionals experience in a primary care HMSA, board certification, residency achievements, peer recommendations, depth of past residency practice experience, and other criteria related to professional competence or conduct will also be considered.

Among applicants, priority will be given to those applicants whose health professions and specialties are most needed by the NHSC and who are, in the Secretary's judgment, most committed to practice in a HMSA.

Health professionals from minority groups are particularly encouraged to apply under this program.

Eligible Applicants

To be eligible to participate in the NHSC Loan Repayment Program, an individual must: (a)(1) Be enrolled as a full-time student at an accredited school in a State, in the final year of a course of study or program leading to a degree in allopathic or osteopathic medicine, nursing, nurse midwifery, dentistry, or other health profession or (2) be enrolled in an approved graduate training program in allopathic or osteopathic medicine, nursing, nurse midwifery, dentistry, or other health profession or (3) have a degree and have completed an approved graudate training program in allopathic or osteopathic medicine, nursing, nurse midwifery, dentistry, or other health profession, and have a current and valid license to practice such health profession in a State; (b) be eligible for appointment as a commissioned officer in the Regular or Reserve Corps of the Public Health Service or be eligible for selection for civilian service in the NHSC; (c) submit an application to participate in the NHSC Loan Repayment Program; and (d) sign and submit to the Secretary, at the time of the submission of such application, a written contract agreeing to accept repayment of educational loans and serve for the applicable period of obligated service in a HMSA as determined by the Secretary.

Any individual who previously incurred an obligation for health professional service to the Federal Government, a State Government, or other entity is ineligible to participate in the NHSC Loan Repayment Program unless such obligation will be completely satisified prior to the beginning of service under this Program. Any individual who has breached an obligation for health professional service to the Federal Government, a State Government or other entity is ineligible to participate in the NHSC Loan Repayment Program. No loan repayments will be made for any professional practice performed prior to the effective date of the NHSC Loan Repayment Program contract or while the provider is in professional school or an approved graduate training program.

Professions and Specialties Needed by the NHSC

At this time, the Secretary has determined that priority will be given to physicians who are certified or eligible to sit for the certifying examination in the specialty boards of family practice, osteopathic general practice, and obstetrics/gynecology, and to nurse midwives, nurse practitioners, and baccalaureate nurses.

Other Award Information

This program is not subject to the provisions of Executive Order 12372, Intergovernment Review of Federal Programs, since Executive Order 12372 does not cover payments to individuals.

The OMB "Catalog of Federal Domestic Assistance" number for this program is 13.162.

Part B—Grants for State Loan Repayment Programs

DATE: All interested States should request application packages by June 2, 1989. Completed applications, to receive consideration, must be delivered by 5:00 p.m. on July 3, 1989, to the address below or postmarked by July 3, 1989, and delivered in time for orderly processing. Applicants should request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier.

Private metered postmarks shall not be acceptable as proof of timely mailing. Applications not submitted on time will be returned.

ADDRESS: Application materials may be obtained by calling or writing, and completed applications should be returned to: Grants Management Branch, Bureau of Health Care Delivery and Assistance, Health Resources and Services Administration, 5600 Fishers Lane, Room 8A–17, Rockville, Maryland 20857, (301) 443–3476. Application for these grants will be made on Form PHS–5161 with revised facesheet DHHS Form 424, as approved by the OMB under control number 0348–0006.

FOR FURTHER INFORMATION CONTACT: Mr. Charles Van Anden, National Health Service Corps, Bureau of Health Care Delivery and Assistance, HRSA, 5600 Fishers Lane, Room 7A–39, Rockville, Maryland 20857, (301) 443–1470.

SUPPLEMENTARY INFORMATION: Pub. L. 100–177, the Public Health Service Amendments of 1987, amended the Public Health Service Act at Section 338H (42 U.S.C. 254q–1) to authorize the Secretary to establish a program of grants for State Loan Repayment Programs to help in assuring an adequate supply of trained health professionals for medically underserved areas.

Through grants under this program, the Secretary may support up to a maximum of 75 percent of the costs of repayment of health profession educational loans under an approved State Loan Repayment Program.

The State share may be in the form of cash or other method of loan repayment. The State's share of the program must be used to repay qualifying loans of health professionals and/or the administrative costs of the State's Loan Repayment Program and may not consist of any Federal funds. No portion of the Federal share shall be used to pay for administrative or management costs of any State Loan Repayment Program. All program administrative costs are to be borne by the State.

Specific instructions for completing the application form for this program will be sent to any State requesting an application package.

The following criteria will be used in the evaluation of applications and awarding of State Loan Repayment Program grants: (a) The need of the State for health professions manpower; (b) the number and type of providers the State proposes to support through this program; (c) the acceptableness of the State's standards for the designation of medically underserved areas and the appropriateness of the proposed placements of obligated providers; (d) the degree of similarity of the proposed State program to the National Health Service Corps Loan Repayment Program; (e) the adequacy of the qualifications and administrative and managerial ability and experience of the State staff to administrator and carry out the proposed project; (f) the suitability of the applicant's approach and the degree to which the applicant's plan is coordinated with Federal, State and other programs for meeting the State's health professions manpower needs and resources, including mechanisms for evaluation of the program's activities; (g) the source and plans for use of the State match (including the percentage of the State's match that is proposed to be used for loans repayments), the degree to which the State match exceeds 25% or has increased over time, and the amount of the match relative to the needs and resources of the State; and (h) the extent to which special consideration will be extended to medically underserved areas with large minority populations.

No loan repayments may be made for any professional practice performed prior to the effective date of the health professional's State Loan Repayment Program contract and no credit will be given for any practice done while the provider is in a professional school or graduate training program.

Professions and Specialties Needed by Medically Underserved Areas

To be supported under this program the State Loan Repayment Program must establish State priorities for the selection of health professionals consistent with the NHCS Loan Repayment Program. At this time, the Secretary has determined that under the NHSC LRP priority will be given to physicians who are certified or eligible to sit for the certifying examination of the following specialty boards: Family practice, osteopathic general practice, and obstetrics/gynecology, and to nurse midwives, nurse practitioners, and baccalaureate nurses.

Other Award Information

This program is considered to be subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs and 45 CFR Part 100. Executive Order 12372 allows States and territories the option of setting up a system for reviewing applications from withint their States for assistance under certain Federal programs. The application packages will contain a listing of States which have chosen to set up a review system and will provide a point of contact in the States for that review. Since 60 days are allowed for this review, applicants are advised to discuss projects with and provide copies of their applications to contact points as early as possible. At the latest, an applicant should provide the application to the State for review at the same time it is submitted to the Grants Management Office.

The OMB "Catalog of Federal Domestic Assistance" number for this program is 13.165.

Dated: May 18, 1989.

John H. Kelso,

Acting Administrator.

[FR Doc. 89–12408 Filed 5–23–89; 8:45 am]

BILLING CODE 4160–15–M

Program Announcement, Proposed Special Consideration, and Proposed Funding Priorities for Nursing Special Project Grants

The Health Resources and Services Administration announces that applications for Fiscal Year 1990, Nursing Special Project Grants are being accepted under the authority of section 820 (a) (b) (c) and (d) of the Public Health Service Act, as amended and invites comments on the proposed special consideration and proposed funding priorities set forth below.

The Administration's budget request for Fiscal Year 1990 does not include funding for this program. Applicants should be advised that this program announcement is a contingency action being taken to ensure that should funds become available for this purpose, they can be awarded in a timely fashion consistent with the needs of the programs as well as to provide for even distribution of funds throughout the fiscal year. This notice regarding applications does not reflect any change in this policy.

Eligible applicants are public or nonprofit private schools of nursing and other public or nonprofit private entities.

Nursing Special Project Grants

Special Project Grants and Contracts are authorized under Title VIII, section 820 of the Public Health Service Act to improve nursing practice through projects that increase the knowledge and skills of nursing personnel, enhance their effectiveness in care delivery, and reduce vacancies and turnover in professional nursing positions.

Section 820(a) authorizes grants and contracts to public or nonprofit private schools of nursing or other public or nonprofit private entities to improve the quality and availability of nurse training

through projects that carry out one of the following purposes:

1. Provide continuing education for nurses;

2. Demonstrate, through geriatric health education centers and other entities, improved geriatric training in preventive care, acute care, and long-term care (including home health care and institutional care);

3. Increase the supply of adequately trained nursing personnel (including bilingual nursing personnel) to meet the health needs of rural areas; and provide nursing education courses to rural areas through telecommunications via satellite;

4. Provide training and education to (a) upgrade the skills of licensed vocational or practical nurses, nursing assistants, and other paraprofessional nursing personnel with priority given to rapid transition programs toward achievement of professional nursing degrees; and (b) develop curricula for the achievement of baccalaureate degrees in nursing by registered nurses and by individuals with baccalaureate degrees in other fields;

5. Demonstrate methods to improve access to nursing services in noninstitutional settings through support of nursing practice arrangements in communities;

6. Collect data to facilitate communications between health facilities and nursing students and nursing personnel in respect to agreements under which the individuals would serve as nurses in the health facilities in exchange for repayment of their educational loans by the facilities. (It is anticipated that the competitive contract mechanism will be used to implement this purpose).

Section 820(b) authorizes grants and contracts to accredited schools of nursing to assist in meeting the costs of providing projects:

1. To improve the education of nurses in geriatrics;

2. To develop and disseminate curricula relating to the treatment of the health problems of elderly individuals;

3. To expand and strengthen instruction in methods of such treatment;

4. To support the training and retraining of faculty to provide such instruction;

5. To support continuing education of nurses who provide such treatment; and

6. To establish new affiliations with nursing homes, chronic and acute disease hospitals, ambulatory care centers, and senior centers in order to provide students with clinical training in geriatric health care.

Section 820(c) authorizes grants to public and nonprofit private entities for projects to demonstrate innovative hospital nursing practice models designed to reduce vacancies in professional nursing positions and to make such positions a more attractive career choice. Projects must include initiatives:

1. To restructure the role of the professional nurse to ensure that the expertise of such nurses is efficiently utilized and that they are engaged in direct patient care during a larger proportion of their work time;

2. To test innovative wage structures for professional nurses in order to (a) reduce vacancies in work shifts during unpopular work hours; and (b) provide financial recognition based upon experience and education; and

3. To evaluate effectiveness of providing benefits for professional nurses as a means of increasing their loyalty to health care institutions and reducing turnover in nursing positions.

Section 820(d) authorizes grants to public and nonprofit private entities accredited for the education of nurses for the purpose of:

1. Demonstrating innovative nursing practice models for (a) the provision of case-managed health care services (including adult day care) and health care services in the home or (b) the provision of health care services in long-term care facilities or;

2. Developing projects to increase the exposure of nursing students to clinical practice in nursing homes, home health care, and gerontologic settings through collaboration between such accredited entities and entities that provide health care in such settings.

Demonstration models must be designed (a) to increase the recruitment and retention of nurses to provide nursing care for individuals needing long-term care; and (b) to improve nursing care in home health care settings and nursing homes.

To receive support, applicants must meet the requirements of 42 CFR Part 57, Subpart T.

Review Criteria

The review of applications will take into consideration the following criteria:

1. The national or special local need which the particular project proposes to serve;

2. The potential effectiveness of the proposed project in carrying out such purposes;

3. The administrative and managerial capability of the applicant to carry out the proposed project;

4. The adequacy of the facilities and resources available to the applicant to carry out the proposed project;

5. The qualifications of the project director and proposed staff;

6. The reasonableness of the proposed budget in relation to the proposed project; and

7. The potential of the project to continue on a self-sustaining basis after the period of grant support.

In addition, the following mechanisms may be applied in determining the funding of approved applications.

1. Funding preferences—funding of a specific category or group of approved applications ahead of other categories or groups of applications, such as competing continuations ahead of new projects.

2. Funding priorities—favorable adjustment of review scores when applications meet specified objective criteria.

3. Special considerations—enhancement of priority scores by merit reviewers based on the extent to which applicants address special areas of concern.

For this program, the following statutory requirements will be applied and the following Departmental special consideration and funding priorities are being proposed:

Statutory Requirements

Section 820 (a)(2) of the statute requires that not less than 20 percent of Special Project Grant funds be allocated for Purpose 2 820(a) and 820(b). Not more than $2 million per year could be obligated for geriatric health education center projects.

Section 820 (a)(3) requires that not less than 20 percent of Special Project Grant funds be allocated for Purpose No. 3.

Section 820 (a)(4) requires that not less than 10 percent of funds for Special Project Grants be allocated for Purpose No. 4.

Proposed Special Consideration for Fiscal Year 1990

Section 820(a)(1)

It is proposed to give special consideration to projects which provide expansion of current or development and implementation of new curriculum concerning the prevention of HIV infection and the care of HIV infection related diseases.

Nursing personnel are increasingly required to provide a wide range of services to HIV infected persons. This special consideration is designed to encourage new curricula for continuing

education offerings for practicing nurses.

Proposed Funding Priorities for Fiscal Year 1990

Section 820(a)(1)

It is proposed to give a funding priority to applications for continuing education programs in the area of Quality Assurance/Risk Management for nurses. Assuring quality in the health care system is increasingly becoming the responsibility of the health care providers. This proposed priority is designed to encourage increased emphasis on the principles and methods of health care quality assurance and risk management.

Section 820(a)(4) (A) & (B)

A. It is proposed to give a funding priority to projects for rapid transition programs toward achievement of professional nursing degrees.

The large pool of licensed vocational nurses and paraprofessional nursing personnel would be offered opportunity for planned career mobility. Additionally the number of professional nurses to provide care in hospitals and in communities would be increased.

B. It is proposed to give a funding priority to projects for rapid transition programs toward achievement of professional nursing degrees.

Registered nurses who wish to achieve a baccalaureate degree in nursing or persons who have achieved a baccalaureate degree in another field who wish to achieve a baccalaureate degree in nursing will be substantially assisted by rapid transition programs. The health care field will be enhanced by the presence of nurses who have additional education.

Section 820(a)(5)

It is proposed to give a funding priority to the following:

1. Projects which include a target population of minority or disadvantaged persons. This would help to ensure that grant funds are awarded to educational institutions with a demonstrated need for them.

2. Projects which demonstrate efforts to recruit and retain minority nurses. This would increase the percentage of minority enrollment of students in nursing programs. Minority students are currently underrepresented in these programs. These priorities were implemented as special considerations in Fiscal Year 1988.

Interested persons are invited to comment on the proposed special consideration and proposed funding priorities. Normally, the comment period would be 60 days. However, due to the need to implement any changes for the Fiscal Year 1990 award cycle, the comment period has been reduced to 30 days. All comments received on or before June 23, 1989 will be considered before a final special consideration and funding priorities are established. No funds will be allocated or final selections made until a final notice is published indicating whether the final special consideration and funding priorities will be applied.

Written comments should be addressed to: Director, Division of Nursing, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 5C–26, 5600 Fishers Lane, Rockville, Maryland 20857.

All comments received will be available for public inspection and copying at the Division of Nursing, Bureau of Health Professions, at the above address, weekdays (Federal holidays excepted) between the hours of 8:30 a.m. and 5:00 p.m.

Multiple review cycles are held annually for Nursing Special Project Grants.

The application deadline dates for Fiscal Year 1990 funding are July 1 and October 1. Any application not meeting a particular deadline will be reviewed with applications meeting the subsequent deadline. Applications shall be considered as meeting the deadline date if they are either:

(1) Received on or before the deadline date, or

(2) Postmarked on or before the deadline date, and received in time for submission to the independent review group. A legibly dated receipt from a commercial carrier or U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks shall not be acceptable as proof of timely mailing.

The standard application form and general instructions, PHS 6025–1 HRSA Competing Training Grant Application and supplement for this program has been approved by the Office of Management and Budget under the Paperwork Reduction Act. The OMB clearance number is 0915–0060.

For information regarding this program contact: Division of Nursing, Bureau of Health Professions, Nursing Education Practice Resources Branch, Health Resources and Services Administration, Parklawn Building, Room 5C–14, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone: (301) 443–6193.

For program guidelines and application kits or questions regarding grants policy, contact: Grants Management Officer (D10), Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 8C–22, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone: (301) 443–6915.

Completed applications should be forwarded to the Grants Management Officer at the above address.

This program is listed at 13.359 in the "Catalog of Federal Domestic Assistance" and is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs (as implemented through 45 CFR Part 100).

Dated: April 19, 1989.

John H. Kelso,

Acting Administrator.

[FR Doc. 89–12375 Filed 5–23–89; 8:45 am]

BILLING CODE 4160–15–M

Office of Human Development Services

Meeting of the Advisory Board on Child Abuse and Neglect

Agency Holding the Meeting: Office of the Assistant Secretary for Human Development Services, HHS.

Times and Dates: 9:00 a.m., May 30, 1989 to 2:00 p.m., June 1, 1989.

Place: Hotel Washington, 15th Street at Pennsylvania Avenue, NW.

Status: Advisory Board meetings are open for public observation.

Matters to be Considered: At this meeting the Advisory Board will: Determine the length of the terms of the public Members; elect officers; decide how the Board will go about carrying out its mission; and discuss other matters of importance.

Contact Person for More Information: Bryon D. Metrikin-Gold, Executive Director, Advisory Board on Child Abuse and Neglect, Room 2412–B Switzer Building, Washington, DC 20201, (202) 245–0877.

Date: May 18, 1989.

Byron D. Metrikin-Gold,

Executive Director, Advisory Board on Child Abuse and Neglect.

[FR Doc. 89–12442 Filed 5–23–89; 8:45 am]

BILLING CODE 4130–01–M

Indian Health Service

Health Professions Recruitment Program for Indians

AGENCY: Indian Health Service, HHS.

ACTION: Notice of competitive grant applications for the Health Professions Recruitment Program for Indians.

SUMMARY: The Indian Health Service (IHS) announces that competitive grant applications are now being accepted for the Health Professions Recruitment Program for Indians established by section 102 of the Indian Health Care Improvement Act of 1976 (25 U.S.C. 1612), as amended by Pub. L. 100–713. There will be only one funding cycle during fiscal year 1989. This program is described at § 3.970 in the Catalog of Federal Domestic Assistance and is governed by regulations at 42 CFR 36.310 et seq. Costs will be determined in accordance with OMB Circulars A–21, A–87, and A–122 (cost principles for different types of applicant organizations); and Subpart Q of 45 CFR Part 74 or 45 CFR 92.22 (as applicable).

DATE: An original and two copies of the completed Grant Application must be submitted, with all required documents, to the Grants Management Branch by close of business on July 3, 1989. Close of business means 5:00 p.m. Eastern Daylight Time.

Applications shall be considered as meeting the deadline if they are either: (1) Received by the Grants Management Branch on or before the deadline; or (2) postmarked on or before the deadline and received in time to be reviewed along with all other timely applications. A legibly dated receipt from a commercial carrier or the U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks will not be accepted as proof of timely mailing.

Applications received after the announced closing date will be returned to the applicant and will not be considered for funding.

FOR FURTHER INFORMATION CONTACT: For program information, contact Larry Thomas, Chief, Scholarship Branch, Division of Health, Manpower and Training, Indian Health Service, Room 6A–16, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–6197. For grants information, contact M. Kay Carpentier, Grants Management Officer, Grants Management Branch, Division of Grants and Contracts, Indian Health Service, Room 6A–33, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–5204. (The telephone numbers are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: This announcement provides information on the general program purpose and objectives, programmatic priorities, eligibility requirements, funding availability, and application procedures for the Health Professions Recruitment Program for Indians for fiscal year 1989.

A. *General Program Purpose:* To augment the number of Indian health professionals serving Indians and to remove the multiple barriers to the entrance of health professionals into the IHS and private practice among Indians.

B. *Eligibility and Preference:* The following organizations are eligible with preference given in the order of priority to:

(1) Indian tribes,

(2) tribal organizations,

(3) urban Indian organizations and other Indian health organizations, and

(4) public and other nonprofit private health or educational entities.

C. *Programmatic Priorities:* 1. Based on Congressional intent as shown in report language from Pub. L. 100–446, Department of the Interior and Related Agencies Appropriations Bill, 1989, page 107, up to three projects will be funded for recruitment of Indian students into an accredited Masters of Public Health program.

2. In order to meet the needs of IHS for manpower in the nursing area, at least one demonstration project will be funded for recruitment of Indian students into accredited nursing programs.

D. *Program Objectives:* 1. To identify Indians with a potential for education or training in Public Health (Masters level) or nursing, and to encourage and assist them to enroll in such programs.

2. To develop the necessary student support systems to help to ensure that students who are recruited successfully complete their academic training. Support services may include providing career counseling and academic advice; assisting students to identify academic deficiencies and to develop plans to correct those deficiencies; assisting students to locate financial aid; monitoring students to identify possible problems; assisting with the determination of need for and location of tutorial services; and other related activities which will help to retain students in school.

3. To publicize existing sources of financial aid available to Indian students interested in enrolling in or enrolled in an accredited Masters of Public Health program or accredited nursing school.

Each proposal must respond to all three objectives.

E. *Required Affiliation:* If the applicant is an Indian tribe, tribal organization, urban Indian organization or other Indian health organization, or a public or nonprofit private health organization, the applicant must submit a letter of support from at least one accredited school of public health or nursing, depending on the type of program for which it proposes to recruit. This letter must document linkage with that educational organization.

When the target population of a proposed project includes a particular Indian tribe or tribes, an official document, i.e., a letter of support or tribal resolution, must be submitted indicating that the tribe or tribes will cooperate with the applicant.

F. *Fund Availability:* Approximately $250,000 is available in fiscal year 1989 during this cycle for award of recruitment grants under Section 102. The average funding level for projects in fiscal year 1988 was $73,000. The anticipated start date for selected projects will be between September 1, 1989 and September 29, 1989, based on the applicant's requested start date. Projects will be awarded for a term of up to three years, with funding for succeeding years based on the Fiscal Year 1989 level and the availability of appropriations in those years.

G. *Type of Program Activities Considered for Support:* Grant programs developed to locate and recruit students with potential for (1) Masters of Public Health or (2) nursing; and to provide support services to Indian students who are recruited.

H. *Application Process:* 1. An IHS Recruitment Grant Application Kit may be obtained from the Grants Management Branch, Division of Grants and Contracts, Indian Health Service, Room 6A–33, 5600 Fishers Lane, Rockville, Maryland 20857. (Standard Form 424 (Rev. 4–88), OMB Approval No. 0348–0043)

2. The application must be signed and submitted by an individual authorized to act for the applicant and to assume on behalf of the applicant the obligations imposed by the terms and conditions of any award.

3. Each application will be reviewed at the Grants Management Branch for completeness, accuracy, and eligibility. All acceptable applications will be subject to a competitive review and evaluation. This program is not subject to Executive Order 12372.

4. If an application is disapproved or if funds are not available to support all approved applications, the affected applicants will be so notified by August 15, 1989.

I. *Criteria for Review and Evaluation:* 1. In accordance with 42 CFR Part 36, Subpart J, § 36.313, Evaluation and Grant Awards, applications will be evaluated against the following criteria (with clarification added):

• The potential effectiveness of the proposed project in carrying out the purposes of section 102, with special emphasis on the objectives and methodology portion of the application.

• The demonstrated capability of the applicant to successfully conduct the project, including organizational and scholarly commitment to the recruitment, education, and retention of Indian students.

• The accessibility of the applicant to target Indian communities or tribes, including evidence of past or potential cooperation between the applicant and such communities or tribes. Evidence must be an official document in such form as is prescribed by the tribal governing body to which recruitment efforts will be directed, i.e., tribal resolution and letters of support. In addition, applications from non-educational institutions must show an affiliation with one (or more) accredited MPH or nursing school(s) to include letter(s) of support.

• The relationship of project objectives to Indian Health manpower's deficiencies, indicating the number of potential Indian students to be contacted and recruited as well as potential cost per student recruited. Those projects that have the potential to serve a greater number of Indians will be given first consideration.

• The soundness of the fiscal plan for assuring effective utilization of grant funds.

• The completeness of the application.

2. The project period for any proposal may not exceed three years. Continuation of a project is contingent upon satisfactory performance of the grantee, the continuing need for manpower resources in this specialty, and the availability of funds. Applications must include information for the entire anticipated project period.

Date: April 21, 1989.

Everett R. Rhoades,

Assistant Surgeon General, Director.

[FR Doc. 89-12374 Filed 5-23-89; 8:45 am]

BILLING CODE 4160-16-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA-060-09-4410-12-ADVB]

Meeting of the California Desert District Advisory Council

SUMMARY: Notice is hereby given, in accordance with Public Laws 92-463 and 94-579, that the California Desert District Advisory Council to the Bureau of Land Management, U.S. Department of the Interior, will meet in formal session Thursday, June 15, 9 a.m. to 5 p.m., and Friday, June 16, 8 a.m. to 4 p.m. in the Arrowhead Room of the Inland Empire Hilton, 285 East Hospitality Lane, San Bernardino, California.

Agenda items will include: Election of a new Council Chairman; Council review of the 1988 amendments to the CDCA Plan; initial review of 1989 proposals for Plan Amendments, including the proposal to establish the Santa Rosa Mountains National Scenic Area; briefing and discussion on the initiation of the South Coast resource management planning effort; and review of the status of the Rand Mountain plan, Afton Canyon, wilderness reclamation, Fort Irwin Expansion draft environmental impact statement, and the raven reduction program. In addition, the Council will begin fulfilling its new function as the Desert Tortoise Coordinating Committee, reviewing the Technical Committee's findings and looking at implementing various management strategies to attempt to stabilize tortoise population levels.

All Formal Council meetings are open to the public, with time allocated for public comments, such time made available by the Council Chairman during presentations of various agenda items.

Written comments may be filed in advance of the meeting with the California Desert District Advisory Council Chairman, c/o Bureau of Land Management Public Affairs Office, 1695 Spruce Street, Riverside, CA 92507. Written comments are also accepted at the time of the meeting and, if copies are provided to the recorder, will be incorporated in the minutes.

For Further Information and Meeting Confirmation: Contact the Bureau of Land Management, California Desert District, Public Affairs Office, 1695 Spruce Street, Riverside, CA 92507 (714) 351-6383.

May 16, 1989.

Gerald E. Hillier,

District Manager

[FR Doc. 89-12417 Filed 5-23-89; 8:45 am]

BILLING CODE 4310-40-M

[NV-010-4130-08]

Intent To Prepare a Report on the Effects From Gold Mining on the Elko Resource Area

AGENCY: Bureau of Land Management; Interior.

ACTION: Notice of Intent to Prepare a Report on the Effects from Gold Mining on the Elko Resource Area, Elko District, Bureau of Land Management.

SUMMARY: The Bureau of Land Management will be directing the preparation of a report on the effects, especially cumulative effects, from gold mining activity within the Elko Resource Area. The report will also project future impacts. The document is designed to supplement the data and analysis presented in the existing Elko Resource Management Plan. The report, to be prepared by a third party contractor, will cover areas in Elko, Eureka and Lander counties. The Bureau invites written comments on the issues to be analyzed in the report. A scoping meeting is also being held.

DATES: Written comments on the report will be accepted until June 26, 1989. A public scoping open house will be held June 14, 1989 from 7 p.m. to 9 p.m. at the Bureau of Land Management, Elko District Office, 3900 E. Idaho, Elko, NV 89801 to identify interested parties, issues, concerns and to encourage public participation. Additional meetings may be held as appropriate.

ADDRESS: Comments may be sent to the District Manager, Bureau of Land Management, P.O. Box 831, Elko, NV 89801, ATTN: Mining Coordinator.

FOR FURTHER INFORMATION CONTACT: For additional information, write to the above address or call Nick Rieger at (702) 738-4071.

SUPPLEMENTARY INFORMATION: In 1985, the Resource Management Plan for the Elko Resource Area estimated surface disturbance from locatable mineral exploration and production to be 800 acres per year from 1981 to 1985. At that time it was thought that the average was high due to unusually frequent new mine openings and that the expected annual average disturbance would likely be 200 acres per year over the long term. However, since 1985 there has been continued expansion from mine development and its associated surface disturbance. The largest portion of this surface disturbance is attributed to gold mining activities.

The Bureau of Land Management and the mining industry recognize the need for developing and maintaining an accurate report of mining activities within the Resource Area. This Report would supplement the data contained in other planning documents and environmental analyses prepared for the Resource Area. This document is not intended to change any decisions in the Elko Resource Management Plan.

Date: May 17, 1989.

Rodney Harris,

District Manager.

[FR Doc. 89-12387 Filed 5-23-89; 8:45 am]

BILLING CODE 4310-HC-M

INTERSTATE COMMERCE COMMISSION

Motor Carrier Applications to Consolidate, Merge or Acquire Control; Southeastern Trailways, Inc.

The following Applications seek approval to consolidate, purchase, merge, lease operating rights and properties, or acquire control of motor carriers pursuant to 49 U.S.C. 11343 or 11344. Also, applications directly related to these motor finance applications (such as conversions, gateway eliminations, and securities issuances) may be involved.

The applications are governed by 49 CFR 1182.1.

Persons wishing to oppose an application must follow the rules under 49 CFR 1182.2. If the protest includes a request for oral hearing, the request shall meet the requirements of 49 CFR 1182.3 and shall include the required certification. Failure seasonable to oppose will be construed as a waiver of opposition and participation in the proceeding.

In the absense of legally sufficient protests as to the finance application or to any application directly related thereto filed within 45 days of publication (or, if the application later becomes unopposed), appropriate authority will be issued to each applicant (unless the application involves impediments) upon compliance with certain requirements which will be set forth in a notification of effectiveness of this decision-notice.

Applicant(s) must comply with all conditions set forth in the grant or grants of authority within the time period specified in the notice of effectiveness of this decision-notice, or the application of a non-complying applicant shall stand denied.

Findings

The findings for these applications are set forth at 49 CFR 1182.6 MC-F-19393, filed April 13, 1989. Southeastern Trailways, Inc. (Transferee) (1810 West 16th Street, Indianapolis, IN 46206)—Merger—De Luxe Trailways, Inc. (Transferor) (901 N. Halsted, Chicago, IL 60616). Applicants' Representatives: Fritz R. Kahn and Mark J. Andrews, Suite 700, 901 15th Street NW., Washington, DC 20005-2301.

Transferee (MC-54591) and Transferor (MC-41638), both of which are passenger motor carrier, seek authority for merger of the latter into the former. The common control relationships of the predecessors of Transferror and Transferee were described and approved in *Victory Coach Lines, Inc.—Pur.—Indiana Motor Bus Co.*, 45 M.C.C. 575 (1947). Transferee, Transferor, and their predecessors long have been commonly controlled by B.D. Kramer of Indianapolis, IN, and other persons. Certain members of the Kramer family also control Peoria-Rockford Bus Company (MC-121231). The Kramers are noncarrier individuals.

Transferee and Transferor principally hold common carrier authority to transport passengers, over regular-routes, between points in five Midwestern States and Kentucky and Tennessee. Their routes extend generally between Chicago, IL, Indianapolis, IN, Louisville, KY, Knoxville, TN, Cincinnati, OH, and Detroit, MI, in the case of Transferee, and between Chicago, IL, and St. Louis, MO, in the case of Transferor.

In addition, Transferor has been issued intrastate motor carrier authorities in Illinois. Under the provisions of 49 U.S.C. 11341 (2), Transferor's intrastate operating rights would be affected by approval of the merger transaction in the same manner as the interstate operating rights. *See* No. MC-C-30122, *Thurston Motor Lines, Inc., Brown Transport Co., Inc., and Brown Transport Truckload, Inc.—Petition for a Declaratory Order—Transfer of Intrastate Rights Under 49 U.S.C. 11343(a) & (e)* (not printed), served January 13, 1989.

Decided: May 17, 1989.

By the Commission, Motor Carrier Board, Members Gagnon, Taylor and Johnson. Member Johnson not participating.

Noreta R. McGee,

Secretary.

[FR Doc. 89-12440 Filed 5-23-89; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Availability of Proposed Guidelines for the Cleanup of Clandestine Drug Laboratories

AGENCY: Drug Enforcement Administration.

ACTION: Notice of availability of proposed guidelines for the cleanup of clandestine drug laboratories.

SUMMARY: On November 18, 1988, Congress enacted the Anti-Drug Abuse Act of 1988, Pub. L. 100-690. Section 2405 of this act mandated the Drug Enforcement Administration (DEA) and the U.S. Environmental Protection Agency (USEPA) to form a joint Federal Task Force to formulate, establish, and implement a program for the cleanup and disposal of hazardous waste produced by illegal drug laboratories. The law also required the Task Force to develop and disseminate guidelines to law enforcement agencies that have responsibility for the enforcement of drug laws. After the final guidelines are published and disseminated, the Attorney General shall make grants to, and enter into contracts with, state and local governments, who agree to comply with the guidelines, for demonstration projects to clean up and safely dispose of substances associated with illegal drug laboratories which may present a danger to public health and the environment. The proposed guidelines are now available for review by state and local agencies and any other interested parties. A 90-day period has been established to allow for comments, prior to developing and publishing the final guidelines.

DATE: Comments must be submitted by August 22, 1989.

ADDRESS: Requests for copies of the proposed guidelines and comments should be addressed to: Sidney A. Hayakawa, Drug Enforcement Administration, Office of Forensic Sciences, Hazardous Waste Disposal Unit, Washington, DC 20537. Attn: AFSH.

FOR FURTHER INFORMATION: Contact Sidney A. Hayakawa or James T. Hannon, Drug Enforcement Administration, Office of Forensic Sciences, Hazardous Waste Disposal Unit (AFSH), Washington, DC 20537, Attn: AFSH.

SUPPLEMENTARY INFORMATION: Domestic clandestine drug laboratories are a growing problem and are similar to uncontrolled waste sites or chemical emergency situations. The laboratories range from crude makeshift operations to highly sophisticated and technically advanced enterprises. The number of clandestine drug laboratory seizures is increasing. In 1981, the DEA seized 184 clandestine drug laboratories. In contrast, 810 laboratories were seized in 1988.

A clandestine laboratory investigation is unique and presents many safety and health hazards. The indiscriminate disposal of hazardous waste by the outlaw laboratory operator to avoid

detection may lead to contamination of surrounding water sources, soil, and air as well as the building and its fixtures.

Many different toxic chemicals are used in illegal drug manufacturing. As a result, the type and scope of chemical hazards that law enforcement officials, local populations and the environment may be exposed to are extremely diverse. Cleanup actions at these laboratory sites, including the immediate or planned removal of bulk chemicals and contaminated materials, are necessary to prevent harm to the public health and welfare and the environment. These complex issues, along with growing public environmental awareness and regulations promulgated by the U.S. Environmental Protection Agency (USEPA) and Occupational Safety and Health Administration (OSHA), require specialized training and medical programs for, and use of protective raid garments by law enforcement personnel involved in clandestine drug laboratory seizures. The overall program implementation requires cooperation between law enforcement and health/environmental entities to protect public health and the environment.

Currently, there are no Federal guidance documents that address the unique problems associated with clandestine drug laboratories. These proposed guidelines have integrated the experience of DEA field Special Agents and Forensic Chemists and USEPA Emergency Response Technicians, various guidance documents developed by USEPA for cleaning up hazardous waste sites and health and safety programs established by DEA, USEPA and OSHA.

The guidelines suggest that state and local law enforcement and environmental and health agencies implement a comprehensive approach to clandestine laboratory cleanup. The guidelines also outline measures which can be taken to reduce the hazards associated with clandestine drug laboratories and provides information on relevant and applicable hazardous waste statutes and regulations, such as the Resource Conservation and Recovery Act (RCRA), which may apply to clean up activities at clandestine drug laboratories.

The guidelines contain information on: Chemicals commonly found at drug laboratory sites, DEA clandestine laboratory safety certification programs and personnel medical requirements for participation in the clandestine drug laboratory program. Sample forms such as contamination reports and uniform hazardous waste manifests for transporting hazardous waste, and additional information that may be used to develop state or local clandestine drug laboratory cleanup programs, are included.

The comment period will enable state and local governments an opportunity to review and comment on the proposed guidelines, which will assist the Task Force in developing final guidelines.

Dated: May 18, 1989.

John C. Lawn,

Administrator, Drug Enforcement Administration.

[FR Doc. 89-12386 Filed 5-23-89; 8:45 am]

BILLING CODE 4410-09-M

John G. Cecil, M.D., Pahrump, NV; Revocation of Registration

On March 3, 1989, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) issued an Order to Show Cause to John G. Cecil, M.D., of Pahrump, Nevada, proposing to revoke his DEA Certificate of Registration, AC0253613, and to deny any pending applications for the renewal of such registration pursuant to 21 U.S.C. 823 and 824. The Order to Show Cause was sent to two addresses, one in Nevada and one in Arizona, both by registered mail. The return receipts showed that the Order sent to the Nevada address was received on March 14, 1987 and signed for by "Chris Cecil." The Order sent to the Arizona address was received on March 9, 1987 and signed for by "C. Cecil. The Order to Show Cause allows the registrant 30 days to respond. It has now been more than 30 days from receipt of the Order to Show Cause and the registrant has failed to respond. The Administrator, therefore, concludes that the registrant has waived his opportunity for a hearing and enters this final order pursuant to 21 CFR 1301.54(d) and 1301.54(e).

The Administrator finds that DEA investigators served an administrative inspection warrant on Dr. Cecil at his office in Pahrump, Nevada on November 13, 1980. Dr. Cecil's inventory of Schedule II controlled substances was audited together with his purchasing and dispensing records. During the inspection, Dr. Cecil admitted that he had never conducted an inventory of his Schedule II controlled substances. This is a violation of 21 U.S.C. 827 and 21 CFR 1304.21. He also admitted to maintaining a drug dependent patient on Percodan while not licensed or registered to operate a drug detoxification or maintenance program. The audit revealed significant shortages for the Schedule II controlled substances Percodan and Tuinal. In addition, Dr. Cecil could not account for over 26,000 dosage units of phentermine, a Schedule IV stimulant.

In January 1988, Dr. Cecil was again investigated when state agents received a suspicious prescription complaint from a Las Vegas pharmacy. Interviews of Dr. Cecil's patients in January 1988 revealed that for many years Dr. Cecil issued prescriptions in fictitious names and was maintaining at least one drug dependent patient on Dilaudid. Interviews with pharmacists also revealed that Dr. Cecil had written prescriptions in patient names and then filled the prescription himself.

On May 16, 1988, Dr. Cecil voluntarily surrendered his license to practice medicine in the State of Nevada, thus terminating his authority to handle controlled substances under the laws of that state. The Administrator has consistently held that a physician may not be registered by the DEA if he is not authorized to handle controlled substances by the state in which he practices. *Wingfield Drugs, Inc.*, Docket No. 87-13, 52 FR 27070 (1987); *Robert F. Witek, D.D.S.*, Docket No. 87-54, 52 FR 47770 (1987); and *Bobby Watts, M.D.*, Docket No. 87-71, 53 FR 11919 (1988).

Accordingly, pursuant to the authority vested in the Attorney General and redelegated to the Administrator of the Drug Enforcement Administration at 21 CFR 0.100, the Administrator concludes that Dr. Cecil's DEA Certificate of Registration should be revoked and any pending applications should be denied. It is therefore ordered that Certificate of Registration, AC0253613, previously issued to Dr. Cecil, be, and it hereby is, revoked. The Administrator further orders that any pending applications for renewal of that registration be, and they hereby are, denied.

John C. Lawn,

Administrator.

Dated: May 18, 1989.

[FR Doc. 89-12411 Filed 5-23-89; 8:45 am]

BILLING CODE 4410-09-M

DePietro's Pharmacy; Revocation of Registration

On March 3, 1989, the deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause proposing to revoke DEA Certificate of Registration BD1180203, issued to DePietro's Pharmacy, 1339 Main Street, Peckville, Pennsylvania. The Order to Show Cause Alleged that the pharmacy's continued registration with DEA would be inconsistent with

the public interest as that term is used in 21 U.S.C. 823(f) and 824(a)(4).

A registered mail receipt indicates that the Order to Show Cause was received at the pharmacy on March 8, 1989. More than thirty days have passed since the Order to Show Cause was received by the pharmacy, and no response or request for hearing has been received by DEA. Therefore, the Administrator concludes that the pharmacy has waived its opportunity for a hearing on the issues raised by the Order to Show Cause, and pursuant to 21 CFR 1301.54(d) and 1301.54(e), enters this final order based upon the investigative file.

The Administrator finds that Thomas J. DePietro is the owner and managing pharmacist at DePietro's Pharmacy. On September 14, 1988, the Pennsylvania Bureua of Professional and Occupational Affairs temporarily suspended Mr. DePietro's license to practice pharmacy. His license remains suspended. Mr. DePietro was advised by the Pennsylvania Bureau of Professional and Occupational Affairs that a new pharmacy manager would have to be designated in order for the pharmacy to retain its pharmacy permit. Mr. DePietro has not designated a new pharmacy manager, and the pharmacy's Pennsylvania pharmacy permit is invalid. The pharmacy is, therefore, not authorized by the State of Pennsylvania to purchase, dispense or otherwise handle controlled substances.

The Administrator of DEA has consistently held that a pharmacy or other DEA registrant may not maintain a DEA Certificate of Registration if they are not authorized by the state in which they are licated to handle controlled substances. See: *Green's Prescription Center*, 53 FR 15153 (1988); *LaMoine F. Murray, R.Ph., Murray's Pharmacy*, Docket No. 86–51, 52 FR 7672 (1987); and *Avner Kauffman, M.D.*, Docket No. 85–8, 50 FR 34208 (1985). Therefore, the DEA Certificate of Registration of DePietro's Pharmacy must be revoked.

The basis for the suspension of Mr. DePietro's license to practice pharmacy was his arrest on June 6, 1988, following three undercover purchases of controlled substances from the pharmacy without a prescription or physician's authorization. On January 19, 1988, an undercover police detective accompanied by a confidential informant purchased 20 dosage units of Valium, a Schedule IV controlled substance, from Thomas DePietro at DePietro's Pharmacy, without a prescription or physician's authorization. Mr. DePietro was paid 20 dollars for the Valium. On January 29, 1988, an undercover police detective and a confidential informant purchased 20 tablets of Valium and 20 tablets of Tylenol with Codeine #3, a Schedule III controlled substance, from Thomas DePietro at DePietro's Pharmacy, without a perscription or physician's authorization. Mr. DePietro was paid 67 dollars for the drugs. On April 15, 1988, an undercover police detective purchased 13 tablets of Percocet, a Schedule II controlled substance, from Thomas DePietro, at DePietro's Pharmacy for 40 dollars. Mr. DePietro sold the Percocet to the undercover detective without a prescription or physician's authorization. On April 3, 1989, Thomas DePietro pled guilty to illegal distribution of controlled substances in Pennsylvania State Court.

In view of the pharmacy's lack of authorization to handle controlled substances in the State of Pennsylvania, and the illegal dispensing of controlled substances by the pharmacys owner and manager Thomas DePietro, the Administrator concludes that the DEA Certificate of Registration previously issued to Respondent pharmacy must be revoked.

Accordingly, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), the Administrator of the Drug Enforcement Administration orders that DEA Certificate of Registration BD1180203, previously issued to DePietro's Pharmacy, be, and it hereby is, revoked. The Administrator further orders that any pending applications for renewal of that registration, be, and they hereby are, denied. This order is effective June 23, 1989.

John C. Lawn,

Administrator.

Dated: May 17, 1989.

[FR Doc. 89–12385 Filed 5–23–89; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Application No. D–7733 et al.]

Proposed Exemptions; International Chemical Workers

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 to 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.

International Chemical Workers Union Employees Retirement Plan (the Plan) Located in Akron, Ohio

[Application No. D–7733]

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), 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 loan of $500,000 by the Plan to the International Chemical Workers Union (ICWU), the Plan sponsor, and to the ICWU Building Corporation (ICWUBC), a non-profit corporation wholly owned by ICWU, under the terms and conditions described in this notice of proposed exemption, provided that such terms and conditions are not less favorable to the Plan than those obtainable by the Plan in an arm's-length transaction with an unrelated party.

Summary of Facts and Representations

1. The ICWU, the Plan sponsor, is an international trade union with headquarters in Akron, Ohio. ICWUBC is a non-profit corporation organized and wholly owned by the ICWU for the purpose of owning and maintaining the headquarters building and an adjacent shopping center (collectively, the Headquarters Building) for the ICWU. The Plan covered 141 employees of the ICWU as of August 12, 1988. As of June 30, 1988, the Plan had $7,910,684 in assets.

2. The Plan proposes to lend $500,000 to the ICWU and the ICWUBC, to be secured by a first mortgage (the Loan) on the Headquarters Building. The Loan will be amortized over a period of 180 months in equal installments of interest and principal and will bear interest at a floating rate of ½% over the First National Bank of Ohio prime rate adjusted monthly. The note for the Loan will be signed by both the ICWU and the ICWUBC and will be duly recorded in accordance with Ohio law. An existing first mortgage on the Headquarters Building held by the First National Bank of Ohio with a balance due of $983,729 as of February 15, 1988, will be paid off at the time of the proposed transaction.

3. On May 3, 1989, T. Randall Fairfax, Private Banking Officer with National City Bank, Akron (NCB), of Akron, Ohio, stated that NCB was willing to make the Loan on the same terms and conditions to the ICWU. The applicant represents that NCB is unrelated to and has no current or anticipated business with ICWU or ICWUBC.

4. On June 20, 1988, John E. Eisenman, President of Industrial Appraisals, Inc., real estate appraisers of Pittsburgh, Pennsylvania, stated that the fair market value of the Headquarters Building as of that date was $3,750,000.

5. On February 7, 1989, Gerrit C. Kuechle (Mr. Kuechle), President of National Associates, Inc. (NA), actuaries and pension consultants doing business in Cleveland, Ohio, agreed to serve as independent fiduciary with respect to the proposed transaction. NA serves as independent Plan actuary, but has no other relationship with the Plan or any of its principals. Mr. Kuechle represents that he is qualified to serve as independent fiduciary as he is accustomed to dealing with transactions similar to the proposed transaction, and is familiar with the requirements of ERISA. Mr. Kuechle states that the terms and conditions of the Loan are comparable to similar loans between unrelated parties, and that the proposed transaction is in the best interest and protective of the Plan and its participants and beneficiaries, and is in keeping with the Plan's investment objectives and liquidity and diversification requirements. Finally, Mr. Kuechle states that as independent fiduciary he will have the authority necessary to enforce the terms of the proposed transaction and to take any steps necessary to protect the benefits of the Plan's participants and beneficiaries.

6. In summary, the applicant represents that the proposed transaction meets the statutory criteria under section 408(a) of the Act because: (a) The Loan will be approved, monitored and enforced by an independent fiduciary; (b) the Loan will be secured by a first mortgage on the Headquarters Building, the fair market value of which represents more than 150% of the Loan; (c) the Loan will be for an amount well below 25% of the Plan's assets; (d) the Plan's independent fiduciary has determined that the Loan is prudent and in the best interest of the participants and beneficiaries of the Plan; and (e) NCB, an unrelated bank, has stated that it would make the Loan on the same terms and conditions.

For Further Information Contact: Joseph L. Roberts III of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

Service Employees Retirement and Pension Fund Local 32E, AFL–CIO (the Plan) Located in New York, New York

[Application No. D–7849]

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 by the Plan to the N.Y.C. Building Maintenance Institute, Inc.—Bronx Center (BMI) of a school building (the Building) for $500,000 in cash, and the proposed sale of an adjacent parking lot (Parking Lot) by the Plan to BMI for $56,685.67 in cash, provided such amounts are not less than the fair market values of the Building and the Parking Lot on the date of the sales.

Summary of Facts and Representations

1. The Plan is a defined benefit plan which had approximately 9,738 participants as of December 31, 1987. The Plan had approximately $48.5 million in assets as of that date.

2. During 1987, several discussions were held between representatives of various employers in the building service industry (the Association) and the organization which acts as collective bargaining agent for the employees in that industry—Service Employees International Union Local 32E, AFL–CIO (the Union). These discussions concerned the need for better training for employees of this industry in the New York Metropolitan Area. The Association and the Union jointly agreed to develop and administer a building maintenance training program.

3. The next step was to acquire appropriate facilities to carry out the training program. The Building, a vacant school building in the South Bronx area of New York became available in 1987 and was put on public auction by New York City (the City). One of the conditions established by the City was that the Building could only be owned and operated by an entity which is exempt from federal taxation under section 501(c) of the Code. The

Association and the Union agreed to form a not-for-profit corporation, BMI, which would operate the training program. BMI was formed on April 12, 1988.

4. Neither the Association nor the Union had sufficient funds to buy the Building, and BMI was not formed as of December 10, 1987, the date of the auction held by the City. The Plan's trustees decided to use Plan assets to purchase the Building with the intention of securing a profit for the Plan. Mr. John S. Johnsen (Mr. Johnsen), a real estate broker and senior real estate appraiser for the firm of Helmsley-Spear, Inc. in the City, had appraised the Building as having a fair market value of $400,000 as of December 8, 1987. The Plan acquired the Building at the December 10, 1987 auction for a price of $227,000. The purchase thus gave the Plan a unique opportunity to make a short-term investment for a sizable financial gain, especially since there was a prospective buyer for the Building at the time of the Plan's purchase.[1]

5. On June 8, 1988, the Plan also purchased the Parking Lot for $40,000. The Parking Lot consists of vacant land adjacent to the Building. The Plan has since spent approximately $11,000 in capital improvements to the Parking Lot. In all, the Plan has spent $56,685.87 on the Parking Lot, which includes purchase price, improvements, legal fees, and real estate taxes.[2]

6. The Plan now wishes to sell the Building and the Parking Lot to BMI. Mr. Johnsen has updated his December 8, 1987 appraisal of the Building, and he estimates its fair market value at $500,000 as of March 16, 1989. Since the Plan's total costs for the Building have been approximately $320,000, the applicants represent that the sales price to BMI will be the appraised value of $500,000. Mr. Johnsen has appraised the fair market value of the Parking Lot as being $30,000 as of January 31, 1989. Thus, the sales price of the Parking Lot to BMI will be $56,685.87, which represents the total costs of the Parking Lot to the Plan. The sales will be for cash and no commissions will be paid with respect to the sales.

7. In summary, the applicants represent that the proposed transactions will satisfy the criteria of section 408(a) of the Act because: (1) The sales will be a one-time transaction for cash; (2) no commissions will be paid with respect to the sales; and (3) the Plan will sell the Building and the Parking Lot at the greater of their appraised value as determined by Mr. Johnsen, a qualified independent appraiser, or their actual cost basis.

For Further Information Contact: Gary H. Lefkowitz of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

Eubanks & Eubanks, D.O., P.C. Pension and Profit Sharing Trust Fund (the Plan) Located in Troutdale, Oregon

[Application No. D-7897]

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 separate accounts (the Accounts) of Robert L. Eubanks and Theresa M. Eubanks (the Eubanks) in the Plan of certain land (the Property) to the Eubanks', parties in interest with respect to the Plan, provided that the Plan receives the greater of $37,100 or the fair market value at the time of the sale.

Summary of Facts and Representations

1. The Plan, established in 1985, is a profit sharing plan which consists of 10 participants. As of January 31, 1988 total plan assets were $120,278. The Plan provides for participant direction for the investment of separate account assets. As of December 31, 1988, total assets of Theresa M. Eubanks' separate account was $36,552 (Account 1). As of the same date, total assets of Robert L. Eubanks' separate account was $21,228 (Account 2). The applicant represents that the current trustees of the Plan are Robert L. Eubanks and Theresa M. Eubanks. The Employer, Eubanks and Eubanks, D.O., P.C., is a medical corporation delivering osteopathic family medical care.

2. The Accounts 1 and 2 purchased the Property on March 6, 1986, for $31,000 cash from an unrelated party. The Property is currently held jointly in these Accounts. The property which consists of unimproved vacant land located in Gresham, Oregon was purchased in order to increase the return of the Accounts. The applicant maintains that there is no outstanding debt on the Property. The Property has not been used by any party in interest since its acquistion by the Accounts.

3. The applicant proposes to sell the Property to the Eubanks'. An appraisal of the Property was prepared by Phyllis F. Horsfeldt, I.F.A. (Ms. Horsfeldt), a real estate broker and appraiser. The appraisal, dated September 14, 1988, estimates the value of the Property to be $37,100. Ms. Horsfeldt represents that she is independent of the parties involved and qualified to perform the appraisal. In a letter of March 8, 1989, Ms. Horsfeldt concludes that the Eubanks' ownership of property adjacent to the Property does not merit a premium above the fair market value in the proposed purchase.

4. The applicant represents that the transaction is desirable for the Accounts. The sale will increase the liquidity available to the Eubanks' upon retirement. The transaction is protective of the Accounts because the value of the Property was determined by a qualified independent appraiser. Furthermore, because the Property is held only by the Accounts the sale will not affect other participants of the Plan. The applicant maintains that economic hardship will result if the transaction is denied with the Accounts foregoing an opportunity to participate in investment vehicles with a higher return. The Accounts would also continue to incur real estate taxes in holding the Property. The applicant maintains that attempts to sell the Property to independent third parties yielded no comparable offers. Furthermore, in a sale to an unrelated third party, the Accounts will be liable for brokerage commissions and other transaction expenses.

5. In summary, the applicant represents that the transaction satisfies the statutory criteria of section 408(a) of the Act and section 4975(c)(2) of the Code because:

(a) The proposed sale will be a one-time cash transaction;

(b) The price paid to the Accounts will be the greater of $37,100 or the fair market value at the time of the sale as determined by an independent, qualified appraiser;

(c) The Plan or the Accounts will pay no expenses associated with the sale;

(d) The sale will allow the Accounts to liquidate its assets and to provide cash for investments with a higher yield.

For Further Information Contact: Ekaterina A. Uzlyan of the Department at (202) 523-8194 (this is not a toll-free number).

[1] The Department is expressing no opinion as to whether the acquisition of the Building by the Plan violated any provision of Part 4 of Title I of the Act.

[2] The Department is expressing no opinion as to whether the acquisition of the Parking Lot by the Plan violated any provision of Part 4 of Title I of the Act.

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 19th day of May, 1989.

Robert J. Doyle,

Director of Regulations and Interpretations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 89-12389 Filed 5-23-89; 8:45 am]

BILLING CODE 4510-29-M

[Prohibited Transaction Exemption 89-37; Exemption Application No. D-7521 et al.]

Grant of Individual Exemptions; Union Bank, 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 person 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 to 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.

Union Bank (the Bank) Located in Los Angeles, California

[Prohibited Transaction Exemption 89-37; Exemption Application No. D-7521]

Exemption

The restrictions of section 406(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 [D] of the Code, shall not apply to: (1) The proposed use of assets from certain multi-employer pension plans (the Plans), for which the Bank serves as a directed trustee, directed corporate trustee, directed corporate co-trustee, or custodian, for permanent mortgage loans to persons (the Borrowers), who will use the loan proceeds to pay off construction loans originated by the Bank; and (2) the execution and consummation of tri-party buy-sell agreements for such mortgage loans by the Bank with the Borrowers and the Plans, and the subsequent assignment of mortgage notes by the Bank to the Plans pursuant to such agreements, provided that:

A. Each permanent mortgage loan is expressly approved by a fiduciary independent of the Bank who has authority to manage or control those Plan assets being invested;

B. The terms of each transaction are no less favorable to the Plan than the terms generally available in an arm's-length transaction between unrelated parties; and

C. No investment management fee, advisory fee, underwriting fee, sales commission or similar compensation is paid to the Bank by the Plan with regard to such transaction.

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 March 15, 1989 at 54 FR 10751.

Temporary Nature of Exemption: This exemption is effective only for those loans which are originated within five years of the date on which this exemption is published in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Mr. E.F. Williams of the Department, telephone (202) 523-8883. (This is not a toll-free number.)

Mid-State Machine Products, Inc. Defined Benefit Plan (the Plan) Located in Winslow, Maine

[Prohibited Transaction Exemption 89-38; Exemption Application No. D-7675]

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 proposed sale by the Plan of its interests in certain real estate limited partnerships and real estate investment trusts (together, the Interests) to Mid-State Machine Products, Inc., the sponsor of the Plan, provided that the price paid is the higher of either the Plan's original purchase price for each of the Interests or the fair market value of the Interests 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 February 14, 1989 at 54 FR 6784.

For Further Information Contact: Mr. E.F. Williams of the Department, telephone (202) 523-8883. (This is not a toll-free number.)

Morgan & Associates, M.D.'s P.C. Employees' Pension Plan and Trust (the Plan) Located in Bismarck, North Dakota

[Prohibited Transaction Exemption 89-39; Exemption Application No. D-7719]

Exemption

The restrictions of section 406(a), (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 (the Sale) by the segregated account (the Account) in the Plan of Margaret Morgan, M.D. (Margaret Morgan) and Riffat Morgan, M.D. (collectively, the Applicants), to the Applicants, individually, parties in interest with respect to the Plan, of certain real property located in Winnipeg, Canada (the Property), for cash in amount of the greater of the appraised fair market value or the U.S. dollar equivalent of $265,000 (Canadian) on the date of the Sale; provded that the terms and conditions of the Sale are at least as favorable to the Plan as those obtainable by the Plan in an arm's-length transaction between unrelated parties.

For a more complete statement of facts and representations supporting the Department's decsion to grant this exemption, refer to the notice of proposed exemption published on April 4, 1989 at 54 FR 13583.

For Further Information Contact: Mrs. B.S. Scott of the Department, telephone (202) 523-8194. (This is not a toll-free number.)

Hinderliter Profit Sharing Plan and Trust (the Plan) Located in Tulsa, Oklahoma

[Prohibited Transaction Exemption 89-40; Exemption Application No. D-7743]

Exemption

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.

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 February 24, 1989, at 54 FR 8023.

For Further Information Contact: Paul Kelty 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 19th day of May, 1989.

Robert J. Doyle,

Director of Regulations and Interpretations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 89-12390 Filed 5-23-89; 8:45 am]

BILLING CODE 4510-29-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Arts in Education 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 Arts in Education Advisory Panel (Overview Section) to the National Council on the Arts will be held on June 12, 1989, from 8:30 a.m.-5:30 p.m. and on June 13, 1989, from 8:30 a.m.-3:00 p.m. in Room 730 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting will be open to the public on a space available basis. The topic for discussion will be guidelines and policy issues.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682-5532, TTY-202/682-5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

Yvonne M. Sabine,

Director, Council and Panel Operations National Endowment for the Arts.

May 17, 1989.

[FR Doc. 89-12383 Field 5-23-89; 8:45 am]

BILLING CODE 7537-01-M

Inter-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 Inter-Arts Advisory Panel (Artists' Projects: New Forms Section) to the National Council on the Arts which was to have been held on May 30–June 3, 1989, from 9:30 a.m.–9:00 p.m. and June 4, 1989, from 9:30 a.m.–5:00 p.m. in Rooms 714 and 716 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506 has been changed.

The meeting dates and times have been changed to May 30, 1989, from 9:30 a.m.–8:00 p.m.; May 31, 1989, from 9:30 a.m.–5:00 p.m.; June 1–2, 1989, from 9:30 a.m.–7:00 p.m.; and June 3, 1989, from 10:00 a.m.–5:00 p.m.

The portion of the meeting which was to be open to the public on June 4, 1989, from 9:30 a.m.–noon for a policy and guidelines discussion has been changed. The open portion of this meeting will be held on June 3, 1989, from 1:00 p.m.–5:00 p.m.

The remaining sessions of this meeting on May 30, 1989, from 9:30 a.m.–8:00 p.m.; May 31, 1989, from 9:30 a.m.–5:00 p.m.; June 1–2, 1989, from 9:30 a.m.–7:00 p.m.; and June 3, 1989, from 10:00 a.m.–1:00 p.m. are 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 subsections (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 references 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.

May 17, 1989.

Yvonne M. Sabine,

Director, Council and Panel Operations National Endowment for the Arts.

[FR Doc. 89–12382 Filed 5–23–89; 8:45 am]

BILLING CODE 7537–01–M

Visual 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 Visual Arts Advisory Panel (Works on Paper Fellowships Section) to the National Council on the Arts will be held on June 12–15, 1989, from 9:00 a.m.–8:00 p.m. and June 16, 1989, from 9:00 a.m.–5:00 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 1956, 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.

May 17, 1989.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 89–12384 Filed 5–23–89; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL SCIENCE FOUNDATION

Young Scholars Projects for High Ability and High Potential Secondary School Students; Guidelines for Proposal Submission and Notice of Submission Deadline

Introduction

The Research Career Development Division of the Directorate for Science and Engineering Education (SEE) manages and coordinates a variety of programmatic efforts that aid young men and women in their development toward productive research and teaching careers in science, mathematics and engineering. Each effort, in its own way, focuses on a period in the lives of such students during which important career options must be analyzed and critical choices made. The designation of a field of specialization, selection of a graduate school, and choice of first employing organization are decisions made during periods targeted by current Division activities—periods when a modest amount of individual support can stimulate the development of careers that will strengthen the academic base and economic competitiveness of the United States.

One of the first decisions for young men and women is the choice of a career. For many the commitment to a career in science, mathematics, or engineering begins to develop during their secondary school years. In order to assist students in reaching an informed decision about a potential career in science, the National Science Foundation initiated in Fiscal Year 1988 the NSF Young Scholars Program, which offers two-year continuing awards, with a second year of support contingent on NSF review of project activities and the availability of funds. To date the Foundation has supported 137 projects which will provide enrichment experiences in science, mathematics and engineering for more than 4,700 high ability or high potential secondary school students during the summer 1989.

The underrepresentation of women, minorities and the disabled at the advanced levels of science, mathematics and engineering deprives the Nation of much potential talent. Consequently the Foundation strongly encourages the full participation of members from these groups as proposers, staff and participants.

Purpose/Scope

The goals of the Young Scholars Program are to:

- Increase participant knowledge of and exposure to science, mathematics and/or engineering as careers in order to facilitate their making realistic decisions based on the full range of career options available;
- Stimulate participant interest in science disciplines as possible career choices;
- Increase student awareness of the academic preparation necessary for such careers;
- Acquaint students with the environment and resources of universities, colleges and research organizations;

• Contribute to students' confidence in their ability to make career decisions.

These experiences with the scientific enterprise should develop student awareness of the work of scientists through a variety of activities including:

• Intellectually challenging experiences which are not a part of the school curriculum.

• Experiences in laboratories and classrooms that broaden understanding of the subject matter through first-hand experience in the research process.

• Personal interaction with researchers by working side-by-side with them.

• Career guidance by scientists and educational counseling personnel.

• Discussion of the philosophy and ethics of the science discipline of the project.

Eligibility

There are three categories of eligibility for the Young Scholars program: submitting organization, activities and discipline focus. Proposals must meet the requirements in all three categories as outlined below to be eligible for consideration for funding.

Submitting Organization

Proposals may be submitted by colleges or universities, their associations or consortiums, scientific or professional societies whose members are primarily university faculty or researchers, and for-profit industries or other organizations which are engaged in significant advanced research efforts and have experience in interacting with pre-college students. Academic institutions are encouraged to combine efforts with industries with appropriate research facilities.

Secondary schools and school districts and other organizations with programs focused on secondary education are not eligible to apply as submitting organizations.

Of course, any organization is welcome to collaborate in a project proposal developed and submitted by an eligible institution.

Activities

Required and eligible activities are discussed under Project Design. Young Scholars project activities are not intended to duplicate or replace the secondary school curriculum or offer tutorial or remedial services. Thus the project should not provide course work primarily designed to improve performance in regular school courses. Nor should the goal of activities be to prepare students for standardized tests for college admissions or advanced placement courses, or to duplicate regular college courses. Further, secondary school or college credit for the successful completion of project activities is neither required nor encouraged. Exceptions may be made when the institution or schools involved require that credit be given. However, grant funds cannot be used to pay per credit fees.

Discipline Focus

Grants for Research and Education in Science and Engineering [GRESE] (NSF 83–57, rev. 3/89, p. 1) specifies the fields of science and engineering which are eligible for support. Consistent with these guidelines, the Young Scholars program will not support activities focused on clinical or health science disciplines.

Any questions regarding a proposed project's eligibility under these categories should be referred to the program staff. Proposers may be asked to submit additional information regarding organizational or project characteristics. In some cases it may be necessary for NSF staff to review a formal proposal before a final and fair determination of eligibility can be made.

Project Design

Except where otherwise indicated, the Foundation intends to allow project directors maximum flexibility in designing their projects to address specific discipline areas and participant age groups. The Young Scholars program actively seeks innovative approaches to cost-effective enrichment activities for young students. These include off-campus sites where scientific inquiry is especially intense, unusual designs for instruction and demonstration, and creative techniques for academic-year follow-up.

Particular attention should be paid to the following areas in the proposal:

Environment

The project should create a learning environment which challenges the students' intellectual abilities and encourages the development of the requisite skills for the use of these abilities. The environment also should foster close interaction among the participants, and between the participants and science, mathematics, and engineering practitioners, including the project director and senior staff. These group activities should prevent isolation and promote group identity and support, and facilitate student involvement in project activities. The opportunities for interaction should be both formal and informal and the identification of mentors is strongly encouraged.

Activities

Proposers should keep in mind that students learn science best by practicing science; that is, by exercising their natural curiosity and participating in the process of scientific discovery. Projects may consist of any combination of activities involving instruction, problem solving, research and exposure to the research environment and research methods that are appropriate for the targeted age group and the discipline focus. However, proposers should strive for balance between lecture, laboratory and field experiences. Activities should be strongly participatory, be intellectually challenging, and promote positive interaction among students and staff.

It also should be noted that while some assignments or tasks will be individualized, a major characteristic of Young Scholars projects is group activities (instructional, field work and social activities) which foster mutual support and feedback. The goal is to facilitate peer support for participant interest in science and to encourage networking among participants for future support and information exchange.

Required Activities—The following components must be included in all proposed projects and outlined in a Schedule of Activities:

Research Methodology—The specific methods and techniques of scientific research differ by field, but the scientific method serves as the basis for the discover of knowledge across disciplines. Projects should include a general discussion of research methodology, with specific attention to the techniques and methods utilized in the disciplines which serve as the focus of the project.

Career Exploration—Since a major objective of this program is to heighten student awareness of science, mathematics and engineering as possible careers, each project must include career exploration activities which offer information and guidance regarding the opportunities of science as a profession, particularly in the discipline area of the project. These activities also should include attention to precollege science and mathematics teaching as a career choice. Specific attention should be given to the secondary school and college academic requirements for a degree in the selected discipline.

The participation of female, minority and disabled scientists in this activity is especially encouraged.

Philosophy and Ethics of Science—The development of a mature and participating citizen, scientist or not, requires an appreciation of the role of science in society. Therefore, all projects must include some activity that focuses on the philosophy of science and scientific ethics specific to the discipline focus of the project. Examples of appropriate topics might be guidelines for the collection and use of scientific data, research ethics or the need for a "Hippocratic oath" for scientists.

Follow-up activities—An academic-year follow-up for summer programs to sustain the intensity of the experience is also required. Proposed activities should reinforce and expand the knowledge and skills learned during the summer by helping students utilize these skills in classroom activities. To this end, the follow-up academic-year component need not be limited to summer participants, but may also involve their classmates and teachers. A summer follow-up component may be proposed for academic-year programs.

Project Assessment—Proposers must specify project goals and objectives, planned outcomes and plans to measure the success of the project. (This is in addition to participation in Young Scholars program data collection activities, described below.) Established projects should include a discussion of previous project outcomes. Current Young Scholars project directors submitting new proposals should summarize previous accomplishments.

Setting

Residential or commuter projects during the summer are recommended as the principal mechanism for creating an enrichment experience. The summer components should include a minimum of two weeks of activity. Projects offering an after school/weekend academic-year program as the principal mechanism are also eligible for funding.

Participants

Junior/Senior High Focus—Proposers are expected to design projects which target subsets of students entering grades 8–12, who are US citizens or permanent residents. (Established programs seeking support to augment program activities or expand participant groups are also eligible if the *majority* of current participants are within this grade range.) The selection of a specific age group, or grade level should be justified in the proposal.

Participants should be students of high ability or high potential, with interest in science, mathematics or engineering. The Foundation assumes that students defined as high ability have demonstrated this ability on some objective criteria, and the proposer must indicate these criteria (i.e. grades, examination scores, honors, awards in science competitions, etc.). Students of high potential are those suspected of high ability, and the proposer must define the criteria to be utilized in identifying these participants (i.e. interviews, recommendations, extracurricular activities, etc.).

The number of project participants will depend on the proposed activities and staff but should allow for substantial one-on-one or small group interaction among students and between students and senior staff.

Participant Tenure—The overall program philosophy is to reach as many students as possible. Each year of project activity is intended as a separate unit, with new participants selected each year. This does not preclude consideration of a proposal in which some students return for the second year. However, such a design must be justified in the proposal. In all other cases proposers are strongly discouraged from accepting students who have participated in any YS project the previous year.

Participant Recruitment and Selection

Proposals must specify how participants will be identified, recruited and selected. Admission decisions regarding participants should be made on the basis of materials submitted by applicants. This information might include (a) recommendations from current or recent science or mathematics teachers and counselors, (b) a short essay by the student on why he or she would like to participate or some other appropriate topic and (c) selected background and biographical information. Other selection mechanisms such as examinations and interviews can also be considered. Recruitment procedures must include a mechanism that allows individual students to initiate the application process. The Young Scholars program offers assistance in the identification of disabled students.

The Foundation expects broad-based participation in these projects regarding the number of schools, geographic areas covered and participant characteristics. That is, participants should be selected from a variety of secondary schools and excessive representation from any one school is discouraged. Regarding geographic distribution, projects should be designed, where possible, to attract students on a regional or national basis, rather than only locally. Also projects must be open to all eligible students in the targeted geographic area, except for those projects designed for disabled students and those proposals responding to the Early Alert Initiative (EAI). In the selection of participants, minorities and females generally should reflect their representation in the designated geographic area.

In the Early Alert Initiative which is described in this announcement, participant selection may focus exclusively on women, minorities or other groups.

Participant Costs

Lack of personal or family financial resources should not be a barrier to participation by any eligible student. Therefore proposers may request NSF funding for all or a portion of student expenses, including room and board for residential projects, travel and a small stipend for students whose participation will preclude needed employment income. Stipends for participants must be justified in terms of their use in attracting the target population. Further, the age of participants in terms of earning potential should be taken into consideration in requesting stipends. Stipends should not exceed $100/week per student for high school students. Stipends for younger students should be less. Stipend amounts can be supplemented by other funding sources.

Proposers can require payment for room and board from participants whom they determine are able to assume responsibility for these expenses. The narrative should detail per student costs for room and board if applicable, travel and any stipends proposed, as well as the percentage of any or all of these costs NSF is being asked to assume. Proposers who plan to charge room and board fees that will vary among NSF-supported participants should outline how applicant financial need will be determined. Ability to pay may be assessed on an individual or group basis. Proposals must include a plan for providing financial assistance to eligible students, if needed.

Staff

Project staffing requirements will depend on the design of the project and participant needs. Senior staff, defined as those who will have primary responsibility for the selection of participants, the supervision of intellectual activity and the demonstration of research techniques and field instruction, should be academic faculty or active research scientists, mathematicians and engineers in industry. Staffing levels should be adequate to allow for

substantive one-on-one interaction between participants and senior staff.

The Project Director (Principal Investigator), who must be a member of the senior staff, will serve as the intellectual leader of the project and as the administrative contact with NSF. The proposal narrative must include a brief statement of the role and responsibilities of the Project Director and his/her time commitment to the project. Except in unusual cases, the program discourages the designation of more than one co-PD.

We encourage the participation as support staff of precollege science and mathematics teachers, counselors, undergraduate and graduate students, and in projects involving middle school students, high school students. Proposers are encouraged to solicit volunteers and to utilize part-time as well as full-time staff in order to reduce costs. Skill in teaching and the ability to interact with young students should be a prerequisite for the selection of all staff. The participation of women, minority and disabled scientists is strongly encouraged.

Site(s) (Resources and Equipment)

Since a major objective of this program is to acquaint students with the environment and resources of universities, colleges and research organizations, projects should be located at facilities where higher education or advanced research takes place.

Established Programs

The Foundation is aware that a number of activities similar to Young Scholars Projects, sometimes known at Secondary School Student Science Training Projects (SST), have been offered at various campuses in recent years, and have reached funding stability. The Foundation strongly encourages the continuation of such programs, and will not normally award support for such projects where NSF support would serve mainly to replace established funding. The Foundation, however, does invite proposals from institutions that organized such activities in the summer of 1989 or regularly in the last few years, where NSF support would serve to strengthen such projects by funding new key components, or expand such projects by broadening participation from previously underrepresented groups.

Established projects for which supplementary support is proposed must in their entirety be eligible for Young Scholar support, and thus must include all the required Young Scholar components, and must be described fully in the proposal. Proposals from these projects also must include a statement describing the use of NSF funding, with attention to how these funds will enhance the project.

Budget

Proposers may request from the Foundation appropriate direct, indirect and participant costs. Separate budgets must be prepared for year one and year two of project activities, along with a cumulative budget. Normally awards will be funded initially for the first year only, with support for the second year contingent on the availability of funds and after review of the activities of the first year.

NSF has specific provisions regarding allowable costs for salaries and wages, indirect costs, fringe benefits, equipment purchases, participant support costs, tuition remission, consultant services and subcontracts. In general the Young Scholars Program is subject to these provisions as stated in the GRESE referenced below and proposers must follow these provisions in preparing the budget for a Young Scholars project.

General NSF provisions of special relevance to this program as well as additional program specific regulations are summarized below:

- Our previous experiences indicate that the average project cost to NSF per student, per week is less than $500 for residential projects. Commuter projects are considerably less. Higher costs must be fully justified in the proposal.
- The Foundation will consider requests for extra compensation for faculty (overload). Such requests should be clearly outlined in the budget justification section and will be reviewed on an individual basis with attention to the nature of the project as well as institutional and current NSF policies.
- Support will not be provided for general purpose office equipment such as typewriters or furniture, nor for permanent scientific equipment. Permanent equipment is defined as any item with a unit cost of $500 or more and an expected service life of two or more years. Where such equipment is deemed necessary, proposals should consider borrowing or renting. Rental costs are allowable under this program. However, when rental costs exceed the purchase price of an item, purchasing the item will be considered.
- Indirect costs will not be paid on participant costs.
- Funds should be included for the project director (one person only) to attend the annual two-day project directors meeting in the Spring in Washington DC. Proposers should use their institutional guidelines regarding per diem allowances.
- Support may not be requested for social activities, attendance at any conference except the project directors meeting, or for teacher training components.
- Proposers are advised to determine whether insurance coverage normally available to students and faculty on campus applies to participants in these, projects. The budget may request funds to purchase health and accident insurance for participants not covered by the usual student health plans. Insurance costs should be specifically justified, and will be reviewed on a case-by-case basis.
- The Young Scholars Program requires a reasonable degree of cost-sharing in all proposals. Arrangements for cost-sharing should be clearly detailed in the proposal's budget justification section, and will be taken into consideration in decisions on the extent of NSF support. Fees assessed of participants are not considered cost-sharing.

Proposal Preparation and Submission

Reference Documents

A formal proposal should be prepared following the guidelines contained in the NSF document "Grants for Research and Education in Science and Engineering" [GRESE] NSF 83–57, rev. 3/89 and the instructions contained in this solicitation. Additional information may be obtained from the NSF "Grants Policy Manual, Revised, NSF 77–47".

Proposal Submission Forms

There are several NSF and Young Scholars program forms which are necessary as part of the submission of a proposal to this program. These include a "Young Scholars Program Data Sheet' (Appendix B) which will be used in the assignment of proposals to appropriate review panels. All forms and a checklist for proposal preparation can be found in the appendices to this solicitation. Please check that all forms are filled out completely and signed, where necessary. Forms may be photocopied.

Narrative Content and Format

The narrative is limited to 30 double-spaced pages (15 single-spaced pages). There is no limited on the length of the appendices. However, proposers should be judicious in this regard as NSF leaves to individual reviewer discretion what part of the appendices, if any, should be read. The narrative should discuss each of the following areas (in the order given) in sifficient detail to allow the

proposal to be evaluated in accordance with the goals of this program:

- Project Goals and Objectives
- Disciplinary Focus
- Project Design (must include a Schedule of Activities)

—Disciplinary Focused Activities
—Activities Focused on Research Methodology
—Career Exploration Activities
—Philosophy and Ethics of Science Activities
—Project Assessment
—Follow-up Activities

- Setting
- Selected Population
- Participant Recruitment & Selection
- Project Staff
- Project Site

(A checklist for proposal preparation specifying the order of presentation can be found in Appendix A. Note that the budget and budget explanation are a separate part of the proposal.)

The deadline for submission of proposals for the Young Scholars Program is August 21, 1989

Fifteen (15) complete copies of the formal proposal; one copy of the required NSF form 1225 and three (3) additional sets of forms each stapled as a unit, containing one Cover Sheet, one Summary Budget and one Young Scholars Program Data Sheet should be sent to the address listed below:

Data Support Section, Room 223, National Science Foundation, 1800 G Street, NW., Washington, DC 20550.

Evaluation and Selection of Proposals

General criteria used in the evaluation of proposals are described in the NSF GRESE referenced above. They are performance competence, intrinsic merit, utility or relevance, and effect on the infrastructure of science and engineering.

Within the context of the Young Scholars Program specific evaluation criteria will include the appropriateness and quality of the following project elements:

(1) Overall project design including time frame for implementation, discipline focus and setting (commuter/residential; summer or academic year); (2) reseach, laboratory, field and classroom activities focused on the science discipline chosen, including hands-on projects and planned interaction between students and scientists and mathematicians; (3) project staff qualifications and mix; (4) participant recruitment and selection procedures and demographics; (5) follow-up activities; (6) scientific ethics and career awareness activities; (7) project site and resources; (8) budget, including total costs, proposed cost sharing and participant costs; and (9) for established projects, the proposed use of NSF funds to enhance the operation and the success of current activities.

Proposals will be reviewed for scientific and educational merit by scientists, mathematicians, engineers, science educators including precollege teachers, and experts in other fields represented by the proposals.

Awards

The announcement of Young Scholars Program awards should be made in February 1990. Notification of awards is made in writing by the Foundation. As soon as possible thereafter the Foundation will publish and distribute a project directory as a reference guide for potential applicants.

Awards will normally provide for one year of support, with a second year of support contingent upon acceptable progress in implementing program objectives and the availability of funding.

Participants admitted and successfully completing these projects will be identified in NSF records as National Science Foundation Young Scholars. Project Directors may use this terminology in the title of their proposed project and in any presentations made in closing ceremonies and any reference to the participants thereafter. The terms "Science", "Mathematics" and "Engineering" may be inserted as appropriate.

Program Assessment Activities

The Foundation has established a plan to facilitate early and regular assessment of program impact. This includes data collection instruments for administration to project applicants, participants, and staff. As a part of these activities NSF will provide copies of these instruments and guidance on their administration at the time of the award. The cooperation of project directors will be an important factor in assuring the success of this effort.

Grant Administration

NSF grants are administered in accord with the terms and conditions of NSF GC–1 (10–88), Grant General Conditions, or FDP II, Federal Demonstration Project General Terms and Conditions (10/88), copies of which may be requested from the NSF Forms and Publication Unit.

The Young Scholars Program Early Alert Initiative, FY 1990

The Young Scholars Program is establishing in FY 1990 an Early Alert Initiative (EAI) component. While there is a continuing need for scientists, mathematicians and engineers at all levels, there has developed a persistent shortfall in the number of college graduates earning degrees in these fields. Part of the problem is the decreasing number of students selecting careers in these disciplines. In fact, there are indications that many students eliminate career in science, mathematics, and engineering as viable choices prior to high school.

To increase the supply of scientists, more attention needs to be given to students earlier than high school. Activities should focus on providing those experiences and opportunities which introduce students to the excitement and challenge of science careers. Projects addressing these areas should include science and mathematics course work beyond that offered in school; expanded counseling regarding career opportunities in these disciplines; interaction with role models in these fields; activities which strengthen family and peer support for student interest in these areas; and the elimination of social/cultural and financial barriers. Without these experiences, many students will continue to enter high school lacking interest in science careers, or lacking key prerequisites for a college science major.

The EAI which will focus on mathematics and physics, is a response to this situation. Mathematics and physics are targeted because of continuing personnel shortages in these fields. The goal of EAI is to support projects which offer activities to develop or sustain the interest of adolescent students in careers in these two disciplines.

This initiative differs from the regular Young Scholars competition in several ways:

Eligible Students—Unlike the regular Young Scholars program, projects are restricted to students entering grades 7, 8 and/or 9, and may be designed exclusively for ethnic minorities and/or women. Other groups such as the disabled, the economically disadvantaged, or rural residents, also could be the focus of recruitment efforts.

Consistent with the overall Young Scholars Program, the EAI is focused on students of high ability or high potential. However, considering the young age of the target pool, and the focus on students who may have had limited exposure to mathematics and science, such high ability or high potential in these areas may not necessarily have been demonstrated in the classroom. Therefore academic performance should not be the sole selection criteria. A combination of alternative mechanisms should be utilized to identify student

ability or potential. Proposers should clearly outline their strategies for selecting student participants on these factors.

Discipline Focus—Proposals must focus on mathematics or physics. In order to allow students to explore their interests in more than one discipline within the targeted fields, we encourage proposals which include attention to both mathematics and physics and their applications.

Activities

Instructional Activities—The EAI is not intended for students who perform below grade level in non-science and non-mathematics school courses. However, when limited course work in mathematics and/or science is a characteristic of the group as a whole, the teaching of additional basic science and math concepts may be necessary. Advanced course work may be proposed, where appropriate for the selected population.

Research Methodology—EAI activities must enable students to experience the excitement of "doing science" in the discipline(s) chosen, as emphasized in the regular Young Scholars competition. However, it should be noted that because of the limited science background of the students to be involved in this initiative, individual research projects may be inappropriate.

Career Exploration—The EAI places a stronger emphasis than the regular Young Scholars competition on career exploration. Thus activities should include interaction with scientists in a variety of potential work settings. Discussions of higher education options and costs, with particular attention to options for financial assistance, are required. Integrated throughout planned activities should be given attention to cultural/social barriers to students entry into science and mathematics careers.

Mentoring—A variety of small group activities, which facilitate interaction between scientists and students are required and should be an integral part of summer and academic year activities. Individual mentors including undergraduate and graduate students are encouraged. Where appropriate, activities should include interaction with scientists in the work place, if these differ from the major site of project activities.

Costs—There should be no charge to the student for participation in these activities, and minimum stipends for students may be requested when they can be justified as a replacement for employment income. Proposers may include the costs of materials and supplies for students use in followup activities including science experiment kits, calculators, science magazine subscriptions, etc.

Project Length—Proposers may request support for two 12-month cycles for two separate groups of students, or one 24-month cycle for a single group of students. Because of the age of these students, local, commuter projects are encouraged. Substantive activities during the school year will be important to maintain the interest of students who attend schools with a limited focus on mathematics and science.

Except as explained above, proposals submitted under EAI should follow guidelines for the regular Young Scholars Program.

Note: Proposals must include all required forms which are available in the printed program announcement. Copies of the program can be requested from the address listed below: Young Scholar Program, Directorate for Science and Engineering Education, NSF, Room 630, Washington, DC 20550, 202–357–7538.

Elmima C. Johnson,

Program Director, Young Scholars.

May 17, 1989.

[FR Doc. 89–12271 Filed 5–23–89; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 70–36 License No. SNM–33]

Finding of no Significant Impact and Opportunity for a Hearing; Amendment of Special Nuclear Material; Combustion Engineering Hematite, MO

The U.S. Nuclear Regulatory Commission (the Commission) is considering the amendment of Special Nuclear Material License No. SNM–33 for Combustion Engineering (CE) located in Hematite, Missouri.

Summary of the Environmental Assessment

Identification of the Proposed Action: The proposed action is an amendment to License No. SNM–33 to authorize CE to operate new pellet production lines. Currently, the Hematite plant receives UF_6 and converts it to UO_2 powder. Most of the UO_2 powder is then shipped to the CE Windsor plant where it is fabricated into pellets. CE plans to relocate all pelletizing operations to the Hematite plant. The proposed action includes the installation of two new pellet lines and startup testing with depleted uranium. After the startup testing is complete, CE plans to introduce enriched uranium into the pellet lines. The environmental assessment includes the evaluation of impacts from operations with enriched uranium. The existing pellet line at Hematite will be maintained for special pellet runs.

The Need For The Proposed Action: As part of a plan for its nuclear fuel fabrication program, CE plans to conduct all uranium pellet production at its Hematite plant. In order to accomplish this relocation, CE plans to install new pellet production lines at the Hematite plant.

Environmental Impacts of the Proposed Action: The land intended for the new buildings is already committed for industrial use. The new buildings replace buildings that were demolished. Thus, there will be no significant impact as a result of the construction of the new buildings.

Addition of the new lines will not require any changes to the treatment methods for the liquid effluent streams. There will be a potential increase in the volume of liquid effluent. The volume of laundry water will increase in proportion to the number of new production personnel for the pellet lines. The laundry water is filtered, held in a storage tank, and sampled prior to release. The amount of liquid going to the sanitary water system will also increase in proportion to the number of new personnel. Trace amounts of radioactivity enter the system from sinks and showers. The control limits for the liquid effluent radioactivity remain the same. The volume increase by approximately 20 percent. The impact from liquid discharges is expected to be minimal.

The main source of solid waste is from the solidification of liquid waste end product from the recovery/recycle processes and mop water. These liquid wastes are heated and concentrated; the concentrate is solidified and put into drums for transport to a commercial licensed disposal facility. The increase in solid waste is expected to be small and to cause an insignificant impact.

Air effluents from the existing oxide building and the recycle/recovery building are not expected to increase. Effluent from the current pellet building will decrease as the pellet production is moved to the new building. Effluents from the Windsor plant are also expected to decrease as the pellet production activities are relocated to the Hematite facility.

Exhausts from the new pellet building are filtered through a double bank of HEPA filters. The exhaust air from the process areas is sampled continuously during operations. CE has a current limit on total plant exhaust of 150 microcuries

per calendar quarter; this limit remains unchanged. CE's objective is to increase pellet production with no significant increase in the existing rates of effluent release. However, radioactive releases are expected to increase. It it is conservatively assumed that the release doubles, the critical organ dose to the nearest resident would only be 0.15 mrem/yr to the lung. An infant at the nearest residence would receive only 0.27 mrem/yr to the lung. This is well below the 25 mrem permitted by 10 CFR Part 20, § 20.105(c), which incorporates the provisions of EPA's standards in 40 CFR Part 190.

Conclusion: Although there will be an increase in effluent, the staff concludes that there will be no significant impacts associated with the operation of the new pellet lines.

Alternatives to the Proposed Action: Alternatives to the proposed action include complete denial of CE's amendment application. This action would result in operations remaining unchanged. Another alternative would be approval of only one new pellet line. Since impacts from the new operation are expected to be minor, neither of these alternatives offers any real benefit.

Agencies and Persons Consulted: In performing this assessment, staff utilized the environmental report dated March 29, 1989, and amendment applications dated March 22, and May 1, 1989.

Finding of No Significant Impact: The Commission has prepared an Environmental Assessment related to the amendment of Special Nuclear Material License No. SNM-33. On the basis of this assessment, the Commission has concluded that environmental impacts that would be created by the proposed licensing action would not be significant and do not warrant the preparation of an Environmental Impact Statement. Accordingly, it has been determined that a Finding of No Significant Impact is appropriate.

The Environmental Assessment and the above documents related to this proposed action are available for public inspection and copying at the Commission's Public Document Room at the Gelman Building, 2120 L Street NW., Washington, DC. Copies of the Environmental Assessment may be obtained by calling (301) 492-3358 or by writing to the Fuel Cycle Safety Branch, Division of Industrial and Medical Nuclear Safety, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Opportunity for a Hearing

Any person whose interest may be affected by the issuance of this amendment may file a request for a hearing. Any request for hearing must be filed with the Executive Director for Operations, U.S. Nuclear Regulatory Commission, Washington, DC 20555, within 30 days of the publication of this notice in the **Federal Register**, and must comply with the procedures set forth in the Commission's regulation, 10 CFR Part 2, Subpart L, "Informal Hearing Procedures for Adjudications in Materials Licensing Proceedings." Subpart L of 10 CFR Part 2, which became effective March 30, 1989, was published in the **Federal Register** on February 28, 1989.

Dated at Rockville, Maryland, this 17th day of May, 1989.

For the Nuclear Regulatory Commission.

Leland C. Rouse,

Chief, Fuel Cycle Safety Branch, Division of Industrial and Medical Nuclear Safety, NMSS.

[FR Doc. 89-12436 Filed 5-23-89; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards, Subcommittee on AC/DC Power Systems Reliability; Meeting

The ACRS Subcommittee on AC/DC Power Systems Reliability will hold a meeting on June 7, 1989, Room P-110, 7920 Norfolk Avenue, Bethesda, MD.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Wednesday, June 7, 1989—8:30 a.m. until the conclusion of business.

The Subcommittee will review the proposed resolution of Generic Issue 128, "Electrical Power Reliability."

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Medhat El-Zeftawy (telephone 391/492-9901) between 7:30 a.m. and 4:15 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Date: May 16, 1989.

Raymond F. Fraley,

Executive Director.

[FR Doc. 89-12367 Filed 5-23-89; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards; Meeting of the Subcommittee on Human Factors

The ACRS Subcommittee on Human Factors will hold a meeting on June 7, 1989, Room P-100, 7920 Norfolk Avenue, Bethesda, MD.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Wednesday, June 7, 1989—1:00 p.m. until the conclusion of business.

The Subcommittee will discuss the Commission Policy Statement on Education and Experience for Senior Operators and Control Room Supervisors at nuclear power plants.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary

views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the congizant ACRS staff member, Mr. Herman Alderman (telephone 301/492-7750) between 7:30 a.m. and 4:15 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised or any changes in schedule, etc., which may have occurred.

Dated: May 16, 1989.

Raymond F. Fraley,

Executive Director.

[FR Doc. 89-12368 Filed 5-23-89; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-321]

Georgia Power Co., et al; Withdrawal of Application for Amendment to Facility Operating License

The United States Nuclear Regulatory Commission (the Commission) has granted the request of Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, and City of Dalton, Georgia (the licensee) to withdraw a portion of its August 1, 1985, application for proposed amendment to Facility Operating License No. DPR-57 for the Edwin I. Hatch Nuclear Plant, Unit 1, located in Appling County, Georgia.

The proposed amendment would have revised the Technical Specifications related to the testing intervals for components and continued operation with inoperable components.

The Commission has previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on August 26, 1985 (50 FR 34560). However, by letter dated May 15, 1989, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated August 1, 1985, and the licensee's letter dated May 15, 1989, which withdrew 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 the Appling County Public Library, 301 City Hall Drive, Baxley, Georgia 31513.

Dated at Rockville, Maryland this 18th day of May 1989.

For the Nuclear Regulatory Commission.

Lawrence P. Crocker,

Project Manager, Project Directorate II-3, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 89-12437 Filed 5-23-89; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-26833; File No. SR-NASD-89-23]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to NASD Code of Arbitration Procedure.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), ("Act") notice is hereby given that on May 15, 1989 the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The NASD has designated this proposal as one constituting a stated policy, practice, or interpretation under section 19(b)(3)(A)(i) of the Act, which renders the proposed rule change effective upon the Commission's receipt of this filing. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed change to Part I, Section 1 of the NASD Code of Arbitration Procedure corrects the reference therein from Article IV, Section 2(b) of the NASD By-Laws to properly refer to the currently applicable provision of the NASD By-Laws, Article VII, section 1(a)(3). The proposed change to Part III, section 12(a) of the NASD Code of Arbitration Procedure deletes a reference to the Supreme Court decision in *Wilko* v. *Swan*, 346 U.S. 427 (1953), which was overruled on May 15, 1989.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed change to Part I, section 1 of the NASD Code of Arbitration Procedure corrects the reference therein from Article IV, section 2(b) of the NASD By-Laws to properly refer to the currently applicable provision of the NASD By-Laws, Article VII, section 1(a)(3).

The proposed change to Part III, section 12(a) of the NASD Code of Arbitration Procedure would delete a footnote which properly reflected NASD policy in light of the applicable law as of January 14, 1972, the date of the footnote's original filing with the Commission. Due to recent developments in the law which have encouraged the use of securities industry arbitration and the decision on May 15, 1989, of the United States Supreme Court that overruled *Wilko* v. *Swan*, 346 U.S. 427 (1953) [*See Rodriguez de Ouijas et al* v. *Shearson/American Express, Inc.* Docket No. 88-385, ___ U.S. ___ (1989)], the NASD has determined to delete the referenced footnote to reflect its current policy and to prevent unnecessary resort to the courts on the part of participants in the arbitration process. The NASD believes that the proposed rule change is consistent with the provisions of section 15A(b)(6) of the Securities Exchange Act of 1934, which requires that the rules of the Association be designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and, in general, protect investors and the public interest.

The proposed rule change was originally filed as SR-NASD-89-8 pursuant to section 19(b)(3)(A)(i) and was effective upon filing on March 14, 1989. *See*, Securities Exchange Act Release No. 26651 (March 20, 1989); 54

FR 12516 (March 27, 1989). In response to publication of the proposal, the Securities and Exchange Commission received a Petition requesting abrogation. In response to the Petition and to permit the Commission to consider comments related to the filing and the NASD's response thereto, the NASD consented to the treatment of SR-NASD-89-8 as a rule filing pursuant to Section 19(b)(2) effective the close of business on May 12, 1989. *See*, SR-NASD-89-8, Amendment No. 1 filed May 12, 1989. However, given the United States Supreme Court's decision issued May 15, 1989 overturning *Wilko* v. *Swan*, 346 U.S. 427 (1953), the NASD believes that the issues raised by the Petition with respect to the Wilko case have been rendered moot. Therefore, the NASD is refiling the proposed rule change pursuant to section 19(b)(3)(A).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Association believes that this rule change does not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The NASD states that the proposed rule change constitutes a stated policy, practice, or interpretation with respect to the administration of the NASD Code of Arbitration Procedure. The NASD accordingly has filed the proposed rule change pursuant to section 19(b)(3)(A) of the Act. As such, it has become effective upon filing pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b-4 under the Act.

At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by June 14, 1989.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Jonathan G. Katz,

Secretary.

Dated: May 18, 1989.

[FR Doc. 89-12418 Filed 5-23-89; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-26832; File No. SR-Phlx-89-17]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Filing of Proposed Rule Change Relating to Crossing Agency Orders

Pursuant to section 19(b)(1), 15 U.S.C. 78s(b)(1), of the Securities Exchange Act of 1934 ("Act") and Rule 19b-4 thereunder, 17 CFR 240.19b 4, notice is hereby given that on March 27, 1989, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") submitted to the Securities and Exchange Commission ("Commission" or "SEC") a proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Change.

Pursuant to Commission Rule 19b-4, the Exchange hereby proposes to amend its Rule 126 to include a proposed policy clarifying the respective rights and obligations of market participants in executing agency cross transactions. (The following proposed policy contained in Supplementary Material .01 is entirely new material.)

"Crossing" Orders

Rule 126, Supplementary Material .01

(a) When a member organization has both a customer's order to buy and a customer's order to sell the same security at the same price, no member may interfere with this cross by seeking to buy or sell securities for his own account at that price, except to the extent such member has entered a bid or offer at that price that has been publicly disseminated.

(b) When a member organization has a customer's order on one side only and the member organization (or another member organization) is acting as principal on the other side, no member may participate on the customer side of the trade for his own account except under the circumstances set forth in paragraph (a). Members are not required to yield priority to the member organization on the principal side of the cross.

(c) When one member organization has a customer's order on one side and another member organization has a customer's order on the other side, no member may interfere with this cross by seeking to buy or sell securities for his own account except under the circumstances set forth in paragraph (a).

(d) For purposes of this rule, a customer order shall include any order which a broker represents in an agency capacity, including any order of a market maker or other broker-dealer not affiliated with the broker; it shall not include any order of a broker-dealer affiliated with the executing broker, or any associated person of such broker-dealer.

(e) A specialist may not seek to avoid the operation of this rule by entering an order for the specialist's own account with another member in order to have the order placed on the specialist's own book; provided, however, that this shall not prevent a specialist from entering orders in securities traded by an unaffiliated specialist unit.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the

most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to provide guidance to market participants respecting their rights and obligations in executing agency cross transactions. The proposed policy provides that, as a general matter, no member may interfere with a customer cross by buying or selling for his own account. It does provide, however, that the specialist or another member may seek to participate in the cross to the extent he had previously made a bid or offer at the same price as the cross and that bid or offer had been publicly disseminated. He would be permitted to participate up to the size of that bid or offer. Additionally, the specialist or another member could participate in the cross on behalf of any customer orders to buy or sell at the cross price.

The proposal specifies that, for purposes of the rule, a "customer order" includes any order which a broker represents in an agency capacity, including an order of a market maker or unaffiliated broker-dealer. It also specifies that a specialist cannot seek to avoid the operation of the rule by placing an order in one of his specialty stocks with another member in order to have that order placed on the specialist's own book.

The proposed policy ensures that customer orders entrusted to PHLX specialists are not disadvantaged by priority being granted to agency crosses. It further provides that, where a specialist or other member has exposed himself to market risk by publicly disseminating a bid or offer at a specified price, he will be protected from yielding priority to an agency cross up to the size of his disseminated market. Beyond that, however, it establishes clearly that an agency cross is entitled to priority over members' proprietary bids or offers. The proposal reflects concerns raised by the existence of multiple exchange markets in an environment increasingly characterized by substantial block positioning. The proposal is intended to address that concern in a manner consistent with auction market principles, striking an appropriate balance between competing needs of various groups of customers and between the varying interests of equity specialists, options market makers and floor brokers.

The proposed rule change is consistent with section 6(b)(5) of the Act in that it will promote just and equitable principles of trade, protect investors and promote the public interest by assuring that agency cross transactions are executed in a fair and orderly auction market environment. Additionally, the proposal is consistent with section 11A(a)(1)(C)(ii) and (iv) of the Act in that it will promote fair competition among brokers and dealers and the practicability of brokers executing investors'orders in the best market.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Phlx does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The proposed rule change has been reviewed and approved by the PHLX's Options Committee.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approved such proposed rule change, or,

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by June 14, 1989.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

May 18, 1989.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 89-12419 Filed 5-23-89; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-16960; 812-6804]

Freedom Investment Trust; Application

May 17, 1989.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "1940 Act").

Applicants: Freedom Investment Trust (the "Applicant"), including Freedom Managed Tax Exempt Fund (the "Fund") and any subsequent series of the Fund which seeks as its objective tax-exempt income (the "Subsequent Tax-Exempt Income Series").

Relevant 1940 Act Sections: Exemption requested under section 6(c) of the 1940 Act from the provisions of section 22(d) of the 1940 Act.

Summary of Application: Applicant seeks an order amending existing orders of the Commission (the "Existing Orders") granted under section 6(c) of the 1940 Act, which authorized the Applicant and any subsequent series of the Applicant to impose, waive and defer a contingent deferred sales load ("CDSL") with respect to certain redemptions of shares of the Applicant's series. The order requested would permit the Fund and the Subsequent Tax-Exempt Income Series to waive the CDSL on redemptions by the Freedom Income Trust or any future series of the Freedom Income Trust unitholders (the "Unitholders") whose shares were purchased in connection with Applicant's proposed dividend reinvestment program (the "Dividend Reinvestment Program").

Filing Dates: The application was filed on July 24, 1987 and an amendment thereto was filed on February 2, 1989.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing the SEC's Secretary and serving Applicant with a copy of the

request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on June 9, 1989, and should state the nature of the requester's interest, the reason for the request, and the issues contested. Hearing requests also should be accompanied by proof of service on the Applicant in the form of affidavits or, for lawyers, certificate of service. Requests for notification of a hearing may be made by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549; Applicant, Freedom Investment Trust, One Beacon Street, Boston, MA 02108.

FOR FURTHER INFORMATION CONTACT: Staff Attorney Bibb L. Strench (202) 272–2856, or Branch Chief Karen L. Skidmore (202) 272–3023 (Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person, or the SEC's commercial copier: (800) 231–3282 (in Maryland (301) 258–4300).

Applicant's Representations

1. Applicant is registered under the 1940 Act as an open-end management investment company and was organized as a Massachusetts business trust on March 29, 1984. It is a series company whose shares are offered for sale to the public through broker-dealers pursuant to a distribution agreement with Tucker, Anthony & R.L. Day, Inc. and Freedom Distributors Corporation (the "Distributors"). The Applicant's investment adviser is Freedom Capital Management Corporation (formerly Tucker Anthony Management Corporation) (the "Adviser"). The Distributors and the Adviser are indirect, wholly-owned subsidiaries of John Hancock Mutual Life Insurance Company.

2. Applicant currently pays the Distributors monthly distribution fees with respect to each series (except the Freedom Money Market Fund) as compensation for services provided and expenses borne by the Distributors in connection with the distribution of the shares of Applicant's series.

3. Shares of each of Applicant's series (except the Freedom Money Market Fund) are offered without the imposition of a front-end sales load, but a CDSL is imposed upon certain redemptions of shares by investors. The CDSL imposed upon redemption does not, in the aggregate, exceed 3% of the total cost of the shares redeemed.

4. Applicant has received Existing Orders from the SEC pursuant to section 6(c) of the 1940 Act:

(a) To permit the imposition of a CDSL on certain redemptions of shares of its Freedom Government Plus Fund and Freedom Equity Value Fund series and any subsequent similar series, and to waive such CDSL on certain redemptions (*See* Investment Company Act Release No. 15118 (May 28, 1986));

(b) To permit the imposition of a CDSL on certain redemptions of shares of Applicant's Freedom Gold & Government Trust, Freedom Regional Bank Fund and Freedom Government/Index Option Fund series (formerly a series of the Applicant the registration of which has been terminated) and any subsequent similar series of the Applicant, and to waive such CDSL on certain redemptions (*See* Investment Company Act Release No. 15445 (December 4, 1986));

(c) To permit Freedom Investment Trust II and any subsequent similar series thereof to impose a CDSL on certain redemptions of its shares and to waive, defer and reduce such CDSL under certain circumstances, and to permit certain offers of exchange of shares among series of shares of each of the funds of the Tucker Anthony Family of Funds, including the Applicant (*See* Investment Company Act Release No. 15745 (May 19, 1987) and Investment Company Act Release No. 15745A (June 2, 1987)); and

(d) To permit the imposition of a new schedule of the CDSL on certain redemptions of shares; to permit the waiver of the CDSL for redemptions by banks or trust companies acting as trustees; and to permit the continuation of certain offers of exchange and deferral of the CDSL thereon, all with respect to the existing series and any future series of the Applicant whose shares are sold on substantially the same basis as the existing series (*See* Investment Company Act Release No. 16487 (July 20, 1988)).

5. Freedom Income Trust consists of thirty-four separate unit investment trusts each of which is a separate legal entity. It was created under New York law by a Trust and Indenture Agreement among Tucker Anthony & R.L. Day, Inc. as Sponsor and Depositor, United States Trust Company of New York as Trustee, and Kenny Information Systems, as Evaluator. Units of each series of Freedom Income Trust previously have been registered with the Commission and a listing of all such series and their corresponding 1933 Act registration numbers is attached to the Application as Exhibit A.

6. Applicant plans to institute a program by which distributions from the series of Freedom Income Trust may be invested, at the option of the Unitholder, in shares of the Fund and Subsequent Tax-Exempt Income Series. If a Unitholder elects to participate in the Dividend Reinvestment Program, the distributions of both principal and interest will be automatically invested each month without any sales charge in shares of the Fund. Unitholders that do not elect to have their monthly distributions reinvested in shares of the Fund currently have the option of receiving their dividends monthly or semi-annually in cash. There is no option to have a Unitholder's distribution reinvested into the Freedom Income Trust.

7. Unitholders must advise the Trustee by written notice of their election to have their monthly distributions automatically reinvested in shares of the Fund at least ten days prior to the record date of the next distribution of the series of Freedom Income Trust in which they invested in order for such election to be in effect for such record date. Any such election shall remain in effect until a subsequent written notice of cancellation is received by the Trustee from the Unitholder. The timing of the distributions to Unitholders will not be affected by their decision to have their distributions reinvested in shares of the Fund. The Dividend Reinvestment Program will also be available to secondary market purchasers of any series of Freedom Income Trust.

8. The Sponsor of Freedom Income Trust has entered into a custodial agreement with the Trustee pursuant to which it is responsible for the administration of a single collective account which holds all of the Unitholders' reinvestments with the Fund. The service provided for each reinvesting Unitholder by the Trustee include record-keeping, reinvestment of distributions received of Fund shares, distribution of account statements to each Unitholder and mailing reports, proxy statements and other required Fund printed materials.

9. The CDSL is assessed to compensate the Distributors for their sales efforts in connection with the initial sale of Fund shares. The Distributors are not expected to incur significant sales costs in connection with the proposed sale of shares of the Fund purchased with Freedom Income Trust Unitholders' distributions because: (1) The Distributors will not undertake any in-person sales solicitation or presentation in connection with such sales; (2) the Distributors expect to incur

reduced distribution, advertising or other expenses with respect to such sales; and (3) once an Unitholder has agreed to invest his or her distributions in shares of the Fund, it is expected that additional shares of the Fund will be purchases periodically as distributions are paid by Freedom Income Trust without further sales effort by the Applicant or the Distributors.

10. Applicant will describe the Dividend Reinvestment Program and waiver of the minimum investment requirement for the Fund in the prospectuses of the Fund and Freedom Income Trust. Each Unitholder will be provided with a current prospectus of the Fund prior to participating in the Dividend Reinvestment Program. Any expenses incurred by the Fund in connection with the Dividend Reinvestment Program will be de minimis and will be borne by the Fund. No shareholder of the Fund will pay an increased sales charge as a result of this proposal.

Applicant's Legal Conclusions

The waiver of the CDSL for those Unitholders who participate in the Dividend Reinvestment Program and the program itself are consistent with the requirements of proposed Rule 6c-10 under the Act as set forth in Investment Company Act Release No. 16619 (November 2, 1988).

2. The additional category for waiver of the CDSL requested is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act because it simply mirrors the method of calculation of the CDSL by the Applicant with respect to any redemptions of its series where the CDSL is not imposed on shares purchased by shareholders through reinvestment of dividends or capital gains distributions.

3. Furthermore, the requested waiver of the CDSL is appropriate and in the public interest because the Unitholders are subject to an initial sales charge imposed by Freedom Income Trust upon investing in a series of Freedom Income Trust or any future series of Freedom Income Trust.

Applicant's Condition

The waiver of the CDSL imposed on redemptions of shares of the Fund and Subsequent Tax-Exempt Income Series purchased pursuant to the Dividend Reinvestment Program offered to the Unitholders of any series of Freedom Income Trust or any future series of Freedom Income Trust will comply with all the provisions of Rule 22d-1 under the Act as if the Rule was applicable.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-12420 Filed 5-23-89; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35-24894]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

May 18, 1989.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by June 12, 1989 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

CNG Energy Company, et al. (70-6680)

Consolidated Natural Gas Company ("Consolidated"), a registered holding Company, and its wholly-owned, non-utility subsidiary, CNG Energy Company ("CNG Energy"), both located at CNG Tower, Pittsburgh, Pennsylvania 15222-3199, have filed a post-effective amendment to their application-declaration pursuant to sections 6(b), 9(a), 10, 12(b), and 13(b) of the Act and Rule 45, 50(a)(5), 87, 90 and 91 thereunder.

CNG Energy was formed with an initial capitalization of $12.5 million pursuant to a Commission order, dated July 22, 1982 (HCAR No. 22582). By subsequent Commission order, CNG Energy was authorized to increase its capitalization by up to $100 million, for a total capitalization of $112.5 million, and to invest in qualifying cogeneration facilities ("QFs") as defined in the Public Utility Regulatory Policies Act of 1978 ("PURPA") and the rules and regulations promulgated thereunder by the Federal Energy Regulatory Commission in amounts up to $100 million (HCAR No. 24253, December 3, 1986) ("Order"). The Order permitted CNG Energy's investments in QFs to be in the form of the acquisition of stock, participation in partnerships, joint ventures, and other business entities, the making and/or guaranteeing of loans, project financings, and involvement in other financing arrangements. CNG Energy was authorized to proceed in acquiring interests in QFs, subject to the $100 million limitation on investment, without further Commission authorization. Any cogeneration corporation, partnership, joint venture, or other business entity in which CNG Energy might acquire an interest was also authorized to engage in financing through project financing, short-term and long-term borrowings from third parties or from the project's owners or sponsors, or any other means and in such amounts as may be deemed appropriate by the project managers.

The Order also indicated that the interest rates on notes proposed to be issued by CNG Energy to Consolidated bear substantially the same interest rate as incurred by Consolidated for comparable securities. Short-term borrowing by CNG Energy from non-associated third parties are not to exceed a term of three years, and the interest rates thereon are not to exceed 2% over the base or prime rate. Permanent financing of CNG Energy from nonassociated third parties may be for a term of from 3 to 20 years, but in no event will any term loan exceed 20 years. The long-term rate will be no greater than 300 basis points over the rate for U.S. Treasury Securities of a comparable term.

Under the Order, there would be calculated against the $100 million authorization: (i) The equity investment of CNG Energy in a partnership or non-wholly owned corporation owning a QF project, and (ii) recourse debt incurred by CNG Energy and any debt issued by CNG Energy to Consolidated for purposes of QF investments other than equity investments already accounted for under (i). In the event, however, of CNG Energy itself being the sole owner of a QF project, the entire cost of the project, including third party financing,

would be calculated against the aggregate authorization.

Through March 31, 1989, CNG Energy has invested approximately $19.2 million for full or partial interests in four QF projects, as follows:

Name and location of project	Size megawatts	CNG Energy's ownership percentage	CNG Energy's investment through March 31, 1989
Cogent Little Falls, Little Falls, NY	3.8	50	[1] $2,360,000
Lakewood Project, Lakewood, NJ	215.0	100	16,050,000
Sanitary Dairy Johnston, PA	.8	100	263,000
Gruman Airospace, Bethpage, NY	50.0	30	528,000

[1] Net balance, reduced by cash distributions of $490,000 received in 1987 and 1988.

One of CNG Energy's QF investments is the continuing development of the Lakewood Project ("Lakewood"), a 215 megawatt QF project in Lakewood, New Jersey. CNG Energy has an equity investment in the form of accumulated development costs of approximately $16 million in Lakewood through March 31, 1989. Since the anticipated total cost of Lakewood is $205 million, an amount in excess of the $80.2 million remaining on its investment authority, CNG Energy must either find a nonassociate coinvestor for the project or obtain additional dollar amount authorization from the Commission in order to continue to own the entire project. Therefore, in order to retain both options, CNG Energy requests an increase in its authorization for investment in QFs from $100 million to $289 million. The authorization increase in the amount of $189 million is equal to the estimated aggregate cost of Lakewood of $205 million, less its current equity investment in Lakewood of approximately $16 million as of March 31, 1989. CNG Energy would not utilize any portion of the $189 million increase in authorization for investments in QF projects other than Lakewood. In the event that Lakewood is unable to maintain its QF status under PURPA for any reason, CNG Energy would continue to operate and retain its interest in the facility until it is able to sell or otherwise dispose of such interest without material loss to its stockholders.

CNG Energy accordingly proposes to increase its authorized capitalization by $189 million, or from $112.5 million to $301.5 million. It further proposes to increase to $289 million the financing that it can obtain through December 31, 1991 for QF investments through (i) the issuance and sale of common stock and/or unsecured notes to Consolidated and/or open account advances from Consolidated and (ii) notes to be issued to nonassociated parties. Consolidated's authority to guarantee notes issued to third parties would also accordingly be expanded to $289 million. All other terms of the Order with respect to such financing by CNG Energy, including limitation on interest rates and maturities, would remain unchanged, except that the following additional provisions would apply to CNG Energy's financing of Lakewood.

1. Any long-term third party financing of Lakewood will involve debt with redemption provisions consistent with the Commission's Statement of Policy regarding first mortgage bonds (HCAR No. 16369, May 8, 1969). Such debt may be secured or unsecured and shall not be convertible into, or carry any right to purchase, any other securities of the issuer or any associate company of Consolidated.

2. CNG Energy expects that its return on its equity investment in Lakewood will not be lower than the latest generic rate of return on common equity for public utilities allowed by the Federal Energy Regulatory Commission under the Federal Power Act.

Further, CNG Energy's current investment in the other three QFs listed above, comply with the financial limitations contained in the Order, and satisfy the provisions of 1. and 2., above.

CNG Energy requests an exception from the competitive bidding requirements of Rule 50 pursuant to Rule 50(a)(5) with respect to the issuance of securities in connection with the financing of Lakewood by CNG Energy or any entity in which CNG Energy is a coinvestor. CNG Energy also requests authority to form a single purpose, wholly-owned subsidiary ("Subsidiary") to own its equity interest in Lakewood in the event such additional authorization is used. In order to better manage the project and to insulate the CNG system from possible risks, the Subsidiary would engage in the investing and financing transactions with respect to Lakewood described above in lieu of CNG Energy. The aggregate initial capitalization of such Subsidiary would not exceed $205 million. Such Subsidiary would only have the authority and obligations that CNG Energy would have under this filing as such relate to Lakewood. Consolidated would also have the authorization to guarantee the notes issued by the Subsidiary to non-affiliated third party lenders if the financing of Lakewood occurs at the Subsidiary level rather than by CNG Energy. CNG Energy or Consolidated Natural Gas Service Company, Inc. may perform services for the Subsidiary pursuant to the Act.

Request is also made for authorization for CNG Energy, or the Subsidiary if it is the owner of Lakewood, to subsequently acquire, without further prior Commission authorization, an interest in a limited or general partnership, joint venture, corporation or any combination thereof ("Entity") to be formed by CNG Energy or the Subsidiary, as the case may be, with one or more coinvestors in Lakewood. Any such third-party coinvestor(s) would not own more than 50% of the equity interest in the Entity. Such Entity would assume by assignment all the rights and obligations of CNG Energy or the Subsidiary, as the case may be, under any pre-existing long-term project financing contract for Lakewood.

The Southern Company (70-7654)

The Southern Company ("Southern"), 64 Perimeter Center East, Atlanta, Georgia 30346, a registered holding company, and its subsidiaries, Alabama Power Company, 600 North 18th Street, Birmingham, Alabama 35291, Georgia Power Company, 333 Piedmont Avenue, NE., Atlanta, Georgia 30308, Gulf Power Company, 500 Bayfront Parkway, Pensacola, Florida 32501, Mississippi Power Company, 2992 West Beach, Gulfport, Mississippi 39501, Southern Company Services, Inc., 800 Shades Creek Parkway, Birmingham, Alabama 35202, Southern Electric Generating Company, 600 North 18th Street, Birmingham, Alabama 35291, and Southern Electric International, Inc., 100 Ashford Center North, Atlanta, Georgia 30338 (collectively, "Employing Companies"), have filed an application-declaration pursuant to sections 6(a), 7, 9(a) and 10 of the Act and Rule 50(a)(5) thereunder.

Southern proposes to issue and sell from time-to-time through March 31, 1992, a maximum of 2,000,000 shares of its authorized but unissued common stock, par value $5 per share ("Additional Common Stock"), in order to fund the Employee Stock Ownership

Plan of the Southern Company System ("Plan"). The Employing Companies and/or the trust established pursuant to the Plan ("Trust") will purchase the Additional Common Stock. Southern requests an exception from the competitive bidding requirements of Rule 50 pursuant to Rule 50(a)(5) for its issuance of the Additional Common Stock. Southern proposes to apply the proceeds it receives from the sale of the Additional Common Stock for further equity investments as authorized by order of the Commission dated March 30, 1989 (HCAR No. 24850) ("March 1989 Order") and as may be hereafter so authorized and for other corporate purposes.

Under the Plan, the Employing Companies may contribute cash and/or Additional Common Stock to the Trust. Cash contributed to the Trust under the Plan may also be invested in Southern's common stock through open market purchases, private purchases from parties other than Southern or purchases directly from Southern. The purchase price per share of Additional Common Stock acquired from Southern directly by the Trust shall be the fair market value as of the date of acquisition.

In order to reduce its common equity to total capitalization ratio, Southern also proposes to acquire for its own account up to 15 million shares, or approximately 5% of its outstanding common stock, $5 par value, in negotiated or open market transactions or tender offers from time-to-time through March 31, 1992. The purchase price per share paid by Southern in a negotiated transaction will be based on the price at which shares are traded in consolidated trading on the New York Stock Exchange. Funds for the purchase of the common stock will be obtained from internally generated cash, including short-term bank borrowings authorized by the March 1989 Order.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-12421 Filed 5-23-89; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[License No. 02/02-5512]

Trusty Capital Inc.; Issuance of a Small Business Investment Company License

On August 23, 1988, a notice was published in the Federal Register (53 FR 32136) stating that an application has been filed by Trusty Capital Inc., 350 Fifth Avenue, Suite 2026, New York, New York 10118, with the Small Business Administration (SBA) pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1983)) for a license as a small business investment company.

Interested parties were given until close of business September 22, 1988, to submit their comments to SBA. No comments were received.

Notice is hereby given that, pursuant to section 301(d) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 02/02-5512 on May 1, 1989, to Trusty Capital Inc. to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

Dated: May 11, 1989.

[FR Doc. 89-12377 Filed 5-23-89; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE-89-21]

Petition for Exemption; Summary of Petitions Received and 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: June 13, 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 May 18, 1989.

Denise Donohue Hall,

Manager, Program Management Staff, Office of the Chief Counsel.

Petitions for Exemption

Docket No.: 25796
Petitioner: Evergreen Helicopters, Inc.
Regulations Affected: 14 CFR 135.379 and 135.385
Description of Relief Sought: To allow petitioner to operate five Casa 212 aircraft under certain specified operating conditions.

Docket No.: 13203
Petitioner: Boeing Commercial Airplanes
Sections of the FAR Affected: 14 CFR 25.807(c)(1) and (5), 25.809(f)(1), and 25.813(b)
Description of Relief Sought: To amend Exemption No. 1870C that permits the carriage on the upper deck of Boeing 747-100 airplanes of five non-crewmembers, plus three crewmembers for those airplanes that have been converted to an all-cargo main-deck configuration. These airplanes are unofficially referred to as 747 Special Freighters. The amendment would change the wording of the exemption to include all 747-100 and 747-200 airplanes modified to the Special Freighter configuration under the Supplemental Type Certification process.

Docket No.: 23465
Petitioner: Everts Air Fuel
Sections of the FAR Affected: 14 CFR 91.31(a)
Description of Relief Sought/ Disposition: To extend and amend Exemption No. 4296A that allows petitioner to operate its DC-6B aircraft at a 5 percent increase in zero fuel and

landing weight. The amendment would allow operation of a second DC–6B aircraft at the increased zero fuel and landing weight.

Grant, May 12, 1989, Exemption No. 4296B

Docket No.: 25302
Petitioner: Flight International, Inc.
Sections of the FAR Affected: 14 CFR 135.169 and 25.853
Description of Relief Sought/ Disposition: To allow petitioner to operate all-cargo aircraft without complying with the seat cushion flammability requirements of those sections that became effective November 28, 1987.

Denial, May 11, 1989, Exemption No. 5048

Docket No.: 25692
Petitioner: JayHawk Air, Inc.
Sections of the FAR Affected: 14 CFR 43.3(g)
Description of Relief Sought/ Disposition: To allow pilots employed by petitioner to perform the preventive maintenance function of removing and/ or replacing the passenger seats of aircraft used in Part 135 operations.

Grant, May 2, 1989, Exemption No. 5045

Docket No.: 063CE
Petitioner: Fairchild Aircraft Corporation
Sections of the FAR Affected: 14 CFR 23.777(g)
Description of Relief Sought/ Disposition: To allow the landing gear control handle to be located to the right of the throttle center line.

Grant, May 4, 1989, Exemption No. 5044

[FR Doc. 89–12432 Filed 5–23–89; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: May 18, 1989.

The Department of the 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.

Internal Revenue Service

OMB Number: 1545–0951.
Form Number: 5434, 5434A.
Type of Review: Revision.
Title: Application for Enrollment; Application for Renewal of Enrollment.
Description: The information relates to the granting of enrollment status to actuaries admitted (licensed) by the Joint Board for the Enrollment of Actuaries to perform actuarial services under the Employee Retirement Income Security Act of 1974.
Respondents: Individuals or households.
Estimated Number of Respondents: 6,000.
Estimated Burden Hours Per Response/Recordkeeping: Form 5434, 1 hour; Form 5434–A, 27 minutes.
Frequency of Response: Once every three years.
Estimated Total Recordkeeping/ Reporting Burden: 3,800 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. 89–12414 Filed 5–23–89; 8:45 am]
BILLING CODE 4810–25–M

Public Information Collection Requirements Submitted to OMB for Review

Date: May 18, 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 2409, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Departmental Offices

OMB Number: 1505–0092, 1505–0093.
Form Number: TD F 90–22.29 (TFAC 33).
Type of Review: Reinstatement.
Title: Libyan Sanctions Regulations.
Description: Submissions will provide U.S. Government with information to be used in administering and enforcing sanctions against Libya.
Respondents: Individuals or households.
Estimated Number of Respondents: 150.
Estimated Burden Hours Per Response: 1 hour.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 150 hours.
Clearance Officer: Dale A. Morgan (202) 343–0263, Departmental Offices, Room 2409, Main Treasury Building, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.
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. 89–12415 Filed 5–23–89; 8:45 am]
BILLING CODE 4810–25–M

Customs Service

Performance Review Boards; Appointment of Members

AGENCY: Customs Service, Department of Treasury.

ACTION: General Notice.

SUMMARY: This notice announces the appointment of the members of the United States Customs Service Performance Review Boards (PRBs) in accordance with 5 U.S.C. 4313(c)(4). The purpose of the PRBs is to review senior executives' performance appraisals and make recommendations regarding performance appraisals and performance awards.

EFFECTIVE DATE: May 15, 1989.

FOR FURTHER INFORMATION, CONTACT: Jerry L. Padalino, Director, Office of Human Resources, U.S. Customs Service, Post Office Box 636, Washington, DC 20044; (202) 634–5270.

Background

There are two Performance Review Boards in the U.S. Customs Service.

Performance Review Board 1

The purpose of this Board is to review the performance appraisals of Senior Executives rated by the Commissioner and Deputy Commissioner. The members are:

Chester C. Bryant, Comptroller, Bureau of Alcohol, Tobacco and Firearms

Stephen E. Garman, Deputy Director, U.S. Secret Service
John W. Mangels, Director, Office of Operations, Department of Treasury
R. Richard Newcomb, Director, Office of Foreign Assets Control, Department of Treasury

Performance Review Board 2

The purpose of this Board is to review the performance appraisals of all Senior Executives except those rated by the Commissioner or Deputy Commissioner. All are Assistant Commissioners, Regional Commissioners, or the equivalent, of the U. S. Customs Service. The members are:

Assistant Commissioners: Samuel H. Banks, Office of Inspection and Control, D. Lynn Gordon, Office of Commercial Operations, William Green, Office of Internal Affairs, William P. Rosenblatt, Office of Enforcement, James W. Shaver, Office of International Affairs.

Comptroller: William F. Riley.

Regional Commissioners: John R. Grimes, South Central Region, George Heavey, Southeast Region, Edward F. Kwas, New York Region, Richard G. McMullen, North Central Region, James C. Piatt, Southwest Region, Philip W. Spayd, Northeast Region, Quintin L. Villanueva, Pacific Region.

Dated: May 12, 1989.

William von Raab,

Commissioner of Customs.

[FR Doc. 89–12376 Filed 5–23–89; 8:45 am]

BILLING CODE 4820–02–M

DEPARTMENT OF VETERANS AFFAIRS

Commission to Assess Veterans' Education Policy; Renewal

This gives notice under the Federal Advisory Committee Act (Pub. L. 92–463) of October 6, 1972, that the Department of Veterans Affairs Commission to Assess Veterans' Education Policy has been renewed for a two year period beginning May 9, 1989 through May 9, 1991.

Dated: May 15, 1989.

By direction of the Secretary.

Rosa Maria Fontanez,

Committee Management Officer.

[FR Doc. 89–12378 Filed 5–23–89; 8:45 am]

BILLING CODE 8320–01–M

Advisory Committee on the Readjustment Problems of Vietnam Veterans; Committee Renewal

This gives notice under the Federal Advisory Committee Act (Pub. L. 92–463) of October 6, 1972, that the Department of Veterans Affairs Advisory Committee on the Readjustment Problems of Vietnam Veterans has been renewed for one year beginning May 10, 1989 through May 10, 1990.

Dated: May 16, 1989.

By direction of the Secretary.

Rosa Maria Fontanez,

Committee Management Officer.

[FR Doc. 89–12406 Filed 5–23–89; 8:45 am]

BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 54, No. 99
Wednesday, May 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).

COMMODITY FUTURES TRADING COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 54 FR 18627, May 1, 1989.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 10:00 a.m., Tuesday, May 23, 1989.

CHANGE IN THE MEETING: The Commission has rescheduled the open meeting to discuss fourth quarter FY 1989 objectives for 10:00 a.m., Tuesday, May 30, 1989.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, Secretary of the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 89-12584 Filed 5-22-89; 3:25 pm]

BILLING CODE 6351-01-M

FEDERAL ENERGY REGULATORY COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: May 15, 1989, 54 FR 20958.

CHANGE IN THE MEETING: The following Docket Numbers and Company have been added to Items CAP-13, CAG-3, CAG-74 and RP-1 for the agenda of May 17, 1989:

Item No., Docket No., and Company

CAP-13
P-4182-000, Shorock Hydro, Inc.
CAG-3
RP89-168-000, ANR Storage Company
CAG-74
RP89-50-000, Florida Gas Transmission Company
RP-1
RP89-33-000, Northern Border Pipeline Company

Lois D. Cashell,

Secretary.

[FR Doc. 89-12477 Filed 5-19-89; 4:42 am]

BILLING CODE 6717-01-M

federal register

Wednesday
May 24, 1989

Part II

Environmental Protection Agency

40 CFR Parts 302 and 355
Reportable Quantity Adjustment—Radionuclides; Final Rules

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 302

[FRL-3352—5]

Reportable Quantity Adjustment—Radionuclides

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Sections 103(a) and 103(b) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended, require that persons in charge of vessels or facilities from which a hazardous substance has been released within a 24-hour period in a quantity equal to or greater than its reportable quantity (RQ) immediately notify the National Response Center of the release. Section 102(b) of CERCLA establishes RQs at one pound for releases of designated hazardous substances, except those substances for which RQs have been established pursuant to section 311(b)(4) of the Clean Water Act (CWA). The RQ for radionuclides established by CERCLA is one pound.

Section 102(a) authorizes the Administrator of the U.S. Environmental Protection Agency (EPA) to adjust RQs for hazardous substances and to designate as hazardous substances those substances that, when released into the environment, may present substantial danger to the public health or welfare or the environment. EPA recognizes that an RQ of one pound for radionuclides may not be appropriate because releases of much less than one pound of radionuclides may present a substantial threat to public health or welfare or the environment. This final rule adjusts the RQ for radionuclides established under section 102(b) and administratively exempts from reporting certain radionuclide releases for which reporting would serve no useful purpose. This RQ adjustment is intended to allow EPA to focus its resources on the most serious releases and to protect public health and welfare and the environment more effectively.

EFFECTIVE DATE: July 24, 1989.

ADDRESSES: The toll-free telephone number of the National Response Center is 1-800/424-8802; in the Washington, DC metropolitan area 1-202/267-2675.

The record supporting this rulemaking is available for public inspection at the Superfund Docket in Room 2427, U.S. Environmental Protection Agency (OS-240), 401 M Street, SW, Washington, DC 20460 (Docket Number 102RQ-RN). The docket may be inspected between 9 a.m. and 4 p.m. Monday through Friday. To review docket materials, you may make an appointment by calling 1-202/382-3046. The public may copy a maximum of 50 pages from any regulatory docket at no cost. Additional copies cost $0.20 per page.

FOR FURTHER INFORMATION CONTACT: Ms. Pamela Harris, Project Officer, Response Standards and Criteria Branch, Emergency Response Division (WH-548B), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, or the RCRA/Superfund Hotline, 1-800/424-9346; in the Washington, DC metropolitan area, 1-202/382-3000.

SUPPLEMENTARY INFORMATION: The contents of today's preamble are listed in the following outline:

I. Introduction

A. Statutory Authority

The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or Superfund) of 1980 (Pub. L. 96-510), 42 U.S.C. 9601 et seq., as amended by the Superfund Amendments and Reauthorization Act (SARA) of 1986 (Pub. L. 99-499), establishes broad federal authority to respond to releases or threats of releases of hazardous substances from vessels and facilities. Section 101(14) of CERCLA defines the term "hazardous substances" by reference to other environmental statutes. Section 102 of CERCLA gives the U.S. Environmental Protection Agency (EPA) authority to designate additional hazardous substances. Currently there are 719 CERCLA hazardous substances.

Section 103 of CERCLA requires the person in charge of a vessel or facility [1] to notify the National Response Center immediately when there is a release of a hazardous substance in an amount equal to or greater than the reportable quantity (RQ) for that substance. As established by EPA in an earlier RQ rulemaking (50 FR 13463, April 4, 1985), a 24-hour period is used for measuring whether the RQ of a substance has been released (i.e., only releases of an RQ or more within 24 hours need to be reported). Section 102(b) of CERCLA establishes RQs at one pound for releases of hazardous substances, except for those substances for which RQs were established pursuant to section 311 of the Clean Water Act (CWA). Section 102(a) of CERCLA authorizes EPA to adjust all of these RQs by regulation.

A major purpose of the section 103 (a) and (b) notification requirements is to alert the appropriate government officials to releases of hazardous substances that may require a response to protect public health or welfare or the environment. EPA emphasizes that a hazardous substance RQ is merely a trigger for informing the government of a release so that the appropriate government personnel can evaluate the need for a response action and can undertake any necessary action in a timely fashion. Federal personnel will evaluate all reported releases, but will not necessarily initiate a response because the release of an RQ will not necessarily pose a hazard in all circumstances. Government personnel will assess each reported release on a case-by-case basis to determine the appropriate response action, if any. In certain limited situations, when direct reporting to the National Response Center is impracticable, the person in

[1] For this final rule on radionuclides, it is important to consider the CERCLA definition of "facility" in section 101(9). A number of consumer products may contain (and at some point release) radionuclides. Because the CERCLA definition of "facility" specifically excludes any consumer product in consumer use, any releases of radionuclides from such products when in consumer use are not subject to the notification requirements discussed in this final rule. Examples of such consumer products are smoke detectors, radon mitigation systems (for reducing indoor radon levels in homes), and home water purification systems used to reduce radon levels in drinking water. Any smoke detector, radon mitigation system, or home water purification system commercially purchased and used by a consumer would be excluded from the CERCLA definition of "facility," and thus radionuclide releases from such systems would not be subject to this rule's notification requirements.

charge may report to the nearest Coast Guard- or EPA-predesignated On-Scene Coordinator (OSC). If it is not possible to notify the National Response Center or predesignated OSC immediately, reports may be made immediately to the nearest Coast Guard unit, provided that the person in charge of the facility notifies the National Response Center as soon as possible (40 CFR 300.63(b) and 33 CFR 153.203).

Section 103(b) of CERCLA authorizes EPA to seek criminal penalties from persons in charge of vessels or facilities who knowingly fail to report releases of hazardous substances that equal or exceed RQs. SARA amended section 103(b) of CERCLA by increasing the maximum penalties and years of imprisonment for failure to report. Any person who, as soon as he or she knows of a reportable release, fails to report the release immediately pursuant to section 103(b) or who submits in such a notification any information that she or he knows to be false or misleading, shall, upon conviction, be fined in accordance with the applicable provisions of Title 18, United States Code, or imprisoned for not more than three years (or not more than five years for second and subsequent convictions), or both. Notifications received under section 103(b), or information obtained by exploitation of such notifications, cannot be used against any reporting person in any criminal case, except a prosecution for perjury or for giving a false statement. Section 109 of CERCLA authorizes EPA to assess civil penalties for violations of CERCLA section 103(b), enforced through administrative or judicial civil proceedings. In addition, section 310 of CERCLA authorizes citizen suits against persons who violate the notification requirements of section 103(b).

In addition to the reporting requirements established by CERCLA, section 304 of the Emergency Planning and Community Right-To-Know Act of 1986 (SARA Title III) requires the owner or operator of certain facilities to report releases of CERCLA hazardous substances to state and local entities. SARA section 304 notification must be given as soon as the owner or operator of a facility has knowledge of a release of an RQ or more (one pound or more if a reporting trigger is not established by regulation). The notification is to be given to the community emergency coordinator for each local emergency planning committee for any area likely to be affected by the release and to the state commission of any state likely to be affected by the release. Through this notification, state or local officials can assess whether a response to the release is appropriate, regardless of whether the federal government intends to respond. SARA section 304 notification requirements apply only to releases that have the potential for off-site exposure and that are from facilities that produce, use, or store a "hazardous chemical," as defined by regulations promulgated under the Occupational Safety and Health Act of 1970 (29 CFR 1910.1200(c)) and by section 311 of SARA.

Section 325 of SARA authorizes EPA to seek penalties, including criminal penalties for willful and knowing violations, against facility owners and operators who fail to report releases of hazardous substances pursuant to section 304. In addition, SARA section 326 authorizes citizen suits against facility owners and operators for failure to submit a follow-up emergency notice of the release pursuant to SARA section 304(c).

B. Background of this Rulemaking

On May 25, 1983, EPA proposed a rule (48 FR 23552) to clarify procedures for reporting releases and to adjust RQs for 387 of the then 696 CERCLA hazardous substances. That Notice of Proposed Rulemaking (NPRM) also listed, for the first time, the "hazardous substances" designated by section 101(14) of CERCLA. The NPRM discussed in detail the CERCLA notification provisions, including the persons required to notify the National Response Center of a release, the substances for which notification is required, the types of releases subject to the notification requirements, the exemptions from these notification requirements, the methodology and criteria used to adjust the RQ levels, and the adjustments proposed under section 102 of CERCLA and under section 311 of CWA. These issues were discussed further in the preamble to a rulemaking finalizing 340 of the 387 proposed RQs, published on April 4, 1985 (50 FR 13456). They will be discussed again in this preamble only to the extent that EPA needs to provide additional explanation of these issues in the specific context of adjusting RQs for releases of radionuclides.

On March 16, 1987, EPA published an NPRM concerning the adjustment of RQs for radionuclide releases (52 FR 8172), with the comment period ending on May 15, 1987. A total of 28 comment letters were received, five of which were after the comment deadline, totaling about 150 pages. The comments received, together with the Agency's responses, are contained in the Responses to Comments on the Notice of Proposed Rulemaking on the Adjustment of Reportable Quantities for Radionuclides (Responses to Comments), which is available for inspection in the Superfund Docket in Room 2427, U.S. Environmental Protection Agency (OS-240), 401 M Street, SW., Washington, DC 20460 (Docket Number 102RQ-RN).

Today, the Agency is promulgating this final rule to adjust the RQs for all (approximately 1,500) radionuclides. In preparing the final rule, EPA has considered carefully all of the public comments submitted on the proposals made in the March 16, 1987 NPRM. Section II of this preamble describes the radionuclides and the releases subject to this final rule, while Section III describes the NPRM methodology and how that methodology has been altered in response to comments. Section IV provides a summary of the analyses supporting the rule.

It should be noted that other provisions of CERCLA may apply even where the statute does not require notification. Therefore, nothing in this rulemaking should be interpreted as reflecting Agency policy or the applicable law with respect to other provisions of CERCLA. For example, unless specifically exempted under CERCLA, a party responsible for a release is liable for the costs of cleaning up the release and for any natural resource damages caused by the release, even if the release is not subject to the notification requirements of sections 103 (a) and (b). Similarly, proper reporting of a release in accordance with sections 103 (a) and (b) does not preclude liability for cleanup costs. The fact that a release of a hazardous substance is reported properly or that it is not subject to the notification requirements of sections 103 (a) and (b) will not prevent EPA or other government agencies from taking response actions under section 104, seeking reimbursement from responsible parties under section 107, or pursuing an enforcement action against responsible parties under section 106. Note also that this final rule does not affect hazardous substance reporting requirements imposed by other regulations and statutes.

C. Organization of the Final Rule

Today's final rule amends 40 CFR by revising the footnote at the end of Table 302.4 referencing radionuclides. This Table 302.4 footnote now will indicate that the adjusted RQs for radionuclides are listed in Appendix B to the table, which has been added by this final rule. Section 302.5 is being amended to explain which RQ to use when two RQs are applicable to a single hazardous substance, one based on chemical

toxicity and the other based on potential radiation hazards. In addition, § 302.6 is being amended to revise the method for determining RQs for mixtures of hazardous substances and to incorporate the notification exemptions established in today's rulemaking. Finally, § 302.6 also is being amended to clarify that releases of radionuclides in quantities that equal or exceed the applicable RQ are reportable regardless of the particle size of the released radionuclide.

II. Coverage

A. Hazardous Substances Subject to this Final Rule

Congress incorporated, in the definition of hazardous substances under section 101(14) of CERCLA, six lists of substances identified primarily under other environmental statutes. Radionuclides, the subject of this final rule, are considered a hazardous substance under CERCLA because EPA designated them generically as a hazardous air pollutant pursuant to section 112 of the Clean Air Act (CAA). Even though the source of their listing is the CAA, releases of radionuclides to all media are covered under section 103 of CERCLA and the provisions of this rule. There are approximately 1,500 different radionuclides and, because the Agency has listed radionuclides generically as a hazardous air pollutant under the CAA, all 1,500 are considered a CERCLA hazardous substance.

The final RQs being adjusted in this rulemaking are for radionuclides, which are species of atoms defined by their atomic number and mass. These RQs are applicable to all chemical and physical forms in which the radionuclides may exist. The radionuclide RQs also are applicable to all particle sizes that may be released to the air. The particle size of a released substance is a critical factor in determining the potential for that substance to cause adverse health effects through the inhalation pathway. Based in part on this fact, 40 CFR 302.6 had specified that releases of an RQ or more of solid particles of antimony, arsenic, cadmium, and other elements were not reportable if the mean diameter of the particles released is larger than 100 micrometers. However, because radionuclides in a particle size greater than 100 micrometers can cause adverse health effects through other exposure pathways (e.g., direct exposure and ingestion), § 302.6 is being amended today to clarify that the radionuclide RQs are applicable to all particle sizes.

B. Releases Subject to This Final Rule

Congress defined the term "release" to include within its scope virtually all ways that substances may enter the environment:

> "release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment (including the abandonment or discarding of barrels, containers, and other closed receptacles containing any hazardous substance or pollutant or contaminant) [section 101(22) as amended by section 101(c) of SARA].[2]

Several commenters addressed the issue of when, under the above definition, radionuclides are released into the environment. One commenter asked that the Agency clarify whether the radiation emitted by radionuclides is considered a "release" *per se*. The emission of radiation from radionuclides, apart from the release of the radionuclides themselves, does not constitute a release under CERCLA. Some radionuclides may be emitted in a gaseous form, however, and this would constitute a release. The emission of a radionuclide in a gaseous form is distinct from the emission of radiation from a radionuclide; the latter is not considered a release under section 103.

On a related issue, this commenter, as well as several others, stated they were unclear whether the stockpiling, outside a building, of materials containing radionuclides constitutes a release of radionuclides under CERCLA, and thus might be subject to the notification requirements. The Agency considers the stockpiling of an RQ of a hazardous substance to be a release because any activity that involves the placement of a hazardous substance into any unenclosed containment structure wherein the hazardous substance is exposed to the environment is considered a release.[3] An unenclosed containment structure may allow the hazardous substance to emit, escape, or leach into the air, water, or soil. Thus, the placement of an RQ of a hazardous substance in an unenclosed structure would constitute a "release" regardless of whether an RQ of the substance actually volatilizes into the air or migrates into surrounding water or soil. This same rule applies to the placement of material containing radionuclides in tanks or other containment structures outside a building. If the tank or containment structure is not totally sealed off from the environment, the placement into the containment structure of an amount of a hazardous substance that equals or exceeds an RQ constitutes a reportable release.

This same commenter argued that the temporary placement of raw materials or products containing radionuclides in tanks or piles at a manufacturing facility is not spilling, leaking, dumping, or disposing them into the environment because it is an intentional method of managing the substances and because the substances will be used. Whether the material stockpiled or placed in a tank or other containment structure is intended for use in an industrial process is irrelevant to whether that placement constitutes a reportable release. Under CERCLA, whether the hazardous substances are used after a release is not relevant for reporting purposes, though it might be highly relevant to the government's evaluation of whether it will respond to the release. The purpose of the CERCLA reporting requirements under section 103 is to inform government agencies of the release so that they may evaluate whether governmental response is appropriate and to assess the response measures taken by others (50 FR 13459, April 4, 1985).

One commenter argued that radionuclides are a hazardous substance under CERCLA only to the extent that radionuclides are a hazardous air pollutant under the CAA. Thus, this commenter argued that only radionuclide releases to the air, and not to other media, would be subject to CERCLA requirements. EPA disagrees with this logic. There is no support in CERCLA for the notion that anything designated as a CERCLA hazardous substance due to its listing by one or more of the environmental statutes referenced in CERCLA section 101(14) is so designated only for releases occurring in the same medium addressed in the referenced statute. In fact, several CERCLA provisions indicate that the statutory authority extends to all media to which a

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[2] A release of a radionuclide must be reported immediately to the National Response Center if that radionuclide can decay into another substance (i.e., a daughter product) in such a time and amount that an RQ or more of the daughter would be released within a 24-hour period after the time of release of the parent.

[3] The Agency wishes to clarify that, for the purpose of this discussion, an unenclosed containment structure means any surface impoundment, lagoon, tank, or other holding device that has an open side with the contained materials directly exposed to the ambient environment. An unenclosed containment structure does not include industrial tanks that have vents or piping systems to prevent over-pressurization or to provide for material transfer or treatment.

hazardous substance can be released. For example, the CERCLA release reporting requirement in section 102(a), as well as the definition of "release" in section 101(22), both concern hazardous substances released into the "environment," which is defined in section 101(8) to constitute all media. Furthermore, CERCLA section 102(a) states that the EPA Administrator "may determine that one single quantity shall be the reportable quantity for any hazardous substance, regardless of the medium into which the substance is released." This authority was referenced in the first RQ rulemaking (48 FR 23562, May 25, 1983) and all subsequent RQ rulemakings.

Several types of releases specifically are excluded from the definition of release in CERCLA section 101(22) and thus do not need to be reported under section 103. One exclusion is for releases of source, byproduct, or special nuclear material [4] from a nuclear incident [5] subject to requirements of the Nuclear Regulatory Commission for financial protection under section 170 of the Atomic Energy Act (AEA). Nuclear reactors are the primary type of facility subject to AEA section 170.

In addition, CERCLA contains exemptions from the notification and liability requirements for certain releases of hazardous substances. The exemption most likely to be of greatest importance for radionuclides is that for federally permitted releases as defined in section 101(10). In particular, section 101(10)(K) exempts from reporting "any release of source, special nuclear, or byproduct material * * * in compliance with a legally enforceable license, permit, regulation, or order issued pursuant to the * * * [AEA]."

Under the AEA, the Nuclear Regulatory Commission is responsible for issuing licenses for the possession and use of source, byproduct, and special nuclear material. States who have entered into an agreement with the Nuclear Regulatory Commission (i.e., Agreement States) are also authorized under the AEA to issue licenses for the possession and use of source, byproduct, or special nuclear material. Releases of source, byproduct, or special nuclear material in compliance with licenses issued by the Nuclear Regulatory Commission or Agreement States are federally permitted releases under CERCLA section 101(10)(K). Regulations issued by the Nuclear Regulatory Commission specifically exempt certain facilities from the Commission's licensing and regulatory requirements. Because of these specific regulatory exemptions, the Agency does not consider releases of source, byproduct, or special nuclear material from these exempted facilities to be "federally permitted" under section 101(10)(K), unless the exemptions apply to operations conducted by the Department of Defense or Department of Energy (DOE) as explained below.

To the extent releases of source, byproduct, and special nuclear material are in accordance with licenses, permits, orders, or regulations issued under the AEA through provisions not administered by the Commission or its Agreement States, they also would be considered federally permitted releases. For example, DOE governs its radiation protection activities under the AEA by a series of internal orders. When such orders are issued under DOE's AEA authority and releases of source, byproduct, or special nuclear material are in compliance with the applicable order(s), these releases are federally permitted under section 101(10)(K). The Department of Defense issues regulations under the AEA governing weapons and reactors within its jurisdiction and EPA has issued regulations under the AEA for certain operations involving radioactive material (e.g., 40 CFR Parts 190, 191, and 192); releases of source, byproduct, or special nuclear material in compliance with these regulations are also federally permitted under section 101(10)(K). Any release that is an RQ or more above any of these federally permitted levels, however, would be subject to the CERCLA notification requirements.

CERCLA section 101(10)(H) defines federally permitted releases to include "any emission into the air subject to a permit or control regulation under * * * section 112 * * * of the Clean Air Act." Pursuant to section 112 of the CAA, EPA has issued final standards for radionuclide emissions to the air as part of the National Emission Standards for Hazardous Air Pollutants (NESHAPs). These standards currently apply to the following source categories: (1) DOE facilities; (2) Nuclear Regulatory Commission-licensed facilities and non-DOE federal facilities (including facilities licensed by Agreement States); (3) elemental phosphorus plants; (4) underground uranium mines; and (5) licensed uranium mill tailings. Any release of a radionuclide to the air from these sources, if the release is in compliance with NESHAPs, is "federally permitted" under section 101(10)(H) and thus exempt from CERCLA reporting. It is important to clarify that NESHAPs apply only to the emission of certain (not all) radionuclides. Specifically, the NESHAPs currently do not apply to emissions of radon-220, radon-222, and their respective decay products from the first two source categories noted above; and apply only to emissions of polonium-210 from elemental phosphorus plants.[6] An airborne release of radionuclides not covered under NESHAPs is not considered federally permitted under section 101(10)(H). Furthermore, several source categories presently are exempted from regulation under NESHAPs (e.g., low energy accelerators not operated by DOE, coal-fired boilers, and mineral extraction industries). Radionuclide emissions from these facilities exempted under NESHAPs also are not considered federally permitted under section 101(10)(H). This issue may be relevant to an NPRM on federally permitted releases (53 FR 27268, July 19, 1988).

The Agency is currently revising the radionuclide NESHAPs. Until these new standards are finalized, the existing radionuclide NESHAPs as described above should be used in determining whether airborne emissions are federally permitted under CERCLA section 101(10)(H).

The NESHAPs limits for radionuclides are health-based annual limits, whereas radionuclide RQs are reporting triggers based on 24-hour releases. The Agency will require a report if an RQ above any annual NESHAPs limit is released in a 24-hour period. Some of the NESHAPs limits, such as those for DOE facilities and Nuclear Regulatory Commission licensees, are annual dose-equivalent limits (e.g., 25 millirem/year to the whole body). In these cases, after it is known that an individual near the facility has received more than 25 millirem within a one-year period, any

[4] Source material is defined as (1) natural uranium, thorium, or any combination thereof or (2) ores which contain 0.05 percent or more (by weight) of uranium or thorium (section 11(z) of the Atomic Energy Act (AEA), and Nuclear Regulatory Commission regulations in 10 CFR Part 40). Byproduct material is (1) any material made radioactive by exposure to radiation in the process of producing or using special nuclear material or (2) the wastes produced by the extraction or concentration of uranium or thorium from ore (section 11(e) of the AEA). Special nuclear material is defined as plutonium, or uranium enriched in the U-235 or U-233 isotope (AEA section 11(aa)). All of these materials are licensed by the Nuclear Regulatory Commission and its Agreement States.

[5] A nuclear incident means any occurrence of bodily injury, sickness, disease, death, loss of or damage to property, or loss of use of property resulting from the radioactive, toxic, explosive, or other hazardous properties of source, special nuclear, or byproduct material.

[6] The NESHAPs for underground uranium mines and licensed uranium mill tailings do not specify emission limits, but rather establish work practices to limit the emission of radon-222 from those types of facilities.

radionuclide release that equals or exceeds an RQ within 24 hours must be reported to the National Response Center. This issue may also be relevant to an NPRM on federally permitted releases (53 FR 27268, July 19, 1988).

Further clarification is needed for releases of naturally occurring and accelerator-produced radioactive material (NARM) and the definition of federally permitted releases under sections 101(10)(H) and 101(10)(K). Only air releases of NARM that are in compliance with NESHAPs are considered federally permitted. The AEA gives DOE broad authority to control its radiation-related activities and to protect public health and safety and the environment. This authority applies to activities involving NARM, as well as activities involving source, byproduct, and special nuclear material. However, because section 101(10)(K) refers only to releases of source, byproduct, and special nuclear material, the only basis for exempting DOE's NARM releases from CERCLA's reporting and liability provisions is section 101(10)(H), which is limited only to airborne emissions in compliance with the regulations issued pursuant to the CAA. Furthermore, although Agreement States may regulate NARM, their authority to regulate NARM is not federally derived (under the AEA, the only authority that can be relinquished to states by the Nuclear Regulatory Commission is the authority to license source, byproduct, and special nuclear material). As a result, the only NARM releases from Agreement State licensees that are considered federally permitted are those that comply with the NESHAPs applicable to that source category. EPA published an NPRM on federally permitted releases (53 FR 27268, July 19, 1988); these issues, and any comments received related to these issues, will be addressed in that rulemaking.

Although the preamble to the proposed rule noted that EPA was planning to clarify the provisions of CERCLA sections 101(10) in a separate rulemaking, several commenters sought clarification or reassurance concerning the applicability to some radionuclide releases of the federally permitted release exemptions. Two commenters desired reassurance that releases from commercial nuclear reactors and power plants, respectively, are federally permitted releases and thus are exempt from the CERCLA notification requirements. EPA agrees that releases of source, special nuclear, or byproduct material that are in compliance with applicable federal licenses, permits, regulations, or orders issued pursuant to the AEA do not need to be reported to the National Responses Center. Additionally, releases that are not in compliance, and thus are not federally permitted, do not need to be reported unless they exceed the federally permitted level by an RQ or more.

In addition to the statutory exemptions from the RQ notification requirements for releases of hazardous substances, section 103(f)(2) of CERCLA provides a reduced reporting requirement for releases that are "continuous" and "stable in quantity and rate." Such releases need only be reported annually and when there is a statistically significant increase in the quantity of the hazardous substance released. Releases of radionuclides that are "continuous" and "stable in quantity and rate" may qualify for this reduced reporting provision. EPA has published an NPRM (53 FR 12868, April 19, 1988) regarding continuous releases. That proposed regulation, rather than today's rule, resolve all remaining issues pertaining to this provision.

One commenter stated that the definition of "release" did not appear to encompass a lost sealed source, even though its radioactivity may be hazardous. Another commenter suggested that radionuclides in certain forms or shipping containers that are unlikely to result in releases should be exempted from the RQ notification requirements. EPA wishes to clarify that a lost sealed source containing radionuclides in an amount equal to or above an RQ constitutes a release that must be reported to the National Response Center. The reporting requirements triggered by the release of an RQ are relevant if a hazardous substance is released into the environment. Under the CERCLA definition, radionuclides are released when they are exposed to the environment or when they are enclosed in barrels, containers, or other closed receptacles that are discarded, lost, or abandoned. Thus, if only the containers are exposed to the environment, but not the radionuclides that they contain, no report under CERCLA is necessary, unless those containers have been lost, discarded, or abandoned. Moreover, as discussed previously in Section II.A. of this preamble, the radionuclide RQs are applicable to all chemical and physical forms in which the radionuclides may exist. Therefore, the same RQ for a given radionuclide will apply regardless of whether the radionuclide exists in a so-called "special form" (i.e., the radionuclide is a single solid piece or is contained in a sealed capsule with at least one dimension greater than five millimeters) or a "normal form" (i.e., any form that has not been demonstrated to qualify as a special form).

Finally, as part of the proposed rule, EPA sought comments on whether a concentration cutoff (expressed in curies per gram), below which the RQs for radionuclides would not apply, would be appropriate to eliminate unnecessary and excessive reporting. Such a cutoff would be similar in concept to one used by the Department of Transportation, which defines radioactive material as material containing greater than 0.002 microcuries per gram. All commenters who addressed this issue (i.e., slightly over half of all commenters) favored a concentration cutoff. The commenters stated that such a cutoff would eliminate the need for many CERCLA reports involving releases that do not truly pose a danger to the public or the environment, particularly releases of radon from naturally occurring materials in large mining operations, land holdings, irrigation systems, and mineral stockpiles.

EPA considered a cutoff because there may be no benefit in requiring reports of releases of radioactive materials in such low concentrations. After evaluating this issue and reviewing the public's comments, however, EPA has decided not to pursue a concentration cutoff through this rule. Although the Agency realizes that there is some concentration of radionuclides below which the hazards are so low that a government response is unnecessary, determination of that precise level is a complex task. EPA does not have a sufficient basis at this time for determining the appropriate concentration cutoff level and, furthermore, does not believe that an RQ adjustment regulation is an appropriate forum in which to make such a determination. The Agency believes that a rulemaking designed to limit public health risks caused by radiation exposure, rather than release reporting requirements, is a more appropriate forum. The Agency is currently developing two rules related to *de minimis*/exemption/below regulatory concern levels and residual radioactivity criteria that may have a bearing on this issue. If sufficient information is provided in the future to enable the Agency to make a finding that a certain radionuclide concentration would pose a hazard only rarely and under circumstances that would not likely result in any action being taken to respond to the hazard, then the Agency will consider a concentration cutoff at that time.

C. Regulatory Reporting Exemptions

In response to numerous comments received on the proposed rule, the Agency has decided to exempt from the CERCLA notification requirements for radionuclide releases three release sources. First, the Agency is exempting releases of naturally occurring radionuclides from large, generally undisturbed land holdings, such as golf courses and parks, along with those activities that involve the disturbance of large areas of land, such as farming or building construction. Second, the Agency is exempting the dumping of coal and coal ash, as well as radionuclide releases to all media from coal and coal ash piles, at utility and industrial facilities with coal-fired boilers.

In granting these exemptions, the Agency considered the risks posed by the sources and activity within the context of the purposes of the CERCLA section 103 reporting requirements. This purpose, as the Agency has previously stated on numerous occasions, is to require "notification of releases so that the appropriate federal personnel can evaluate the need for a federal response action and undertake any necessary response (removal or remedial action) in a timely fashion." (50 FR 13456, 13457, April 4, 1985). Thus if the Agency determines that the federal government would never, or would only rarely, take a response action as a consequence of the harm posed by the release or because of the infeasibility of a federal response, a basis for an exemption from the section 103 reporting requirements may exist.

With respect to large undisturbed land holdings, as well as the disturbance of large areas of land, some commenters noted that these sites and this activity would result in the release of an RQ or more of some naturally occurring radionuclides (radon in particular). The Agency concluded that releases from such land holdings and land disturbance activities rarely would pose a hazard to public health or welfare or the environment because releases would be dispersed widely in the environment at levels not much (if at all) above natural background. Furthermore, the Agency does not believe that any action realistically could be taken to respond to such releases. Thus reports of radionuclide releases from generally undisturbed land holdings and land disturbance activities could divert National Response Center resources unnecessarily, preventing timely responses to those releases that truly warrant a response. Releases of radionuclides from land holdings and activities involving the disturbance of land for purposes other than mining, therefore, are exempted from complying with the RQ notification requirements. Facility owners and operators still are subject to all other provisions under CERCLA, including all liability provisions.

The Agency is also exempting radionuclide releases resulting from the dumping of coal and coal ash, and radionuclide releases to all media from coal and coal ash piles, at utility and industrial facilities with coal-fired boilers. Like the exemption for large undisturbed land holdings and land disturbing activities, this exemption is based both upon the risks posed by such releases and the appropriateness of a federal response to such releases under CERCLA.

Based upon information supplied by commenters and upon other readily available information, the EPA Office of Radiation Programs (ORP) performed a risk assessment of utility and industrial facilities with coal-fired boilers to determine if a technical basis exists to exempt these facilities from reporting under CERCLA for radionuclide releases from coal and coal ash piles. The ORP risk assessment used reasonably conservative models to estimate the radiation doses and resulting health risks to residents and workers living or working near or on coal and coal ash piles. In particular, for nearby residents, ORP estimated doses and risks via the following potential exposure pathways: (1) Direct radiation; (2) various pathways of exposure to particulates released to the air, including inhalation, immersion in an airborne plume, direct radiation from particulates deposited on the ground, and ingestion of crops contaminated by airborne deposition; (3) inhalation of radon; (4) ingestion of contaminated ground water, as well as ingestion of crops and livestock assumed to be contaminated by the ground water; and (5) ingestion of contaminated surface water, as well as ingestion of crops and livestock assumed to be contaminated by the surface water. The critical exposure pathway for nearby residents (i.e., the one yielding the highest dose and risk estimates) was found to be the inhalation of radon from the coal and coal ash piles.

For workers, ORP estimated radiation doses and resulting health risks via four potential exposure pathways: (1) Direct radiation when standing next to (i.e., 10 meters from) a coal or ash pile; (2) direct radiation when standing on a coal or ash pile; (3) various pathways of exposure to airborne particulates, including inhalation, immersion in an airborne plume, and direct radiation from particulates deposited on the ground; and (4) inhalation of radon. The critical exposure pathway for workers was found to be direct radiation, especially when standing on a coal or coal ash pile. (See Technical Background Supplement in Support of Rulemaking Adjustment Activities for Reportable Quantities of Radionuclides, available in the Superfund Docket, for more detail on the modeling assumptions used in this analysis.)

According to the analysis completed by ORP, the estimated health risks posed by the radiation releases from coal and coal ash piles are within the range generally acceptable under the Superfund program. The estimated health risk posed to nearby residents and to workers are all within the general range of 10^{-4} to 10^{-7} individual lifetime excess cancer risk.

In addition, the Agency believes that the submission of individual reports from each industrial and utility facility with coal and coal ash piles may not be consistent with the purposes of the section 103 reporting requirement. In the case of radiation releases from coal and coal ash piles, the amount and rate of radiation released is extremely similar across all industrial and utility facilities with coal-fired boilers. For example, all coal and coal ash piles will contain the same radionuclides in low concentrations. The radiation emitted from these piles, therefore, will always be emitted continuously at low levels spread over large areas—it never will be emitted at a high rate or in an unusually large amount as the result of a sudden, episodic release. EPA is already aware of the amount and concentration of these radiation releases. Because of these two factors, submission of individual notifications of these releases is not necessary for the government to assess whether a response action is needed under CERCLA.

Perhaps more importantly, however, a response action (i.e., removal or remedial action) under CERCLA does not appear to be the most appropriate federal regulatory response to radiation releases that are (1) similar in amount and concentration across an entire sector of industry; (2) pose acceptable exposure risks; and (3) disperse quickly in the environment such that a response is not necessary to cleanup the accumulation of what has already been released. Whereas CERCLA is designed to enable the government to respond on a case-by-case basis where each site or release poses different hazards and requires a different type of response

other federal regulatory programs and mechanisms are more appropriately designed to address the hazards of releases that uniformly occur across an entire industry. In summary, because the health risks from radiation releases from coal and coal ash piles from industrial and utility facilities with coal-fired boilers are generally acceptable and because it is extremely unlikely that the Agency would take a response action to such releases, the Agency is exempting these releases from the CERCLA Section 103 reporting requirements.

D. Duplicate Reporting/Regulatory Consistency

Several federal agencies, including the Nuclear Regulatory Commission and the Departments of Transportation and Energy, have existing requirements to report radionuclide releases under certain conditions. EPA also may require reporting under the Toxic Substances Control Act.

Nearly half of all commenters stated that the CERCLA notification requirements for radionuclide releases were an unnecessary duplication or contradiction of existing reporting requirements. EPA points out, however, that the statutory language of CERCLA (section 103(a)) requires that a facility's owner or operator immediately report to the National Response Center releases from the facility that equal or exceed an RQ. One exemption to this reporting requirement, however, is for releases that constitute a nuclear incident as defined by section 170 of the Atomic Energy Act (see CERCLA section 101(22)). For the most hazardous releases, therefore, notification of the National Response Center is not required. The statute provides no other exceptions for situations in which other government agencies also must be informed of radionuclide releases pursuant to the directives of other statutes or regulations.[7] CERCLA notification requirements, however, are not intended to supercede or supplant notification to state and local authorities in the event of a release. These notifications may occur as they have in the past; the requirement to report immediately to the National Response Center may be interpreted on a case-by-case basis, depending on the exigencies of the situation.

While EPA understands that some additional burden would be imposed upon facility owners and operators who would need to file reports with more than one government agency, one purpose of alerting the National Response Center is to ensure a coordinated federal, state, and local response to the release, if a response is needed. Additionally, as noted in the Economic Impact Analysis accompanying this rule, EPA expects that only about 59 additional notifications of episodic releases annually will result from the RQ adjustments. Thus, the incidence of duplicative reporting due to this rule is relatively small.

Two commenters also questioned how the CERCLA reporting requirement could be reconciled with the reporting provisions of the Federal Radiological Emergency Response Plan (FRERP). The Agency notes that the FRERP itself states that it is a framework for coordinating federal actions within statutory or other authorities, rather than creating any new authorities itself. One such controlling statutory authority is CERCLA, with its requirement for the reporting of releases to the National Response Center. Furthermore, the FRERP expressly allows facility owners or operators to contact directly an appropriate federal agency for assistance, which in this case is the National Response Center. Therefore, this rule has no bearing on the FRERP. The framework for coordinating federal actions established by the FRERP remains completely in place; the reports required by this rule simply will provide added information.

III. Discussion of NPRM Methodology

A. General

Although radionuclides are potential carcinogens, there are several reasons why EPA could not adjust the radionuclide RQs using the existing methodology for adjusting RQs of potential chemical carcinogens (see 52 FR 8140, March 16, 1987 for a detailed description of the potential carcinogen RQ adjustment methodology). First, direct application of the potential carcinogen RQ adjustment methodology would result in adjusted RQs for radionuclides of either one or ten pounds. Each radionuclide has a different "specific activity" (i.e., a certain number of curies per gram of the element) and one or ten pounds equates to a different number of curies of each nuclide. Neither one nor ten pounds is appropriate for radionuclide RQs because they equate to a large number of curies for most isotopes and, therefore, could present an undue hazard if released. In fact, as little as one-billionth of a pound of certain radionuclides could pose a threat to public health or welfare or the environment. Second, the RQs that would be calculated for radionuclides using the potential carcinogen RQ adjustment methodology (one or ten pounds) would differ by only one order of magnitude. EPA believes that this variation would not be appropriate for radionuclides, which present levels of hazard that differ by many orders of magnitude. Finally, establishing RQs in mass units such as pounds is entirely inappropriate because most radiation measurements and standards in the U.S. are established in terms of curies or dose-equivalent limits (in units of rem).

The approach that EPA selected and presented in the March 16, 1987 NPRM began with a decision to establish an RQ in terms of activity (measured in units of curies) for individual radionuclides. To develop individual RQs in units of curies, the Agency relied heavily on the health data and human intake limits published by the International Commission on Radiological Protection (ICRP), particularly as reflected in its Publication 30 (Pergamon 1982). Data were available for 757 radionuclides, and so analysis of individual radionuclides was limited to this universe. Although this list is not comprehensive (there are more than 1,500 known radionuclides), it does represent all radionuclides for which data needed by EPA to develop individual radionuclide RQs are available. Furthermore, the remaining radionuclides are generally rare and short-lived, and most are of little practical significance. Thus, EPA today is establishing individual RQs for 757 radionuclides. Because of the inadequacy of available data for all other radionuclides, they are treated as a generic class with a single RQ for the entire class.

The individual RQs were calculated using the Annual Limits of Intake (ALIs) developed by the ICRP. The ALIs:

are the annual intakes of given radionuclides by 'Reference Man' which would result in either (1) a committed effective dose-equivalent [8] of 5 rem to the whole body

[7] While the authority to respond to radiological releases outside a building within a federal facility has been delegated by Executive Order No. 12580, sections 2 (d) and (e)(1), to the federal agency with custody of or jurisdiction or control over that facility, such releases still must be reported to the National Response Center if the release is one RQ or more greater than the permitted release.

[8] An effective dose-equivalent is a weighted average of committed dose-equivalents for specific organs, with the weights determined from risk factors associated with the respective organs. It provides a measure of the overall (i.e., total body) carcinogenic and genetic risk resulting from a radionuclide exposure. The term "committed dose-equivalent" means that this is the dose that will

(stochastic ALI), or (2) a committed dose-equivalent of 50 rem to any organ or tissue (non-stochastic ALI).[9]

ICRP has presented ALIs for both oral ingestion and inhalation. The ALIs, which are in units of becquerels, are considered to produce harm comparable to that of receiving a uniform whole body dose-equivalent of five rem. It is important to note that ALIs represent quantities of radionuclides taken into the body, not quantities released to the environment. These curie levels were adjusted by EPA to reflect (1) the difference between intake levels and release levels, and (2) a lower whole body dose-equivalent of 500 millirem (0.5 rem), a more protective limitation.

For purposes of this rulemaking, the Agency used conservative assumptions regarding different releases to air and water, and analyzed exposure through inhalation, ingestion, and direct exposure. The Agency then estimated the smallest number of curies of a radionuclide that, if released into the environment over a 24-hour period, could result in a person located 30 meters from the release point receiving an effective dose-equivalent of 500 millirem.

Only two commenters expressed a preference for an alternative approach for adjusting the radionuclide RQs. Both indicated that establishing a dose-equivalent level as the radionuclide RQ would be desirable under certain circumstances. One commenter explained that nuclear power plants could use site-specific data to calculate potential exposures for a release, thereby enabling appropriate adjustments in RQs for site-specific application. EPA believes, however, that few other individuals and organizations that handle radionuclides have this capability. Additionally, the Agency believes that it is the government's proper role, and not that of a private party, to evaluate the release to determine whether government intervention is required. The Agency also believes that development of a special rule to cover releases from nuclear power plants would serve no useful purpose and would be more confusing and difficult to implement. This is particularly true because most releases from nuclear power plants would be exempted from the CERCLA notification requirements because these releases are federally permitted under CERCLA section 101(10)(K) or are excluded from the definition of CERCLA releases under section 101(22)(C).

The other commenter noted that radionuclide transport in some media, such as ground water, is so slow that there would be time for facility owners or operators to estimate the dose-equivalent released before public exposure occurred. The Agency notes, though, that it is the intention of CERCLA that the government be informed immediately of releases that may pose a hazard to public health or welfare or the environment. Further, the Agency has determined that it would be impractical from an implementation standpoint to provide different RQs for releases to different media, and, in some media (e.g., air), transport of the release to a point of exposure could occur quickly, allowing minimal time for an evaluation. The Agency is convinced that activity-level RQs will result in the most timely reporting.

Two commenters argued that one of EPA's objections to a dose-equivalent RQ, the degree of variability in estimating whole body dose-equivalents, also was applicable to EPA's selected approach. EPA disagrees, however, because the curie is a clearly defined number for any given radionuclide. Unlike a dose-equivalent RQ, where determination of whether an RQ has been released would be based at least partially on the exposure scenario associated with the release, a release in curies could be measured or estimated irrespective of the exposure conditions. By establishing the adjusted RQs in units of curies, the Agency has made assumptions about the circumstances surrounding a release, and thereby has reduced the number of assumptions that would be required to be made by releasers to determine if the release equals or exceeds an RQ. EPA believes that it will be assured of more timely reporting if the method for determining whether an RQ has been released is unambiguous and not open to judgment; measuring or estimating the number of curies released is generally simpler and less open to judgment than estimating a resulting dose-equivalent. The Agency believes that by making conservative assumptions about release circumstances to derive activity level RQs, the Agency will be assured that the appropriate government authorities will have an opportunity to evaluate the need for a response.

In developing the proposed RQs, the Agency did not account for radioactive decay explicitly in its models. After considering this issue further and after reviewing the public's comments, radioactive decay has been incorporated into some of the models used to determine the final RQ adjustments. For the inhalation pathway model and the model used to evaluate direct exposure due to submersion in an airborne cloud, the Agency has decided to continue to ignore the effects of radioactive decay. Both of these pathway models consider exposures to an airborne plume of radionuclides; however, the period of release and exposure, and thus the extent of radioactive decay over these periods, cannot be defined. For example, a short-lived radionuclide could undergo significant decay if the release and exposure periods were one day, but decay would be much less if a time period of one hour was considered. Because the models do not stipulate the release periods (except to assume that they do not exceed 24 hours), the Agency assumed conservatively that no decay occurs over these periods. EPA also ignored decay over the period of radionuclide transport to the point of inhalation or submersion in a cloud. This approach was adopted because transport to a location 30 meters from the point of release may occur in a matter of seconds, and decay would be negligible for a large majority of radionuclides.

In the model used to evaluate exposure by the ingestion of ground water, the release conservatively is assumed to be instantaneous to the saturated zone, and it is assumed that no decay occurs over the period of the release. Decay over the period of transport and period of ingestion, however, has been incorporated into the model. For the period of transport, the time that it would take for a released radionuclide to travel to a drinking water well is first determined assuming conservative transport characteristics that take into account ground-water flow and sorption in an aquifer. In order to consider decay over the period of ingestion, it is recognized that an individual would ingest progressively smaller quantities of radionuclides as the radionuclides decay over the period of ingestion. For a detailed explanation of the mathematical calculations used to incorporate radioactive decay into the ground-water ingestion model, see the Technical Background Document to Support the Final Rulemaking Pursuant to Section 102 of CERCLA: Radionuclides (Technical Background Document), Chapter 4 and Appendix B of that report, available in the Superfund Docket.

In the NPRM, ingestion of vegetables contaminated by the airborne deposition

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accrue from one year of intake of radionuclides during the remaining lifetime (50 years) of the individual.

[9] The total dose-equivalent averaged throughout a single organ or tissue (rather than the whole body) in the 50 years after intake of a radionuclide into the body.

of radionuclides was considered as another exposure pathway, but it was determined that it was not a critical pathway, largely because radioactive decay was ignored. With the incorporation of radioactive decay into the exposure models, the results of the vegetable ingestion pathway model serve as the basis for the RQs for some radionuclides. In the model used to evaluate the ingestion of vegetables contaminated by airborne deposition, it is not possible to define the period of release and deposition. Following the same approach used in the inhalation and cloud submersion models, therefore, decay during release and deposition is ignored. Similarly, decay during airborne transport to vegetation located 30 meters from the point of release is not considered because the transport occurs over a 30-second period in the model and decay over this period would not be significant for the large majority of radionuclides. Once the initial quantity of radionuclides is deposited upon the vegetation, however, a significant amount of decay may occur before the radionuclides actually are consumed. Decay over the period of ingestion, therefore, is taken into account in the vegetable ingestion model.

Finally, for direct exposure to a point source of radionuclide, the Agency has decided to ignore decay during the period of release and transport and to assume instead that the release occurs instantaneously and that a person is exposed to radiation immediately after the radionuclide is released. Radioactive decay during the period of exposure, however, is fully accounted for in the model. See Chapter 4 and Appendix D of the Technical Background Document for a detailed discussion on the methods for incorporating radioactive decay into the direct exposure pathway model.

In summary, the methodology to adjust the final radionuclide RQs uses five separate equations to derive release values, in curies, that could result in an individual 30 meters from the release point receiving an effective dose-equivalent of 500 millirem. The five equations represent the following routes of exposure: inhalation, ground-water ingestion, vegetable ingestion, direct exposure to a point source, and direct exposure by submersion in a cloud of radioactive noble gas. A sixth pathway equation, which is described later in this preamble, is for the ingestion of surface water. Although EPA calculated release values for this exposure pathway, they were never lower than those calculated for the other pathways and, thus, never served as the basis for RQs.

Slightly over half of all commenters raised concerns about the appropriateness of certain general assumptions used in the models. Four commenters argued that the 500 millirem whole body dose-equivalent was too conservative. EPA disagrees, and points out that Federal Radiation Protection Guidance recommends 500 millirem as an upper bound on exposure to individual members of the general public. RQs do not have to be set at such levels that reports would be received only when there is a substantial danger to the public health or welfare or the environment. RQs are simply reporting triggers that allow government authorities to evaluate a release to determine if, based on the circumstances of the release, there is a need for federal, state, or local action. In addition, alternative and even more conservative dose-equivalents of 25 and 100 millirem per year were noted in the NPRM as being considered by EPA for calculating radionuclide RQs. However, after further examination and after reviewing the public's comments, EPA has concluded that, for the time being, the 500 millirem assumption is sufficiently protective of the general public and the environment. Furthermore, EPA emphasizes that, due to the conservatism of the exposure pathway models noted above, it is likely that the release of an RQ will result in doses that are less than 500 millirem. However, if the Federal Radiation Protection Guidance recommendation for exposure limits for the general public changes from 500 millirem to 100 millirem, or any other level, the Agency will consider adjusting the radionuclide RQs accordingly in a future technical update.

Another commenter stated that ALIs were developed to protect workers from radiological hazards, and that RQs should be protective of critically exposed individuals, such as children, rather than workers. The Agency agrees that RQs are reporting triggers to protect the public health and welfare and the environment from the hazards associated with releases of hazardous substances. The ALIs used in the exposure models, therefore, are divided by a factor of 10 to reflect a whole body dose-equivalent of 500 millirem [0.5 rem], as opposed to the occupational exposure limit of 5 rem. The Agency does not agree, however, that the most critical member of the general public should be used in determining RQs. EPA believes that the final RQs adjusted today are low enough to assure timely reporting for most release situations, but not so low as to result in numerous release reports to which the government would be unlikely to respond. If the Agency determines, however, that RQs for particular radionuclides are inappropriate, those RQs will be adjusted in a future technical update.

Six commenters argued that the selection of an exposure point 30 meters from the release was too conservative. The Agency, however, does not agree. The Agency developed release scenarios that it believes are conservative but reasonable representations of potential release events. Because the models derive RQs applicable to releases from a wide variety of facilities, it is likely that the models do not represent accurately all potential release events. However, due to the administrative complexity involved in developing different RQs for different types of facilities, the Agency relies first on conservative models and then on the appropriate government official to evaluate the risks and the need for a response once notification occurs.

Although 30 meters was selected as the assumed distance between the point of release and the point of exposure, a longer or shorter distance, in reality, could be relevant. Most nuclear power plants have restricted areas around a facility much greater than 30 meters; many facilities, such as hospitals, have no restricted area and 30 meters arguably could be too far. The Department of Transportation's (DOT) Emergency Response Guidebook recommends a range of isolation distances for releases of hazardous chemicals (not radionuclides), and 30 meters is within the range of recommended distances. For small leaks of hazardous chemicals, the DOT-recommended initial isolation distances range from 9 meters to 180 meters, and for large spills the recommended initial isolation distances range from 20 meters to 380 meters. Approximately 44 percent of the initial isolation distances recommended for releases of hazardous chemicals is in the zero to 30-meter range. The 30-meter distance assumed in the exposure models, therefore, does not conflict with the DOT Guidebook and is not unrealistic.

Two commenters claimed that the 24-hour period of exposure for some models is too conservative and that releases are unlikely to last that long. EPA agrees that it may be unlikely for exposure to last 24 hours for some pathways; however, no shorter period could be determined that was shown to be sufficiently protective. The release scenarios were developed to ensure that timely reporting occurs; without such reports, a release may continue

unabated for at least 24 hours, and a proper response may not occur. EPA points out that all releases must be measured over a 24-hour period to determine if the RQ has been exceeded. Releases can occur over a shorter period of time; however, as soon as an RQ is released (within a 24-hour period), the release needs to be reported to the National Response Center.

B. Inhalation Pathway

The inhalation equation derives a release value for each radionuclide. Inhalation release values are in units of curies and represent the activity level of each radionuclide that, if released under the assumed set of modeling conditions, could result in an exposed individual receiving a whole body dose-equivalent of 500 millirem (0.5 rem). Critical assumptions that are built into the equation are that the release occurs from a point source at ground level and that the hypothetically exposed individual is 30 meters downwind from the point of release. The release values are derived by dividing the ALI for inhalation presented in ICRP Publication 30 by the product of several factors that account for the dispersion in air, the fraction of each radionuclide that could become airborne, the breathing rate of man, and other factors described in detail in the Technical Background Document, Chapter 4. Where more than one inhalation ALI is given by ICRP for a particular radionuclide, the lowest one was used. This approach assures that the possible release of the most hazardous chemical form is taken into consideration.

The inhalation model was not used for noble gases other than radon (e.g., argon, krypton, and xenon). According to ICRP Publication 30, the effects of inhaling a noble gas are negligible compared to the effects of external irradiation from a person being submerged in a gas cloud of these radionuclides. Thus, a separate model, described later, was used to determine the direct exposure release values for noble gas radionuclides. Inhalation of radon was considered because the critical health effect associated with exposure to radon is caused by inhalation of radon's short-lived decay products.

Five commenters expressed concerns that certain aspects of the inhalation pathway model were unreasonable. One commenter argued that, for radionuclides with multiple ALIs, the ALI of the specific chemical form should be used, rather than the lowest ALI value for that radionuclide. EPA does not agree with this commenter. Using multiple ALIs would result in multiple RQs for each radionuclide; EPA believes that a single reporting trigger is less confusing and more likely to assure timely reporting.

Four commenters argued that the assumption of a point source release for uniform emissions over large areas was inapplicable, and two other commenters claimed that the assumption of a ground-level release was inapplicable for emissions from piled materials or raised stacks. EPA realizes that any single atmospheric dispersion model will not be applicable to all possible release scenarios. The Agency believes, however, that multiple RQs for different release configurations would add significant complications to the rule and is unnecessary given the purpose of RQs. Even if the Agency used many different models to develop RQs for numerous different release scenarios, there would still be countless other scenarios for which the models would not be fully applicable. For these reasons, the Agency developed exposure models to simulate release events at facilities that could release radionuclides and to calculate RQs that are applicable broadly.

Another commenter cited several aspects of the inhalation model as overly conservative. This commenter claimed that the release fractions used in the model were of questionable applicability because they were developed for uranium fuel cycle facilities; the dispersion coefficients were suspect because they were extrapolated to a distance shorter than the range of standard references; and the model failed to account for vertical dispersion, radioactive decay, plume washout, ground deposition, or ground effects on dispersion. First, the Agency notes that the release fractions were not developed strictly for uranium fuel cycle facilities, but also for a variety of other radioactive material operations, and they are the only known attempt to quantify in a consistent manner airborne release fractions for numerous radionuclides. Second, while the dispersion coefficients have been extrapolated to a distance shorter than published ranges, the results appear reasonable compared to documented values for distances of 100 meters or more. Finally, dispersion in vertical and horizontal directions was taken into account but dispersion in the direction of flow was ignored because, relative to the chosen wind velocity of one meter per second, it is insignificant; radioactive decay was not considered for reasons explained earlier in this preamble; plume washout was ignored because it is unpredictable and because most days are rain-free; and ground deposition was not considered because radionuclides of respirable diameter are unlikely to plate out on the ground significantly before reaching a receptor located only 30 meters away.

It also has come to EPA's attention that the release fraction used for bromine and chlorine isotopes in the inhalation model may be too low. The Agency is examining whether a release fraction of 0.5, rather than 0.01, may be more appropriate for these isotopes. Such a change in the release fraction would result in a lower RQ for four isotopes: Chlorine-36—new RQ would be 0.1 Ci; Bromine-77—new RQ would be 10 Ci; Bromine-80m—new RQ would be 100 Ci; and Bromine-83—new RQ would be 100 Ci. The Agency will be considering readjusting these four RQs in a future rulemaking.

C. Ingestion Pathway

1. Ground-Water Ingestion

One ingestion equation used for RQ development is based on a release of a radionuclide to ground water. The maximum concentration in a plume 30 meters downgradient from a point source release is calculated using ground-water advection-dispersion modeling equations that take into account sorption of the radionuclides in the aquifer, ground-water flow velocities and other hydrogeological parameters, and radioactive decay during transport and during the exposure period. The details of this model are discussed in the Technical Background Document, Chapter 4.

Only two commenters referenced the ground-water ingestion model. One commenter claimed that the model's ground-water velocity was unrealistically slow and that the model assumed that radionuclides would migrate upgradient. EPA obtained the velocity, however, from published studies that substantiate its appropriateness. Also, EPA emphasizes that only possible exposures at a downgradient location were considered.

The other commenter argued that by assuming that a person would ingest contaminated ground water for a maximum period of only one year, the model results in release values that are too low for certain radionuclides.

Additionally, this commenter stated that the use of a point source release is inappropriate when approximating the release of a radionuclide from a large area into an aquifer. First, contrary to what the commenter states, the one year exposure time results in higher RQs, not lower RQs. This is because the model

assumes a maximum period of exposure of one year, even though it may take several years for a radionuclide plume to pass a drinking water well located 30 meters away (a longer exposure period would result in a greater intake of radionuclides for a given release amount). By limiting the exposure period to one year, a greater number of curies would need to be released before an exposed person receives 500 millirem. Additionally, the one year maximum time period is appropriate because ALIs are annual intake limits. Second, EPA agrees that the model's use of a point source release yields a lower release value than if an area source was assumed, as in the commenter's scenario. However, EPA prefers to use a single ground-water dispersion model to calculate RQs and believes that the complications added by having multiple RQs for different release configurations would outweigh the benefits to be gained by such an approach.

2. Vegetable Ingestion

In its analyses for the proposed rule, the Agency evaluated each of the 757 radionuclides for which ICRP developed ALIs and calculated release values for two ingestion routes: ingestion of vegetables contaminated by airborne deposition and ingestion of contaminated ground water. For the majority of radionuclides, the ground-water exposure route resulted in lower release values (i.e., was a more critical route of exposure). Further, for the radionuclides for which the vegetable ingestion pathway produced lower release values, the Agency determined that in the vast majority of cases either inhalation or direct exposure was even more critical than vegetable ingestion. Therefore, in determining proposed RQs, the Agency chose to proceed with development of a release value for ingestion based only on the consumption of contaminated ground water.

Decisions to include the effects of radioactive decay in models of other pathways and to use a different, more conservative model for estimating the transfer of radionuclides from air to vegetation tend to exaggerate the importance of the vegetable ingestion pathway relative to other pathways. Appendix C of the Technical Background Document supporting the NPRM describes the two models considered for estimating airborne deposition of radionuclides, one presented by the Nuclear Regulatory Commission and the other presented by the National Council on Radiation Protection and Measurements (NCRP). The analysis of the vegetable ingestion route considered in support of the NPRM was based on the Nuclear Regulatory Commission model, which was determined subsequently to be inappropriate for the release configurations and distances considered for the development of RQs. The NCRP model, which is very conservative when coupled with the atmospheric dispersion factor considered for the inhalation pathway, was determined to be the most straightforward method for determining RQs for the vegetable ingestion pathway. Appendix C of the Technical Background Document supporting this final rule describes in detail the NCRP model.

The equation that EPA has adopted for the calculation of release values based on consumption of contaminated vegetables divides the lowest ALI for ingestion by factors accounting for dilution from the point of release to the point of vegetable ingestion, the food consumption rate of man, the exposure period, and the airborne release fraction. The dilution factor represents the fraction of an airborne release of radionuclides that would be deposited in and on vegetables located 30 meters downwind. This factor was calculated using the same atmospheric dispersion factor used in the inhalation pathway equation, and the NCRP model which takes into account radionuclide deposition from the air, radionuclide loss due to weathering and radioactive decay, and radionuclide buildup in and uptake from soil. The Agency assumed that an individual ingests contaminated vegetables over the entire length of the growing season, 60 days. For more details, see the Technical Background Document, Chapter 4 and Appendix C of that report.

3. Surface Water Ingestion

In support of the NPRM, EPA analyzed qualitatively the relative hazards of radionuclide releases to ground water and surface water. It was concluded that the mixing in surface water is more complete than in ground water because of the higher flow rate and turbulence of surface water. Both of these factors suggested that, in general, there will be greater dilution in surface water than in ground water. Based on this analysis, the Agency concluded that exposures via the consumption of ground water (under the modeling conditions assumed) would likely be more critical than those through the consumption of surface water and, therefore, that the calculation of surface water ingestion release values for each radionuclide was unnecessary.

The previous analysis in the NPRM was valid as long as radioactive decay was not incorporated into the various exposure pathway equations. Incorporating the effects of decay (as explained in the Technical Background Document, Chapter 4), however, increased the relative importance of the surface water ingestion pathway. In the adjustment of final RQs, therefore, EPA calculated release values for the ingestion of surface water based on the lowest ingestion ALI for each radionuclide, a generally conservative stream flow rate, and the water consumption rate for standard man. Although some of the surface water release values calculated in this way were lower than those calculated for ground-water ingestion, the surface water release values were never the lowest when compared to those calculated for the other exposure pathways. Therefore, surface water ingestion release values were not used to derive any of the final RQ adjustments.

D. Direct Exposure Pathway

An equation with the same parameters—the quantity of radiation intercepted by "Reference Man" (ICRP Publication 23, Pergamon, 1975) at a distance of 30 meters from a release, with the exposure limited to 500 millirem—also was developed to calculate a value for a third route of exposure, direct exposure to a point source of radiation. A separate direct exposure equation was developed for submersion in a radioactive cloud of noble gas because submersion in a radioactive cloud results in an integrated dose from all directions at varying distances from the body, unlike direct exposure to a point source.[10] These equations are discussed in more detail in the Technical Background Document, Chapter 4 and Appendix D of that report.

Four commenters referred to the direct exposure models. Two of them stressed the desirability of using gamma ray constants for all gamma emitting nuclides. EPA notes that the direct exposure pathway equation incorporates an accepted equation for calculating gamma ray constants. Another commenter argued that it was implausible, in the model for submersion in a cloud of noble gas, for the gas concentration at a point 30 meters from the source to remain constant for 24

[10] EPA recognizes that a cloud of non-noble gases can contribute to a dose through the submersion-in-a-cloud pathway, in the same manner as noble gases. However, it is generally recognized that, in this situation, the inhalation pathway is controlling. Therefore, direct exposure by submersion in a cloud was analyzed only for noble gases.

hours and for an exposed individual to remain in that position for 24 hours. EPA agrees that these assumptions are unlikely, but RQs are based on releases occurring over no more than a day, so the maximum period of exposure in this instance also is one day. The Agency could not determine a shorter exposure period that it was certain would be sufficiently protective. The final commenter stated that the point source release model is unrepresentative of area sources and that release values based on a point source model may be too low. EPA agrees that the release models are not perfect representations of all potential release situations, but the Agency prefers not to develop multiple RQs (or correction factors) to take into account many different release configurations because this would add more complications than benefits to the rule. Instead, EPA has adopted a single model to calculate direct exposure release values that is applicable broadly.

E. Establishing the RQ

For each of the 757 radionuclides listed in ICRP Publication 30, therefore, four release values were derived. The Agency selected the lowest of the four values for each specific radionuclide, with the intent of choosing an RQ that is the most protective of human health and welfare and the environment. A detailed explanation of the methodology used to derive radionuclide RQs is in Chapter 4 of the Technical Background Document, available in the Superfund Docket.

To simplify administration and implementation of RQ reporting for the 757 separate radionuclides, EPA decided to place each radionuclide in one of seven groups, with each group assigned a single specific RQ. While the RQs for other CERCLA hazardous substances are divided into only five groups, the Agency decided to use seven groups for radionuclides so that the assigned RQ groups would not differ in magnitude by more than a factor of ten, as is the case for other hazardous substance RQ groups. The lowest release value for each radionuclide was used to determine the group to which the radionuclide was assigned. The RQs for the seven radionuclide groups are as follows:

Adjusted RQ (in curies)	Lowest release value range (in curies)	Number (and percent) of radionuclides
0.001	0.001–0.0099	7 (1%)
0.01	0.01–0.099	29 (4%)
0.1	0.1–0.99	29 (4%)
1	1–9.99	32 (4%)
10	10–99.99	220 (29%)
100	100–999.99	235 (31%)
1000	1000 and greater	205 (27%)

All radionuclides not listed by ICRP Publication 30 have been assigned a final RQ of one Ci. Available information on these radionuclides is insufficient to develop a specific RQ for individual radionuclides in this group. An RQ of one Ci was selected because it is the middle RQ category, and the majority of radionuclides (91 percent) examined individually have RQs at least at this level. The Agency believes, for two main reasons, that an RQ of one Ci for these "remaining radionuclides" is sufficiently low to assure timely reporting for most release situations. First, most of the radionuclides that fall into this category are rare, both in terms of frequency of use and quantities used. Many of these radionuclides have been produced in only a few isolated research projects and many do not exist in the world in quantities that equal or exceed one Ci. Therefore, releases of the radionuclides not listed by ICRP Publication 30 are expected to be infrequent and, if they occur, are expected to be released within any 24-hour period in quantities smaller than one Ci. Second, many of the remaining radionuclides have short half-lives and do not decay into other radioactive isotopes. Under most realistic release situations, these radionuclides would be expected to decay and virtually disappear before they could reach receptor locations.

EPA has set a group RQ for these remaining radionuclides at a level that it believes is sufficiently protective of public health and welfare and the environment, without posing an unreasonable burden on the regulated community. Nevertheless, EPA recognizes that an RQ of one Ci may not necessarily assure timely reporting for a small number of remaining radionuclides. Also, an RQ of one Ci may result in unnecessary reporting of releases of some short-lived radionuclides. For example, more than one Ci of nitrogen-13 and oxygen-15 can be released to the air within 24 hours from low energy accelerators. Such a release, however, may not present a level of hazard worthy of a report because nitrogen-13 and oxygen-15 have short half-lives (10 minutes and 2 minutes, respectively) and likely would undergo significant decay before reaching an exposure point. For these reasons, EPA is investigating alternate methodologies for developing RQs for the radionuclides not listed by ICRP Publication 30. Any necessary revision to the one Ci RQ promulgated today for these radionuclides will be made in a future technical update.

Assignment of the individually calculated lowest release values to one of seven groups and placement of other radionuclides in the generic RQ group should not be interpreted to mean that all radionuclides in any given group represent the same threat or danger to public health and welfare and the environment. Two or more radionuclides with the same RQ do not reflect a determination that a release of one will be as hazardous as the release of another, or even that the release of one will be hazardous at or above the RQ level and not hazardous below that level. The actual hazard will vary with the unique circumstances of the release and the characteristics of the radionuclides, and extensive scientific data and analysis would be necessary to determine the hazard presented by each substance under a number of possible circumstances. The RQs are designed to be a trigger for notification and they reflect the Agency's judgment that the appropriate government agencies should be notified of certain releases to which a response might be necessary. The RQs represent a determination only of possible or potential harm, not that releases of a particular amount of a hazardous substance necessarily will be harmful to public health or welfare or the environment.

One commenter suggested that the RQs should not be rounded off into the seven groups, as this is no simpler than being set at their specific calculated release values. EPA disagrees, and believes that seven different RQs for 757 radionuclides is certainly simpler than 757 RQs for 757 radionuclides. Also, the model calculations are only approximate, and setting individual RQs at specific release values implies an unjustified precision.

Another commenter argued for adherence to the one-pound RQ for radionuclides not listed in ICRP Publication 30 until EPA obtains meaningful data on them. However, EPA has rejected measuring radionuclide RQs in terms of pounds. Using one pound as the RQ might ensure reporting of very large releases, but many releases much smaller than this may represent a serious health and environmental hazard. Additionally, a one-pound RQ does not conform to commonly accepted units of measurement for radionuclides.

F. Alternative Approaches

In addition to describing in the NPRM the method and assumptions used to develop the proposed RQs, EPA solicited comments on other methodologies for developing RQs for radionuclides. Two commenters offered alternative approaches to the methodology described in the NPRM. One commenter suggested using EPA's Protective Action Guides (PAGs), or a multiple thereof, as the basis for RQs. PAGs are projected doses to individuals (ranging from one to five rem) that might warrant taking protective action. EPA notes that the final RQs were calculated based on 500 millirem, which is 0.5 times the lowest PAG.

There are several reasons why EPA chose not to use the PAGs directly for adjustment of the radionuclide RQs. First, the PAGs are projected dose levels; they do not specify (or provide guidance for calculating) quantities of specific radionuclides that, if released, could cause doses that exceed the PAGs. As discussed in the NPRM, EPA rejected the option of using a dose-equivalent level as the RQ for radionuclides, mainly because it is significantly more complicated to estimate a dose than a quantity released, and because different releasers could estimate doses in different ways. This could result in untimely and inconsistent reporting. Second, the PAGs and RQs differ in their basic purpose. The PAGs are projected dose levels that might warrant protective action, while the RQs are simply reporting triggers designed to give the government the opportunity to evaluate the release and mount a response if necessary. Given these different purposes, EPA sees no reason why the PAGs and RQs should be based on the same dose level. Finally, the "protective actions" that appear to be contemplated by the PAGs are generally large-scale actions, such as emergency response planning and evacuation on a community-wide level. The government, however, may wish to take smaller-scale actions, such as cleaning up a release or making telephone calls to gather more information or to alert other government officials. The 500 millirem level used to calculate the RQs is considered low enough to give the government the opportunity to carry out these small-scale responses, as well as any large-scale responses that might be necessary.

The other commenter recommended using as RQs the DOT A_2 values, which define the content limits of "normal form" radioactive material for Type A packages. EPA believes, however, that the assumptions and methodology used in calculating such values are not applicable to the calculation of RQs because they assume situations and conditions incompatible with determining the size of releases that should trigger a notification to the National Response Center. For example, the A_2 values were calculated based on the following assumptions: a person in the vicinity of a failed transportation package receiving the annual dose limit for radiation workers (five rem); the distance from the point of release to point of exposure is one meter; the period of exposure is 30 minutes; and subjective assumptions regarding the extent of package damage and releases of the package's contents. RQs, on the other hand, are: Applicable for all types of release situations (not just those involving a damaged package); based on 500 millirem, the Federal Radiation Protection Guidance for members of the general public; based, in general, on a longer exposure period; and based on a longer distance to point of exposure (30 meters) because they are designed to assure timely reporting in the event of public exposures, not occupational exposures that might occur at a distance of one meter. Furthermore, A_2 values are only available for about 250 radionuclides.

G. Reporting Requirements for Mixtures of Radionuclides Only

1. Mixtures of Known Composition

Reporting requirements for releases involving mixtures of known composition can be obtained directly from the RQs for individual constituents of the mixture. If the identity and quantity (in curies) of each radionuclide involved in a release event is known, the decision whether to report a release must be made in the following manner: for each radionuclide in the mixture, determine the ratio between the quantity released in curies and the RQ for the radionuclide. If the sum of the ratios for all radionuclides is less than one, the release need not be reported. If the sum is equal to or greater than one, the release must be reported to the National Response Center.

2. Mixtures of Unknown Composition

Reporting requirements for mixtures, where either the amount or identity of the individual radionuclides in the mixture is unknown, cannot be based on the determination of quantities released. There are three possibilities: (1) The identities of the radionuclides involved are known, but the amount released of each is unknown; (2) the identities of the radionuclides (or one of the radionuclides) in the mixture are unknown, but the amount released is known in total curies per unit volume or weight; or (3) the identities of the radionuclides involved are unknown and the amount of some of the radionuclides released in the mixture is unknown (but the total quantity is known). For these cases, the decision to report a release shall be made as follows:

a. *Identity known, but amount unknown*

If the identity of each radionuclide in the mixture is known but the amount of one or more of the radionuclides is unknown, the RQ for the mixture shall be the lowest RQ of any radionuclide in the mixture.

One commenter suggested that when comparing the RQ of the unquantified isotope to the total release, the latter should be reduced by the known (isotope and quantity) releases, with the remainder of the release then assumed to be the isotope with the most restrictive RQ. EPA agrees that, in theory, it would be sensible to separate the released quantity into the known and unknown isotopes and quantities. However, EPA believes that this would add considerable complication to determining RQs and, hence, could prevent timely reporting of releases to the government. This commenter also urged that some *de minimis* level be applied to the determination that an isotope is known to be present, to prevent trace quantities from being considered. However, EPA disagrees that trace quantities of radionuclides, if known to the person-in-charge, should be ignored in assessing mixtures.

b. *Identity of radionuclide(s) in the release is unknown*

If the identity of a radionuclide in a release is unknown or if the identity of one or more radionuclides in the release of a mixture of radionuclides is unknown, the release must be reported to the National Response Center if the total release is equal to or greater than one Ci, or if the total release is equal to or greater than the lowest RQ of any known radionuclide in the mixture, whichever is lower.

3. Common Radionuclide Mixtures

In response to comments on the NPRM, the Agency today has calculated RQs for four common radionuclide mixtures: radium-226 in secular equilibrium with its daughters (an RQ of 0.053 Ci), natural uranium (an RQ of 0.1 Ci), natural uranium in secular equilibrium with its daughters (an RQ of 0.052 Ci), and thorium in secular equilibrium with its daughters (an RQ of 0.011 Ci). The Agency has calculated

these RQs for the convenience of persons frequently handling these hazardous substances and these RQs are listed in a footnote in Appendix B to Table 302.4. The RQs are developed directly from the mixture rule discussed above.

One commenter endorsed an RQ of 0.1 Ci for natural uranium so long as it was not meant to apply to natural uranium in secular equilibrium with its daughters. The Agency today has clarified that the 0.1 Ci RQ is applicable to natural uranium not in secular equilibrium with its daughters; natural uranium in secular equilibrium with its daughters has an RQ of 0.052 Ci.

H. Reporting Requirements for Compounds and Mixtures of Radionuclides and Other Hazardous Substances

One commenter noted that the RQs of several radionuclides (e.g., Cd-113, Be-10, Cl-36, In-115, and Pb-205) should be based upon chemical toxicity rather than radiological hazard. EPA agrees that for some relatively long-lived and naturally occurring radioactive materials, the chemical toxicity may exceed the radiotoxicity. Two RQs may apply to the release of a substance containing radionuclides—one RQ being based on chemical toxicity and the other being based on radiotoxicity. In such situations, the lowest applicable RQ for a substance governs when the owner or operator must report the release to the National Response Center. In this way, the RQs reflect the relative chemical toxicity and radiation hazard of a substance.

For example, naturally occurring cadmium consists of roughly 12 percent cadmium-113, a radioactive isotope, and several other isotopes of cadmium that are not radioactive. The RQ for cadmium based on potential carcinogenicity will be finalized in a future rulemaking; the RQ for cadmium-113, just one component of naturally occurring cadmium, is finalized in today's rulemaking at 0.1 Ci. A releaser of cadmium metal is required to report if either the RQ of the metal (if the diameters of the particles of the released metal are less than or equal to 100 micrometers) or 0.1 Ci of cadmium-113 (regardless of the particle size of the cadmium-113) is released. The RQ for cadmium based on chemical toxicity may be more limiting than the RQ based on radiotoxicity, however, for other materials, the RQ based on radiotoxicity may be more limiting than the RQ based on chemical toxicity. In both situations, the lowest RQ applicable to the substance released would be the reporting trigger.

Uranyl acetate and uranyl nitrate are additional examples of substances with two applicable RQs, one based on chemical toxicity and the other based on radiation hazard. Both substances are specifically listed as CERCLA hazardous substances because they are included under section 311 of the CWA; however, they both consist of about 60 percent uranium-238, a radionuclide. Based on their chemical toxicity, uranyl acetate and uranyl nitrate have a final adjusted RQ of 100 pounds (51 FR 34534, September 29, 1986). The final RQ for uranium-238, based upon radiological hazard, is 0.1 Ci, which is equivalent to roughly 660 pounds of uranium-238. Both the 0.1 Ci RQ for uranium-238 and the 100 pound RQ are applicable to releases of uranyl acetate and uranyl nitrate, but the 100-pound RQ will always trigger reporting first because it is the lower, more protective level. The RQ of 100 pounds will assure timely reporting of releases of uranyl acetate and uranyl nitrate from both a radiological hazard and chemical toxicity standpoint.

IV. Summary of Supporting Analyses

A. Executive Order No. 12291

Rulemaking protocol under Executive Order (E.O.) No. 12291 requires that regulations be classified as major or non-major for purposes of review by the Office of Management and Budget (OMB). According to E.O. No. 12291, major rules and regulations that are likely to result in:

(1) An annual effect on the economy of $100 million or more; or

(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.

The Economic Impact Analysis for the Final Reportable Quantity Adjustments for Radionuclides under section 102 of CERCLA (Economic Impact Analysis) is available for inspection in the Superfund Docket in Room 2427, U.S. Environmental Protection Agency (OS-240), 401 M Street, SW., Washington, DC 20460. The Economic Impact Analysis shows that today's final regulation is non-major, because adoption of the rule will result in an estimated total annual cost of $1.6 million to the government and the regulated community, with the latter's share being about $1.2 million annually. Of these costs, $256,000 would be due to 59 additional episodic releases expected to be reported annually to the government. The remaining $1.4 million would result from about 1,000 facilities, largely in the mining and extraction industries, that would file reports pursuant to the reduced reporting requirements for continuous releases allowed under CERCLA section 103(f)(2). None of the other characteristics of major rules are satisfied by today's rule.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 requires that a Regulatory Flexibility Analysis be performed for all rules that are likely to have a "significant impact on a substantial number of small entities." EPA certifies that this regulation will not have a significant impact on a substantial number of small entities. See Chapter 6 of the Economic Impact Analysis for more information concerning this finding.

C. Paperwork Reduction Act

The information collection requirements contained in this rule have been approved by OMB under the provisions of the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* and have been assigned OMB control number 2050-0046.

Public reporting burden for this collection of information is estimated to average two hours per response, including 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 the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM-223, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA."

List of Subjects in 40 CFR Part 302

Air pollution control, Chemicals, Hazardous materials, Hazardous materials transportation, Hazardous substances, Hazardous wastes, Intergovernmental relations, Mineral mining, Natural resources, Radioactive materials, Radionuclide, Reporting and recordkeeping requirements, Source, byproduct and special nuclear materials, Superfund, Waste treatment and disposal, Water pollution control.

Dated: March 30, 1989.

William K. Reilly,

Administrator.

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

PART 302—DESIGNATION, REPORTABLE QUANTITIES, AND NOTIFICATION

1. The authority citation for Part 302 continues to read as follows:

Authority: Sec. 102 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9602; secs. 311 and 501(a) of the Federal Water Pollution Control Act, 33 U.S.C. 1321 and 1361.

2. Section 302.5 is amended by revising paragraph (a) to read as follows:

§ 302.5 Determination of reportable quantities.

(a) *Listed hazardous substances.* The quantity listed in the column "Final RQ" for each substance in Table 302.4, or in Appendix B to Table 302.4, is the reportable quantity (RQ) for that substance. The RQs in Table 302.4 are in units of pounds based on chemical toxicity, while the RQs in Appendix B to Table 302.4 are in units of curies based on radiation hazard. Whenever the RQs in Table 302.4 and Appendix B to the table are in conflict, the lowest RQ shall apply.

* * * * *

3. Section 302.6 is amended by redesignating paragraph (c) as (d) and by revising paragraph (b) and the newly designated (d) and by adding a new paragraph (c) to read as follows:

§ 302.6 Notification requirements.

* * * * *

(b) Releases of mixtures or solutions of

(1) Hazardous substances, except for radionuclides, are subject to this section's notification requirements only where a component hazardous substance of the mixture or solution is released in a quantity equal to or greater than its RQ.

(2) Radionuclides are subject to this section's notification requirements only in the following circumstances:

(i) If the identity and quantity (in curies) of each radionuclide in a released mixture or solution is known, the ratio between the quantity released (in curies) and the RQ for the radionuclide must be determined for each radionuclide. The only such releases subject to this section's notification requirements are those in which the sum of the ratios for the radionuclides in the mixture or solution released is equal to or greater than one.

(ii) If the identity of each radionuclide in a released mixture or solution is known but the quantity released (in curies) of one or more of the radionuclides is unknown, the only such releases subject to this section's notification requirements are those in which the total quantity (in curies) of the mixture or solution released is equal to or greater than the lowest RQ of any individual radionuclide in the mixture or solution.

(iii) If the identity of one or more radionuclides in a released mixture or solution is unknown (or if the identity of a radionuclide released by itself is unknown), the only such releases subject to this section's notification requirements are those in which the total quantity (in curies) released is equal to or greater than either one curie or the lowest RQ of any known individual radionuclide in the mixture or solution, whichever is lower.

(c) The following categories of releases are exempt from the notification requirements of this section: (1) Releases of those radionuclides that occur naturally in the soil from land holdings such as parks, golf courses, or other large tracts of land; (2) releases of radionuclides occurring naturally from the disturbance of land for purposes other than mining, such as for agricultural or construction activities; (3) releases of radionuclides from the dumping of coal and coal ash at utility and industrial facilities with coal-fired boilers; and (4) releases of radionuclides from coal and coal ash piles at utility and industrial facilities with coal-fired boilers.

(d) Except for releases of radionuclides, notification of the release of an RQ of solid particles of antimony, arsenic, beryllium, cadmium, chromium, copper, lead, nickel, selenium, silver, thallium, or zinc is not required if the mean diameter of the particles released is larger than 100 micrometers (0.004 inches).

§ 302.4 [Amended]

4. In Section 302.4, Table 302.4 is amended by revising the entry for "Radionuclides" under the "Final RQ" column for "Pounds (kg)" to read: "§."

5. In Section 302.4, Table 302.4 is amended by revising the footnote at the end of the table explaining "§" to read:

"§—the adjusted RQs for radionuclides may be found in Appendix B to this table."

6. In Section 302.4, Table 302.4 is amended by adding the following table as Appendix B:

APPENDIX B—RADIONUCLIDES

Radionuclide	Atomic Number	Final RQ Ci (Bq)
Radionuclides[e]		1& (3.7E 10)
Actinium-224	89	100 (3.7E 12)
Actinium-225	89	1 (3.7E 10)
Actinium-226	89	10 (3.7E 11)
Actinium-227	89	0.001 (3.7E 7)
Actinium-228	89	10 (3.7E 11)
Aluminum-26	13	10 (3.7E 11)
Americium-237	95	1000 (3.7E 13)
Americium-238	95	100 (3.7E 12)
Americium-239	95	100 (3.7E 12)
Americium-240	95	10 (3.7E 11)
Americium-241	95	0.01 (3.7E 8)
Americium-242m	95	0.01 (3.7E 8)
Americium-242	95	100 (3.7E 12)
Americium-243	95	0.01 (3.7E 8)
Americium-244m	95	1000 (3.7E 13)
Americium-244	95	10 (3.7E 11)
Americium-245	95	1000 (3.7E 13)
Americium-246m	95	1000 (3.7E 13)
Americium-246	95	1000 (3.7E 13)
Antimony-115	51	1000 (3.7E 13)
Antimony-116m	51	100 (3.7E 12)
Antimony-116	51	1000 (3.7E 13)
Antimony-117	51	1000 (3.7E 13)
Antimony-118m	51	10 (3.7E 11)
Antimony-119	51	1000 (3.7E 13)
Antimony-120 (16 min)	51	1000 (3.7E 13)
Antimony-120 (5.76 day)	51	10 (3.7E 11)
Antimony-122	51	10 (3.7E 11)
Antimony-124m	51	1000 (3.7E 13)
Antimony-124	51	10 (3.7E 11)
Antimony-125	51	10 (3.7E 11)
Antimony-126m	51	1000 (3.7E 13)
Antimony-126	51	10 (3.7E 11)
Antimony-127	51	10 (3.7E 11)
Antimony-128 (10.4 min)	51	1000 (3.7E 13)
Antimony-128 (9.01 hr)	51	10 (3.7E 11)
Antimony-129	51	100 (3.7E 12)
Antimony-130	51	100 (3.7E 12)
Antimony-131	51	1000 (3.7E 13)
Argon-39	18	1000 (3.7E 13)
Argon-41	18	10 (3.7E 11)
Arsenic-69	33	1000 (3.7E 13)
Arsenic-70	33	100 (3.7E 12)
Arsenic-71	33	100 (3.7E 12)
Arsenic-72	33	10 (3.7E 11)
Arsenic-73	33	100 (3.7E 12)
Arsenic-74	33	10 (3.7E 11)
Arsenic-76	33	100 (3.7E 12)
Arsenic-77	33	1000 (3.7E 13)
Arsenic-78	33	100 (3.7E 12)
Astatine-207	85	100 (3.7E 12)
Astatine-211	85	100 (3.7E 12)
Barium-126	56	1000 (3.7E 13)
Barium-128	56	10 (3.7E 11)
Barium-131m	56	1000 (3.7E 13)
Barium-131	56	10 (3.7E 11)
Barium-133m	56	100 (3.7E 12)
Barium-133	56	10 (3.7E 11)
Barium-135m	56	1000 (3.7E 13)
Barium-139	56	1000 (3.7E 13)
Barium-140	56	10 (3.7E 11)
Barium-141	56	1000 (3.7E 13)
Barium-142	56	1000 (3.7E 13)
Berkelium-245	97	100 (3.7E 12)
Berkelium-246	97	10 (3.7E 11)
Berkelium-247	97	0.01 (3.7E 8)
Berkelium-249	97	1 (3.7E 10)
Berkelium-250	97	100 (3.7E 12)
Beryllium-7	4	100 (3.7E 12)
Beryllium-10	4	1 (3.7E 10)
Bismuth-200	83	100 (3.7E 12)
Bismuth-201	83	100 (3.7E 12)
Bismuth-202	83	1000 (3.7E 13)
Bismuth-203	83	10 (3.7E 11)

APPENDIX B—RADIONUCLIDES—Continued

Radionuclide	Atomic Number	Final RQ Ci (Bq)
Bismuth-205	83	10 (3.7E 11)
Bismuth-206	83	10 (3.7E 11)
Bismuth-207	83	10 (3.7E 11)
Bismuth-210m	83	0.1 (3.7E 9)
Bismuth-210	83	10 (3.7E 11)
Bismuth-212	83	100 (3.7E 12)
Bismuth-213	83	100 (3.7E 12)
Bismuth-214	83	100 (3.7E 12)
Bromine-74m	35	100 (3.7E 12)
Bromine-74	35	100 (3.7E 12)
Bromine-75	35	100 (3.7E 12)
Bromine-76	35	10 (3.7E 11)
Bromine-77	35	100 (3.7E 12)
Bromine-80m	35	1000 (3.7E 13)
Bromine-80	35	1000 (3.7E 13)
Bromine-82	35	10 (3.7E 11)
Bromine-83	35	1000 (3.7E 13)
Bromine-84	35	100 (3.7E 12)
Cadmium-104	48	1000 (3.7E 13)
Cadmium-107	48	1000 (3.7E 13)
Cadmium-109	48	1 (3.7E 10)
Cadmium-113m	48	0.1 (3.7E 9)
Cadmium-113	48	0.1 (3.7E 9)
Cadmium-115m	48	10 (3.7E 11)
Cadmium-115	48	100 (3.7E 12)
Cadmium-117m	48	10 (3.7E 11)
Cadmium-117	48	100 (3.7E 12)
Calcium-41	20	10 (3.7E 11)
Calcium-45	20	10 (3.7E 11)
Calcium-47	20	10 (3.7E 11)
Californium-244	98	1000 (3.7E 13)
Californium-246	98	10 (3.7E 11)
Californium-248	98	0.1 (3.7E 9)
Californium-249	98	0.01 (3.7E 8)
Californium-250	98	0.01 (3.7E 8)
Californium-251	98	0.01 (3.7E 8)
Californium-252	98	0.1 (3.7E 9)
Californium-253	98	10 (3.7E 11)
Californium-254	98	0.1 (3.7E 9)
Carbon-11	6	1000 (3.7E 13)
Carbon-14	6	10 (3.7E 11)
Cerium-134	58	10 (3.7E 11)
Cerium-135	58	10 (3.7E 11)
Cerium-137m	58	100 (3.7E 12)
Cerium-137	58	1000 (3.7E 13)
Cerium-139	58	100 (3.7E 12)
Cerium-141	58	10 (3.7E 11)
Cerium-143	58	100 (3.7E 12)
Cerium-144	58	1 (3.7E 10)
Cesium-125	55	1000 (3.7E 13)
Cesium-127	55	100 (3.7E 12)
Cesium-129	55	100 (3.7E 12)
Cesium-130	55	1000 (3.7E 13)
Cesium-131	55	1000 (3.7E 13)
Cesium-132	55	10 (3.7E 11)
Cesium-134m	55	1000 (3.7E 13)
Cesium-134	55	1 (3.7E 10)
Cesium-135m	55	100 (3.7E 12)
Cesium-135	55	10 (3.7E 11)
Cesium-136	55	10 (3.7E 11)
Cesium-137	55	1 (3.7E 10)
Cesium-138	55	100 (3.7E 12)
Chlorine-36	17	10 (3.7E 11)
Chlorine-38	17	100 (3.7E 12)
Chlorine-39	17	100 (3.7E 12)
Chromium-48	24	100 (3.7E 12)
Chromium-49	24	1000 (3.7E 13)
Chromium-51	24	1000 (3.7E 13)
Cobalt-55	27	10 (3.7E 11)
Cobalt-56	27	10 (3.7E 11)
Cobalt-57	27	100 (3.7E 12)
Cobalt-58m	27	1000 (3.7E 13)
Cobalt-58	27	10 (3.7E 11)
Cobalt-60m	27	1000 (3.7E 13)
Cobalt-60	27	10 (3.7E 11)

APPENDIX B—RADIONUCLIDES—Continued

Radionuclide	Atomic number	Final RQ Ci (Bq)
Cobalt-61	27	1000 (3.7E 13)
Cobalt-62m	27	1000 (3.7E 13)
Copper-60	29	100 (3.7E 12)
Copper-61	29	100 (3.7E 12)
Copper-64	29	1000 (3.7E 13)
Copper-67	29	100 (3.7E 12)
Curium-238	96	1000 (3.7E 13)
Curium-240	96	1 (3.7E 10)
Curium-241	96	10 (3.7E 11)
Curium-242	96	1 (3.7E 10)
Curium-243	96	0.01 (3.7E 8)
Curium-244	96	0.01 (3.7E 8)
Curium-245	96	0.01 (3.7E 8)
Curium-246	96	0.01 (3.7E 8)
Curium-247	96	0.01 (3.7E 8)
Curium-248	96	0.001 (3.7E 7)
Curium-249	96	1000 (3.7E 13)
Dysprosium-155	66	100 (3.7E 12)
Dysprosium-157	66	100 (3.7E 12)
Dysprosium-159	66	100 (3.7E 12)
Dysprosium-165	66	1000 (3.7E 13)
Dysprosium-166	66	10 (3.7E 11)
Einsteinium-250	99	10 (3.7E 11)
Einsteinium-251	99	1000 (3.7E 13)
Einsteinium-253	99	10 (3.7E 11)
Einsteinium-254m	99	1 (3.7E 10)
Einsteinium-254	99	0.1 (3.7E 9)
Erbium-161	68	100 (3.7E 12)
Erbium-165	68	1000 (3.7E 13)
Erbium-169	68	100 (3.7E 12)
Erbium-171	68	100 (3.7E 12)
Erbium-172	68	10 (3.7E 11)
Europium-145	63	10 (3.7E 11)
Europium-146	63	10 (3.7E 11)
Europium-147	63	10 (3.7E 11)
Europium-148	63	10 (3.7E 11)
Europium-149	63	100 (3.7E 12)
Europium-150 (12.6 hr)	63	1000 (3.7E 13)
Europium-150 (34.2 yr)	63	10 (3.7E 11)
Europium-152m	63	100 (3.7E 12)
Europium-152	63	10 (3.7E 11)
Europium-154	63	10 (3.7E 11)
Europium-155	63	10 (3.7E 11)
Europium-156	63	10 (3.7E 11)
Europium-157	63	10 (3.7E 11)
Europium-158	63	1000 (3.7E 13)
Fermium-252	100	10 (3.7E 11)
Fermium-253	100	10 (3.7E 11)
Fermium-254	100	100 (3.7E 12)
Fermium-255	100	100 (3.7E 12)
Fermium-257	100	1 (3.7E 10)
Fluorine-18	9	1000 (3.7E 13)
Francium-222	87	100 (3.7E 12)
Francium-223	87	100 (3.7E 12)
Gadolinium-145	64	100 (3.7E 12)
Gadolinium-146	64	10 (3.7E 11)
Gadolinium-147	64	10 (3.7E 11)
Gadolinium-148	64	0.001 (3.7E 7)
Gadolinium-149	64	100 (3.7E 12)
Gadolinium-151	64	100 (3.7E 12)
Gadolinium-152	64	0.001 (3.7E)
Gadolinium-153	64	10 (3.7E 11)
Gadolinium-159	64	1000 (3.7E 13)
Gallium-65	31	1000 (3.7E 13)
Gallium-66	31	10 (3.7E 11)
Gallium-67	31	100 (3.7E 12)
Gallium-68	31	1000 (3.7E 13)
Gallium-70	31	1000 (3.7E 13)
Gallium-72	31	10 (3.7E 11)
Gallium-73	31	100 (3.7E 12)
Germanium-66	32	100 (3.7E 12)
Germanium-67	32	1000 (3.7E 13)

APPENDIX B—RADIONUCLIDES—Continued

Radionuclide	Atomic number	Final RQ Ci (Bq)
Germanium-68	32	10 (3.7E 11)
Germanium-69	32	10 (3.7E 11)
Germanium-71	32	1000 (3.7E 13)
Germanium-75	32	1000 (3.7E 13)
Germanium-77	32	10 (3.7E 11)
Germanium-78	32	1000 (3.7E 13)
Gold-193	79	100 (3.7E 12)
Gold-194	79	10 (3.7E 11)
Gold-195	79	100 (3.7E 12)
Gold-198m	79	10 (3.7E 11)
Gold-198	79	100 (3.7E 12)
Gold-199	79	100 (3.7E 12)
Gold-200m	79	10 (3.7E 11)
Gold-200	79	1000 (3.7E 13)
Gold-201	79	1000 (3.7E 13)
Hafnium-170	72	100 (3.7E 12)
Hafnium-172	72	1 (3.7E 10)
Hafnium-173	72	100 (3.7E 12)
Hafnium-175	72	100 (3.7E 12)
Hafnium-177m	72	1000 (3.7E 13)
Hafnium-178m	72	0.1 (3.7E 9)
Hafnium-179m	72	100 (3.7E 12)
Hafnium-180m	72	100 (3.7E 12)
Hafnium-181	72	10 (3.7E 11)
Hafnium-182m	72	100 (3.7E 12)
Hafnium-182	72	0.1 (3.7E 9)
Hafnium-183	72	100 (3.7E 12)
Hafnium-184	72	100 (3.7E 12)
Holmium-155	67	1000 (3.7E 13)
Holmium-157	67	1000 (3.7E 13)
Holmium-159	67	1000 (3.7E 13)
Holmium-161	67	1000 (3.7E 13)
Holmium-162m	67	1000 (3.7E 13)
Holmium-162	67	1000 (3.7E 13)
Holmium-164m	67	1000 (3.7E 13)
Holmium-164	67	1000 (3.7E 13)
Holmium-166m	67	1 (3.7E 10)
Holmium-166	67	100 (3.7E 12)
Holmium-167	67	100 (3.7E 12)
Hydrogen-3	1	100 (3.7E 12)
Indium-109	49	100 (3.7E 12)
Indium-110 (69.1 min)	49	100 (3.7E 12)
Indium-110 (4.9 hr)	49	10 (3.7E 11)
Indium-111	49	100 (3.7E 12)
Indium-112	49	1000 (3.7E 13)
Indium-113m	49	1000 (3.7E 13)
Indium-114m	49	10 (3.7E 11)
Indium-115m	49	100 (3.7E 12)
Indium-115	49	0.1 (3.7E 9)
Indium-116m	49	100 (3.7E 12)
Indium-117m	49	100 (3.7E 12)
Indium-117	49	1000 (3.7E 13)
Indium-119m	49	1000 (3.7E 13)
Iodine-120m	53	100 (3.7E 12)
Iodine-120	53	10 (3.7E 11)
Iodine-121	53	100 (3.7E 12)
Iodine-123	53	10 (3.7E 11)
Iodine-124	53	0.1 (3.7E 9)
Iodine-125	53	0.01 (3.7E 8)
Iodine-126	53	0.01 (3.7E 8)
Iodine-128	53	1000 (3.7E 13)
Iodine-129	53	0.001 (3.7E 7)
Iodine-130	53	1 (3.7E 10)
Iodine-131	53	0.01 (3.7E 8)
Iodine-132m	53	10 (3.7E 11)
Iodine-132	53	10 (3.7E 11)
Iodine-133	53	0.1 (3.7E 9)
Iodine-134	53	100 (3.7E 12)
Iodine-135	53	10 (3.7E 11)
Iridium-182	77	1000 (3.7E 13)
Iridium-184	77	100 (3.7E 12)

APPENDIX B—RADIONUCLIDES

Radionuclide	Atomic number	Final RQ Ci (Bq)
Iridium-185	77	100 (3.7E 12)
Iridium-186	77	10 (3.7E 11)
Iridium-187	77	100 (3.7E 12)
Iridium-188	77	10 (3.7E 11)
Iridium-189	77	100 (3.7E 12)
Iridium-190m	77	1000 (3.7E 13)
Iridium-190	77	10 (3.7E 11)
Iridium-192m	77	100 (3.7E 12)
Iridium-192	77	10 (3.7E 11)
Iridium-194m	77	10 (3.7E 11)
Iridium-194	77	100 (3.7E 12)
Iridium-195m	77	100 (3.7E 12)
Iridium-195	77	1000 (3.7E 13)
Iron-52	26	100 (3.7E 12)
Iron-55	26	100 (3.7E 12)
Iron-59	26	10 (3.7E 11)
Iron-60	26	0.1 (3.7E 9)
Krypton-74	36	10 (3.7E 11)
Krypton-76	36	10 (3.7E 11)
Krypton-77	36	10 (3.7E 11)
Krypton-79	36	100 (3.7E 12)
Krypton-81	36	1000 (3.7E 13)
Krypton-83m	36	1000 (3.7E 13)
Krypton-85m	36	100 (3.7E 12)
Krypton-85	36	1000 (3.7E 13)
Krypton-87	36	10 (3.7E 11)
Krypton-88	36	10 (3.7E 11)
Lanthanum-131	57	1000 (3.7E 13)
Lanthanum-132	57	100 (3.7E 12)
Lanthanum-135	57	1000 (3.7E 13)
Lanthanum-137	57	10 (3.7E 11)
Lanthanum-138	57	1 (3.7E 10)
Lanthanum-140	57	10 (3.7E 11)
Lanthanum-141	57	1000 (3.7E 13)
Lanthanum-142	57	100 (3.7E 12)
Lanthanum-143	57	1000 (3.7E 13)
Lead-195m	82	1000 (3.7E 13)
Lead-198	82	100 (3.7E 12)
Lead-199	82	100 (3.7E 12)
Lead-200	82	100 (3.7E 12)
Lead-201	82	100 (3.7E 12)
Lead-202m	82	10 (3.7E 11)
Lead-202	82	1 (3.7E 10)
Lead-203	82	100 (3.7E 12)
Lead-205	82	100 (3.7E 12)
Lead-209	82	1000 (3.7E 13)
Lead-210	82	0.01 (3.7E 8)
Lead-211	82	100 (3.7E 12)
Lead-212	82	10 (3.7E 11)
Lead-214	82	100 (3.7E 12)
Lutetium-169	71	10 (3.7E 11)
Lutetium-170	71	10 (3.7E 11)
Lutetium-171	71	10 (3.7E 11)
Lutetium-172	71	10 (3.7E 11)
Lutetium-173	71	100 (3.7E 12)
Lutetium-174m	71	10 (3.7E 11)
Lutetium-174	71	10 (3.7E 11)
Lutetium-176m	71	1000 (3.7E 13)
Lutetium-176	71	1 (3.7E 10)
Lutetium-177m	71	10 (3.7E 11)
Lutetium-177	71	100 (3.7E 12)
Lutetium-178m	71	1000 (3.7E 13)
Lutetium-178	71	1000 (3.7E 13)
Lutetium-179	71	1000 (3.7E 13)
Magnesium-28	12	10 (3.7E 11)
Manganese-51	25	1000 (3.7E 13)
Manganese-52m	25	1000 (3.7E 13)
Manganese-52	25	10 (3.7E 11)
Manganese-53	25	1000 (3.7E 13)
Manganese-54	25	10 (3.7E 11)

APPENDIX B—RADIONUCLIDES—Continued

Radionuclide	Atomic number	Final RQ Ci (Bq)
Manganese-56	25	100 (3.7E 12)
Mendelevium-257	101	100 (3.7E 12)
Mendelevium-258	101	1 (3.7E 10)
Mercury-193m	80	10 (3.7E 11)
Mercury-193	80	100 (3.7E 12)
Mercury-194	80	0.1 (3.7E 9)
Mercury-195m	80	100 (3.7E 12)
Mercury-195	80	100 (3.7E 12)
Mercury-197m	80	1000 (3.7E 13)
Mercury-197	80	1000 (3.7E 13)
Mercury-199m	80	1000 (3.7E 13)
Mercury-203	80	10 (3.7E 11)
Molybdenum-90	42	100 (3.7E 12)
Molybdenum-93m	42	10 (3.7E 11)
Molybdenum-93	42	100 (3.7E 12)
Molybdenum-99	42	100 (3.7E 12)
Molybdenum-101	42	1000 (3.7E 13)
Neodymium-136	60	1000 (3.7E 13)
Neodymium-138	60	1000 (3.7E 13)
Neodymium-139m	60	100 (3.7E 12)
Neodymium-139	60	1000 (3.7E 13)
Neodymium-141	60	1000 (3.7E 13)
Neodymium-147	60	10 (3.7E 11)
Neodymium-149	60	100 (3.7E 12)
Neodymium-151	60	1000 (3.7E 13)
Neptunium-232	93	1000 (3.7E 13)
Neptunium-233	93	1000 (3.7E 13)
Neptunium-234	93	10 (3.7E 11)
Neptunium-235	93	1000 (3.7E 13)
Neptunium-236 (1.2 E 5 yr)	93	0.1 (3.7E 9)
Neptunium-236 (22.5 hr)	93	100 (3.7E 12)
Neptunium-237	93	0.01 (3.7E 8)
Neptunium-238	93	10 (3.7E 11)
Neptunium-239	93	100 (3.7E 12)
Neptunium-240	93	100 (3.7E 12)
Nickel-56	28	10 (3.7E 11)
Nickel-57	28	10 (3.7E 11)
Nickel-59	28	100 (3.7E 12)
Nickel-63	28	100 (3.7E 12)
Nickel-65	28	100 (3.7E 12)
Nickel-66	28	10 (3.7E 11)
Niobium-88	41	100 (3.7E 12)
Niobium-89 (66 min)	41	100 (3.7E 12)
Niobium-89 (122 min)	41	100 (3.7E 12)
Niobium-90	41	10 (3.7E 11)
Niobium-93m	41	100 (3.7E 12)
Niobium-94	41	10 (3.7E 11)
Niobium-95m	41	100 (3.7E 12)
Niobium-95	41	10 (3.7E 11)
Niobium-96	41	10 (3.7E 11)
Niobium-97	41	100 (3.7E 12)
Niobium-98	41	1000 (3.7E 13)
Osmium-180	76	1000 (3.7E 13)
Osmium-181	76	100 (3.7E 12)
Osmium-182	76	100 (3.7E 12)
Osmium-185	76	10 (3.7E 11)
Osmium-189m	76	1000 (3.7E 13)
Osmium-191m	76	1000 (3.7E 13)
Osmium-191	76	100 (3.7E 12)
Osmium-193	76	100 (3.7E 12)
Osmium-194	76	1 (3.7E 10)
Palladium-100	46	100 (3.7E 12)
Palladium-101	46	100 (3.7E 12)
Palladium-103	46	100 (3.7E 12)
Palladium-107	46	100 (3.7E 12)
Palladium-109	46	1000 (3.7E 13)
Phosphorus-32	15	0.1 (3.7E 9)

APPENDIX B—RADIONUCLIDES—Continued

Radionuclide	Atomic number	Final RQ Ci (Bq)
Phosphorus-33	15	1 (3.7E 10)
Platinum-186	78	100 (3.7E 12)
Platinum-188	78	100 (3.7E 12)
Platinum-189	78	100 (3.7E 12)
Platinum-191	78	100 (3.7E 12)
Platinum-193m	78	100 (3.7E 12)
Platinum-193	78	1000 (3.7E 13)
Platinum-195m	78	100 (3.7E 12)
Platinum-197m	78	1000 (3.7E 13)
Platinum-197	78	1000 (3.7E 13)
Platinum-199	78	1000 (3.7E 13)
Platinum-200	78	100 (3.7E 12)
Plutonium-234	94	1000 (3.7E 13)
Plutonium-235	94	1000 (3.7E 13)
Plutonium-236	94	0.1 (3.7E 9)
Plutonium-237	94	1000 (3.7E 13)
Plutonium-238	94	0.01 (3.7E 8)
Plutonium-239	94	0.01 (3.7E 8)
Plutonium-240	94	0.01 (3.7E 8)
Plutonium-241	94	1 (3.7E 10)
Plutonium-242	94	0.01 (3.7E 8)
Plutonium-243	94	1000 (3.7E 13)
Plutonium-244	94	0.01 (3.7E 8)
Plutonium-245	94	100 (3.7E 12)
Polonium-203	84	100 (3.7E 12)
Polonium-205	84	100 (3.7E 12)
Polonium-207	84	10 (3.7E 11)
Polonium-210	84	0.01 (3.7E 8)
Potassium-40	19	1 (3.7E 10)
Potassium-42	19	100 (3.7E 12)
Potassium-43	19	10 (3.7E 11)
Potassium-44	19	100 (3.7E 12)
Potassium-45	19	1000 (3.7E 13)
Praseodymium-136	59	1000 (3.7E 13)
Praseodymium-137	59	1000 (3.7E 13)
Praseodymium-138m	59	100 (3.7E 12)
Praseodymium-139	59	1000 (3.7E 13)
Praseodymium-142m	59	1000 (3.7E 13)
Praseodymium-142	59	100 (3.7E 12)
Praseodymium-143	59	10 (3.7E 11)
Praseodymium-144	59	1000 (3.7E 13)
Praseodymium-145	59	1000 (3.7E 13)
Praseodymium-147	59	1000 (3.7E 13)
Promethium-141	61	1000 (3.7E 13)
Promethium-143	61	100 (3.7E 12)
Promethium-144	61	10 (3.7E 11)
Promethium-145	61	100 (3.7E 12)
Promethium-146	61	10 (3.7E 11)
Promethium-147	61	10 (3.7E 11)
Promethium-148m	61	10 (3.7E 11)
Promethium-148	61	10 (3.7E 11)
Promethium-149	61	100 (3.7E 12)
Promethium-150	61	100 (3.7E 12)
Promethium-151	61	100 (3.7E 12)
Protactinium-227	91	100 (3.7E 12)
Protactinium-228	91	10 (3.7E 11)
Protactinium-230	91	10 (3.7E 11)
Protactinium-231	91	0.01 (3.7E 8)
Protactinium-232	91	10 (3.7E 11)
Protactinium-233	91	100 (3.7E 12)
Protactinium-234	91	10 (3.7E 11)
Radium-223	88	1 (3.7E 10)
Radium-224	88	10 (3.7E 11)
Radium-225	88	1 (3.7E 10)
Radium-226Φ	88	0.1 (3.7E 9)
Radium-227	88	1000 (3.7E 13)
Radium-228	88	0.1 (3.7E 9)
Radon-220	86	0.1 (3.7E 9)
Radon-222	86	0.1 (3.7E 9)

APPENDIX B—RADIONUCLIDES—Continued

Radionuclide	Atomic number	Final RQ Ci (Bq)
Rhenium-177	75	1000 (3.7E 13)
Rhenium-178	75	1000 (3.7E 13)
Rhenium-181	75	100 (3.7E 12)
Rhenium-182 (12.7 hr)	75	10 (3.7E 11)
Rhenium-182 (64.0 hr)	75	10 (3.7E 11)
Rhenium-184m	75	10 (3.7E 11)
Rhenium-184	75	10 (3.7E 11)
Rhenium-186m	75	10 (3.7E 11)
Rhenium-186	75	100 (3.7E 12)
Rhenium-187	75	1000 (3.7E 13)
Rhenium-188m	75	1000 (3.7E 13)
Rhenium-188	75	1000 (3.7E 13)
Rhenium-189	75	1000 (3.7E 13)
Rhodium-99m	45	100 (3.7E 12)
Rhodium-99	45	10 (3.7E 11)
Rhodium-100	45	10 (3.7E 11)
Rhodium-101m	45	100 (3.7E 12)
Rhodium-101	45	10 (3.7E 11)
Rhodium-102m	45	10 (3.7E 11)
Rhodium-102	45	10 (3.7E 11)
Rhodium-103m	45	1000 (3.7E 13)
Rhodium-105	45	100 (3.7E 12)
Rhodium-106m	45	10 (3.7E 11)
Rhodium-107	45	1000 (3.7E 13)
Rubidium-79	37	1000 (3.7E 13)
Rubidium-81m	37	1000 (3.7E 13)
Rubidium-81	37	100 (3.7E 12)
Rubidium-82m	37	10 (3.7E 11)
Rubidium-83	37	10 (3.7E 11)
Rubidium-84	37	10 (3.7E 11)
Rubidium-86	37	10 (3.7E 11)
Rubidium-88	37	1000 (3.7E 13)
Rubidium-89	37	1000 (3.7E 13)
Rubidium-87	37	10 (3.7E 11)
Ruthenium-94	44	1000 (3.7E 13)
Ruthenium-97	44	100 (3.7E 12)
Ruthenium-103	44	10 (3.7E 11)
Ruthenium-105	44	100 (3.7E 12)
Ruthenium-106	44	1 (3.7E 10)
Samarium-141m	62	1000 (3.7E 13)
Samarium-141	62	1000 (3.7E 13)
Samarium-142	62	1000 (3.7E 13)
Samarium-145	62	100 (3.7E 12)
Samarium-146	62	0.01 (3.7E 8)
Samarium-147	62	0.01 (3.7E 8)
Samarium-151	62	10 (3.7E 11)
Samarium-153	62	100 (3.7E 12)
Samarium-155	62	1000 (3.7E 13)
Samarium-156	62	100 (3.7E 12)
Scandium-43	21	1000 (3.7E 13)
Scandium-44m	21	10 (3.7E 11)
Scandium-44	21	100 (3.7E 12)
Scandium-46	21	10 (3.7E 11)
Scandium-47	21	100 (3.7E 12)
Scandium-48	21	10 (3.7E 11)
Scandium-49	21	1000 (3.7E 13)
Selenium-70	34	1000 (3.7E 13)
Selenium-73m	34	100 (3.7E 12)
Selenium-73	34	10 (3.7E 11)
Selenium-75	34	10 (3.7E 11)
Selenium-79	34	10 (3.7E 11)
Selenium-81m	34	1000 (3.7E 13)
Selenium-81	34	1000 (3.7E 13)
Selenium-83	34	1000 (3.7E 13)
Silicon-31	14	1000 (3.7E 13)
Silicon-32	14	1 (3.7E 10)
Silver-102	47	100 (3.7E 12)
Silver-103	47	1000 (3.7E 13)
Silver-104m	47	1000 (3.7E 13)

APPENDIX B—RADIONUCLIDES

Radionuclide	Atomic number	Final RQ Ci (Bq)
Silver-104	47	1000 (3.7E 13)
Silver-105	47	10 (3.7E 11)
Silver-106m	47	10 (3.7E 11)
Silver-106	47	1000 (3.7E 13)
Silver-108m	47	10 (3.7E 11)
Silver-110m	47	10 (3.7E 11)
Silver-111	47	10 (3.7E 11)
Silver-112	47	100 (3.7E 12)
Silver-115	47	1000 (3.7E 13)
Sodium-22	11	10 (3.7E 11)
Sodium-24	11	10 (3.7E 11)
Strontium-80	38	100 (3.7E 12)
Strontium-81	38	1000 (3.7E 13)
Strontium-83	38	100 (3.7E 12)
Strontium-85m	38	1000 (3.7E 13)
Strontium-85	38	10 (3.7E 11)
Strontium-87m	38	100 (3.7E 12)
Strontium-89	38	10 (3.7E 11)
Strontium-90	38	0.1 (3.7E 9)
Strontium-91	38	10 (3.7E 11)
Strontium-92	38	100 (3.7E 12)
Sulfur-35	16	1 (3.7E 10)
Tantalum-172	73	100 (3.7E 12)
Tantalum-173	73	100 (3.7E 12)
Tantalum-174	73	100 (3.7E 12)
Tantalum-175	73	100 (3.7E 12)
Tantalum-176	73	10 (3.7E 11)
Tantalum-177	73	1000 (3.7E 13)
Tantalum-178	73	1000 (3.7E 13)
Tantalum-179	73	1000 (3.7E 13)
Tantalum-180m	73	1000 (3.7E 13)
Tantalum-180	73	100 (3.7E 12)
Tantalum-182m	73	1000 (3.7E 13)
Tantalum-182	73	10 (3.7E 11)
Tantalum-183	73	100 (3.7E 12)
Tantalum-184	73	10 (3.7E 11)
Tantalum-185	73	1000 (3.7E 13)
Tantalum-186	73	1000 (3.7E 13)
Technetium-93m	43	1000 (3.7E 13)
Technetium-93	43	100 (3.7E 12)
Technetium-94m	43	100 (3.7E 12)
Technetium-94	43	10 (3.7E 11)
Technetium-96m	43	1000 (3.7E 13)
Technetium-96	43	10 (3.7E 11)
Technetium-97m	43	100 (3.7E 12)
Technetium-97	43	100 (3.7E 12)
Technetium-98	43	10 (3.7E 11)
Technetium-99m	43	100 (3.7E 12)
Technetium-99	43	10 (3.7E 11)
Technetium-101	43	1000 (3.7E 13)
Technetium-104	43	1000 (3.7E 13)
Tellurium-116	52	1000 (3.7E 13)
Tellurium-121m	52	10 (3.7E 11)
Tellurium-121	52	10 (3.7E 11)
Tellurium-123m	52	10 (3.7E 11)
Tellurium-123	52	10 (3.7E 11)
Tellurium-125m	52	10 (3.7E 11)
Tellurium-127m	52	10 (3.7E 11)
Tellurium-127	52	1000 (3.7E 13)
Tellurium-129m	52	10 (3.7E 11)
Tellurium-129	52	1000 (3.7E 13)
Tellurium-131m	52	10 (3.7E 11)
Tellurium-131	52	1000 (3.7E 13)
Tellurium-132	52	10 (3.7E 11)
Tellurium-133m	52	1000 (3.7E 13)
Tellurium-133	52	1000 (3.7E 13)
Tellurium-134	52	1000 (3.7E 13)
Terbium-147	65	100 (3.7E 12)
Terbium-149	65	100 (3.7E 12)
Terbium-150	65	100 (3.7E 12)
Terbium-151	65	10 (3.7E 11)
Terbium-153	65	100 (3.7E 12)
Terbium-154	65	10 (3.7E 11)
Terbium-155	65	100 (3.7E 12)
Terbium-156m (5.0 hr)	65	1000 (3.7E 13)

APPENDIX B—RADIONUCLIDES—Continued

Radionuclide	Atomic number	Final RQ Ci (Bq)
Terbium-156m (24.4 hr)	65	1000 (3.7E 13)
Terbium-156	65	10 (3.7E 11)
Terbium-157	65	100 (3.7E 12)
Terbium-158	65	10 (3.7E 11)
Terbium-160	65	10 (3.7E 11)
Terbium-161	65	100 (3.7E 12)
Thallium-194m	81	100 (3.7E 12)
Thallium-194	81	1000 (3.7E 13)
Thallium-195	81	100 (3.7E 12)
Thallium-197	81	100 (3.7E 12)
Thallium-198m	81	100 (3.7E 12)
Thallium-198	81	10 (3.7E 11)
Thallium-199	81	100 (3.7E 12)
Thallium-200	81	10 (3.7E 11)
Thallium-201	81	1000 (3.7E 13)
Thallium-202	81	10 (3.7E 11)
Thallium-204	81	10 (3.7E 11)
Thorium-226	90	100 (3.7E 12)
Thorium-227	90	1 (3.7E 10)
Thorium-228	90	0.01 (3.7E 8)
Thorium-229	90	0.001 (3.7E 7)
Thorium-230	90	0.01 (3.7E 8)
Thorium-231	90	100 (3.7E 12)
Thorium-232Φ	90	0.001 (3.7E 7)
Thorium-234	90	100 (3.7E 12)
Thulium-162	69	1000 (3.7E 13)
Thulium-166	69	10 (3.7E 11)
Thulium-167	69	100 (3.7E 12)
Thulium-170	69	10 (3.7E 11)
Thulium-171	69	100 (3.7E 12)
Thulium-172	69	100 (3.7E 12)
Thulium-173	69	100 (3.7E 12)
Thulium-175	69	1000 (3.7E 13)
Tin-110	50	100 (3.7E 12)
Tin-111	50	1000 (3.7E 13)
Tin-113	50	10 (3.7E 11)
Tin-117m	50	100 (3.7E 12)
Tin-119m	50	10 (3.7E 11)
Tin-121m	50	10 (3.7E 11)
Tin-121	50	1000 (3.7E 13)
Tin-123m	50	1000 (3.7E 13)
Tin-123	50	10 (3.7E 11)
Tin-125	50	10 (3.7E 11)
Tin-126	50	1 (3.7E 10)
Tin-127	50	100 (3.7E 12)
Tin-128	50	1000 (3.7E 13)
Titanium-44	22	1 (3.7E 10)
Titanium-45	22	1000 (3.7E 13)
Tungsten-176	74	1000 (3.7E 13)
Tungsten-177	74	100 (3.7E 12)
Tungsten-178	74	100 (3.7E 12)
Tungsten-179	74	1000 (3.7E 13)
Tungsten-181	74	100 (3.7E 12)
Tungsten-185	74	10 (3.7E 11)
Tungsten-187	74	100 (3.7E 12)
Tungsten-188	74	10 (3.7E 11)
Uranium-230	92	1 (3.7E 10)
Uranium-231	92	1000 (3.7E 13)
Uranium-232	92	0.01 (3.7E 8)
Uranium-233	92	0.1 (3.7E 9)
Uranium-234ϕ	92	0.1 (3.7E 9)
Uranium-235ϕ	92	0.1 (3.7E 9)
Uranium-236	92	0.1 (3.7E 9)
Uranium-237	92	100 (3.7E 12)
Uranium-238ϕ	92	0.1& (3.7E 9)
Uranium-239	92	1000 (3.7E 13)
Uranium-240	92	1000 (3.7E 13)
Vanadium-47	23	1000 (3.7E 13)
Vanadium-48	23	10 (3.7E 11)
Vanadium-49	23	1000 (3.7E 13)
Xenon-120	54	100 (3.7E 12)
Xenon-121	54	10 (3.7E 11)

APPENDIX B—RADIONUCLIDES—Continued

Radionuclide	Atomic Number	Final RQ Ci (Bq)
Xenon-122	54	100 (3.7E 12)
Xenon-123	54	10 (3.7E 11)
Xenon-125	54	100 (3.7E 12)
Xenon-127	54	100 (3.7E 12)
Xenon-129m	54	1000 (3.7E 13)
Xenon-131m	54	1000 (3.7E 13)
Xenon-133m	54	1000 (3.7E 13)
Xenon-133	54	1000 (3.7E 13)
Xenon-135m	54	10 (3.7E 11)
Xenon-135	54	100 (3.7E 12)
Xenon-138	54	10 (3.7E 11)
Ytterbium-162	70	1000 (3.7E 13)
Ytterbium-166	70	10 (3.7E 11)
Ytterbium-167	70	1000 (3.7E 13)
Ytterbium-169	70	10 (3.7E 11)
Ytterbium-175	70	100 (3.7E 12)
Ytterbium-177	70	1000 (3.7E 13)
Ytterbium-178	70	1000 (3.7E 13)
Yttrium-86m	39	1000 (3.7E 13)
Yttrium-86	39	10 (3.7E 11)
Yttrium-87	39	10 (3.7E 11)
Yttrium-88	39	10 (3.7E 11)
Yttrium-90m	39	100 (3.7E 12)
Yttrium-90	39	10 (3.7E 11)
Yttrium-91m	39	1000 (3.7E 13)
Yttrium-91	39	10 (3.7E 11)

APPENDIX B—RADIONUCLIDES—Continued

Radionuclide	Atomic Number	Final RQ Ci (Bq)
Yttrium-92	39	100 (3.7E 12)
Yttrium-93	39	100 (3.7E 12)
Yttrium-94	39	1000 (3.7E 13)
Yttrium-95	39	1000 (3.7E 13)
Zinc-62	30	100 (3.7E 12)
Zinc-63	30	1000 (3.7E 13)
Zinc-65	30	10 (3.7E 11)
Zinc-69m	30	100 (3.7E 12)
Zinc-69	30	1000 (3.7E 13)
Zinc-71m	30	100 (3.7E 12)
Zinc-72	30	100 (3.7E 12)
Zirconium-86	40	100 (3.7E 12)
Zirconium-88	40	10 (3.7E 11)
Zirconium-89	40	100 (3.7E 12)
Zirconium-93	40	1 (3.7E 10)
Zirconium-95	40	10 (3.7E 11)
Zirconium-97	40	10 (3.7E 11)

Ci—Curie. The curie represents a rate of radioactive decay. One curie is the quantity of any radioactive nuclide which undergoes 3.7E 10 disintegrations per second.

Bq—Becquerel. The becquerel represents a rate of radioactive decay. One becquerel is the quantity of any radioactive nuclide which undergoes one disintegration per second. One curie is equal to 3.7E 10 becquerel.

*—Final RQs for all radionuclides apply to chemical compounds containing the radionuclides and elemental forms regardless of the diameter of pieces of solid material.

&—The adjusted RQ of one curie applies to all radionuclides not otherwise listed. Whenever the RQs in Table 302.4 and this appendix to the table are in conflict, the lowest RQ shall apply. For example, uranyl acetate and uranyl nitrate have adjusted RQs shown in Table 302.4 of 100 pounds, equivalent to about one-tenth the RQ level for uranium-238 listed in this appendix.

E—Exponent to the base 10. For example, 1.3E 2 is equal to 130 while 1.3E 3 is equal to 1300.

m—Signifies a nuclear isomer which is a radionuclide in a higher energy metastable state relative to the parent isotope.

ϕ—Notification requirements for releases of mixtures or solutions of radionuclides can be found in Section 302.6(b) of this rule. Final RQs for the following four common radionuclide mixtures are provided: radium-226 in secular equilibrium with its daughters (0.053 curie); natural uranium (0.1 curie); natural uranium in secular equilibrium with its daughters (0.052 curie); and natural thorium in secular equilibrium with its daughters (0.011 curie).

[FR Doc. 89-8416 Filed 5-23-89; 8 15 am]

BILLING CODE 6560-50

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 355

[FRL-3574-2]

Reportable Quantity Adjustment—Radionuclides

AGENCY: U.S Environmental Protection Agency (EPA).

ACTION: Technical amendment.

SUMMARY: Sections 103(a) and 103(b) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended, require that persons in charge of vessels or facilities from which a hazardous substance has been released within a 24-hour period in a quantity equal to or greater than its reportable quantity immediately notify the National Response Center of the release. As discussed elsewhere in today's **Federal Register**, the U.S. Environmental Protection Agency (EPA) has decided to exempt from CERCLA notification requirements the following four categories of releases of radionuclides: (1) Releases of radionuclides that occur naturally in soil from land holdings such as parks, golf courses, or other large tracts of land; (2) releases of radionuclides occurring naturally from the disturbance of land for purposes other than mining, such as for agricultural or construction activities; (3) releases of radionuclides from the dumping of coal and coal ash at utility and industrial facilities with coal-fired boilers; and (4) releases of radionuclides from coal and coal ash piles at utility and industrial facilities with coal-fired boilers. These releases also are exempt from the reporting requirements of section 304 of the Emergency Planning and Community Right to Know Act (EPCRA), also known as Title III of the Superfund Amendments and Reauthorization Act of 1986 (SARA). Under SARA Section 304(a)(3), releases of radionuclides must be reported to the community emergency coordinator for the Local Emergency Planning Committee (LEPC) and to the State Emergency Response Commission (SERC) of any State that is likely to be affected by the release, if the release occurs at a facility at which a hazardous chemical is produced, used, or stored, and if notification of the release is required under section 103(a) of CERCLA. Because of today's exemptions of certain radionuclide releases from CERCLA notification requirements, as described above, such exempted releases also are exempt from the reporting requirements of section 304 of SARA.

This Technical Amendment also adds language to 40 CFR 355.40(a)(2) that was inadvertently deleted in publishing the final rule adjusting Threshold Planning Quantities for Extremely Hazardous Substances (52 FR 13396; April 22, 1987). This amendment adds paragraph 355.40(a)(2)(iv) that provides that releases exempted from CERCLA section 103(a) reporting by CERCLA section 103(e) (which applies to the application, handling, or storage of a pesticide registered under the Federal Insecticide, Fungicide, and Rodenticide Act) also are exempt from reporting under SARA section 304. In addition, this Technical Amendment clarifies the language in paragraph (a)(2)(v). Section 355.40(a)(2)(v) exempts from section 304 reporting any occurrence not meeting the definition of release under section 101(22) of CERCLA. Such occurrences are also exempt from reporting under CERCLA Section 103(a).

EFFECTIVE DATE: July 24, 1989.

FOR FURTHER INFORMATION CONTACT: Ms. Pamela Harris, Project Officer, Response Standards and Criteria Branch, Emergency Response Division (WH-548B), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460, or the RCRA/Superfund Hotline, 1-800/424-9346; in Washington DC metropolitan area, 1-202/382-3000.

Dated: May 11, 1989.

Jonathan Z. Cannon,

Acting Assistant Administrator.

For the reasons set forth above, Title 40 of the Code of Federal Regulations is amended as follows:

PART 355—EMERGENCY PLANNING AND NOTIFICATION

1. The authority citation for Part 355 is revised to read as follows:

Authority: 42 U.S.C. 11002 and 11048.

2. Section 355.40 is amended by adding paragraphs (a)(2)(v) and (a)(2)(vi), and by revising paragraph (a)(2)(iv) to read as follows ((a)(2) introductory text is republished):

§ 355.40 Emergency release notification.

(a) Applicability.

(1) * * *

(2) This section does not apply to:

* * *

(iv) Any release of a pesticide product exempt from CERCLA section 103(a) reporting under section 103(e) of CERCLA;

(v) Any release not meeting the definition of release under Section 101(22) of CERCLA, and therefore exempt from Section 103(a) reporting; and

(vi) Any radionuclide release which occurs (A) naturally in soil from land holdings such as parks, golf courses, or other large tracts of land; (B) naturally from the disturbance of land for purposes other than mining, such as for agricultural or construction activities; (C) from the dumping of coal and coal ash at utility and industrial facilities with coal-fired boilers; and (D) from coal and coal ash piles at utility and industrial facilities with coal-fired boilers.

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[FR Doc. 89-12180 Filed 5-23-89; 8:45 am]

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federal register

Wednesday
May 24, 1989

Part III

Department of Transportation

Coast Guard

33 CFR Part 151

Implementation of the Shore Protection Act of 1988; Interim Rule with Request for Comments

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 151

[CGD 89-014]

RIN 2115-AD23

Implementation of the Shore Protection Act of 1988

AGENCY: Coast Guard, DOT.

ACTION: Interim rule with request for comments.

SUMMARY: The Coast Guard is publishing an interim rule to implement permitting the numbering requirements of the Shore Protection Act of 1988. The Coast Guard is issuing these requirements as an interim rule because the Shore Protection Act requires that permits be in place 240 days after the Act's enactment, which will occur on July 15, 1989. By issuing an interim rule, the Coast Guard and the public will be able to meet this mandated deadline.

DATES: *Effective Date:* 1. May 24, 1989.

2. The Coast Guard will accept comments on this interim rule until August 24, 1989.

ADDRESSES: Comments should be submitted to the Executive Secretary, Marine Safety Council (G-LRA-2/3600), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593-0001 between the hours of 8:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be delivered to and will be available for copying at that address. The Categorical Exclusion from the requirements of the National Environmental Policy Act (NEPA) is available for inspection and copying at the same address.

Persons wishing to comment on the information collection requirements should submit their comments to: Office of Regulatory Policy, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503, ATTN: Desk Officer, U.S. Coast Guard.

FOR FURTHER INFORMATION CONTACT: Lieutenant James H. McDowell, Office of Marine Safety, Security and Environmental Protection (G-MPS-3) (202) 267-0491, between 7:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: The public is invited to participate in this rulemaking by submitting written views, data or arguments. Comments should include the name and address of the person making them, identify this interim rule (CGD 89-014) and the specific section of the interim rule to which each comment applies, and give the reasons for the comment. If an acknowledgment of receipt is desired, a stamped, self-addressed postcard should be enclosed.

All comments received before the expiration date of the comment period will be considered before any action is taken on this interim rule. They will also be considered in preparing the notice of proposed rulemaking for the second regulatory project described below in the paragraphs under Regulatory Approach.

Drafting Information

The principal persons involved in drafting this rule are: Lieutenant James H. McDowell, Project Manager, and Stanley M. Colby, Project Counsel, Office of Chief Counsel.

Discussion of the Interim Rule

I. Background

On November 18, 1988, Congress enacted the Shore Protection Act (33 U.S.C. 2501 *et seq.*), hereafter referred to as the Act, to help prevent trash, medical debris and other unsightly and potential harmful materials from being deposited into the costal waters of the United States as as result of sloppy waste handling procedures. The Conference Report on the Ocean Dumping Ban Act (Report 100-1090) stated that landfills and attendant barging operations are a major source of floatable waste in harbor areas. The report concluded that this type of waste has fouled the beaches of this country over the last two summers, reducing the quality of coastal waters, endangering the health of humans, marine mammals, waterfowl and fish, and causing severe decline in coastal economies dependent upon tourism and recreational uses.

Section 4103(a)(1) of the Act requires owners or operators of waste sources, vessels transporting waste and waste reception facilities to take reasonable steps to minimize the amount of municipal or commercial waste deposited into coastal waters during vessel loading and unloading operations and during vessel transportation from a waste source to receiving facilities. The Act prohibits vessels from transportating municipal and commercial waste unless they have a permit and display a number of other prescribed marking 240 days after enactment, which will occur on July 15, 1989. The Act also outlines provisions for enforcing these requirements.

The Environmental Protection Agency (EPA) and the Department of Transportation (DOT) have been assigned responsibility for implementing the provisions of the Act. DOT is responsible for issuing permits, prescribing the number or marking which vessels must display, and enforcing regulations implementing the Act. On January 12, 1989, the Secretary of Transportation delegated these responsibilities to the Coast Guard.

II. Regulatory Approach

These interim regulations amend Part 151 of Title 33, Code of Federal Regulations. This part is concerned with shipboard requirements to prevent pollution. Existing regulation in this Part implement Annexes I, II and V of MARPOL 73/78. There are no new requirements in the regulations in this document which change Annexes I, II or V requirements. This interim rule reorganizes Part 151 into 2 Subparts. Subpart A will contain the existing regulations in Part 151. Existing Subparts A, B, C, and D will be reorganized as undesignated hearings under Subpart A. The new Subpart B will contain the regulations implementing the Act.

Due to the July 15, 1989 statutory implementation date, the Coast Guard has decided to issue two regulatory projects implementing the responsibilities delegated under the Act. The first regulatory project, which is this document, is being initiated in the public interest as expeditiously as possible, to meet this deadline and allow vessels to continue to operate without interrupting the flow of waste removal. It establishes the requirement for the owner or operator of each vessel, whose purpose is to transport municipal or commercial waste, to apply for a conditional permit and to display a vessel number. It details the procedure to apply for a conditional permit and requirements for displaying the vessel number. It establishes the procedures for issuing conditional permits and the conditions for denying issuance and withdrawing a conditional permit.

At a later date, procedures for applications and issuance of a regular permit will be proposed. These procedures will continue, modify or replace the procedures contained in this document. Regulations implementing the suspension and revocation provisions of the Act will also be proposed.

III. Vessels Effected By This Rule:

This rule applies to vessels whose purpose is to transport municipal or commercial waste in the coastal waters of the United States. The conference report on the Ocean Dumping Ban Act (Report 100-1090) states that the Act was intended "only to apply to vessels whose purpose is the transportation of municipal or commercial waste, not all

vessels. It was not intended to apply to vessels that may generate waste during their normal operations". There are many vessels which transport some quantities of municipal or commercial waste incidentally to the predominant business or purpose of the vessel, e.g., a ferry which transports a garbage truck loaded with municipal or commercial waste. In this example, the ferry is not required to apply for a permit, since the ferry's predominant business or purpose is not waste transportation. However, a vessel which regularly transports miscellaneous cargo but is hired to transport waste for a specific voyage would be required to hold a permit to transport waste for that voyage, since the predominant business or purpose of the vessel for that voyage in waste transportation.

IV. What Constitutes Municipal or Commercial Waste

Section 151.1006 defines the term "municipal or commercial waste", which is the same definition provided by section 4101(3) of the Act. This definition includes solid waste regulated under the Solid Waste Disposal Act [42 U.S.C. 6903) and transported for disposal on land, including municipal garbage, commercial refuse, medical wastes, and wood debris. However, in accordance with the Act, the term specifically excludes hazardous wastes identified and listed under the Solid Waste Disposal Act (42 U.S.C. 6921), waste generated by the vessel during normal operations, construction debris, sewage sludge as permitted by the EPA, and dredge spoil or fill materials subject to regulation under title I of the Marine Protection, Research and Sanctuaries Act of 1972 [33 U.S.C. 1401 *et seq.*), the Federal Water Pollution Control Act [33 U.S.C. 1251 *et seq.*), or the Rivers and Harbors Appropriation Act of 1899 [33 U.S.C. 401 *et seq.*).

V. Applying For a Permit

In order to receive a conditional permit to transport municipal or commercial waste, the owner or operator of a vessel must apply by letter to Commandant (G–MPS–1), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001, Attn: Shore Protection Act Desk. Applications must include the information required by § 151.1012, which is also required by section 4102(b) of the Act and an acknowledgment that the information provided on the application is true and correct. After reviewing the application for completeness, the Coast Guard will determine whether or not to issue the conditional permit. A vessel number and the termination date of the conditional permit will be added to the application. A copy of the application will be returned to the owner or operator to serve as the conditional permit for the vessel to transport municipal or commercial waste after July 15, 1989. This expeditious method of issuance is being implemented in the public interest to avoid the interruption of waste removal or any unnecessary accumulation of waste on vessels or shore structures.

Under the provisions of the Act, it will be unlawful to transport municipal or commercial waste after July 15, 1989 without a permit. To allow the continued transportation of municipal and commercial waste and to avoid the health hazards that would occur if waste accumulated, this interim rule provides for the issuance of conditional permits, which will be effective immediately. These conditional permits are subject to being withdrawn if further inquiry or consultation with Environmental Protection Agency (EPA) officials indicates the vessel would not qualify for a regular permit. As required by the Act, regular permits will not be effective until 30 days after they are issued.

Conditional permits will be valid for 18 months, unless a shorter period is specified on the permit. The Coast Guard may deny issuance of a conditional permit if the application for the conditional permit does not contain the required information or if the Coast Guard has reason to believe the information provided is not true or correct. The Coast Guard will notify the owner or operator in writing of the denial, the reason for the denial and the procedures for appealing this decision.

After issuing the conditional permit, the Coast Guard will consult with the regional director of the EPA, as required by 4102(d) of the Act, to determine whether or not the owner or operator of the vessel has a record or a pattern of serious violations of the Act, the Solid Waste Disposal Act (supra), the Marine Protection, Research and Sanctuaries Act of 1972 [33 U.S.C. 1401 *et seq.*), the Rivers and Harbors Appropriations Act of 1899 [33 U.S.C. 401 *et seq.*), or the Federal Water Pollution Control Act [33 U.S.C. 1251 *et seq.*).

A conditional permit may be withdrawn at any time after issuance if the Administrator of the EPA requests withdrawal because the Administrator has determined that the owner or operator of the vessel has a record or a pattern of serious violations of the statutes listed under section 4102(d) (1) through (5) of the Act and described above. The Coast Guard will notify the owner or operator in writing of the withdrawal, the reason for the withdrawal and the procedures for appealing this decision.

Owners or operators of vessels which have been denied issuance of a conditional permit or have had a conditional permit withdrawn may request reconsideration by the issuing authority. Owners or operators who are not satisfied with a ruling after it has been reconsidered may appeal this decision to the Chief, Office of Marine Safety, Security and Environmental Protection, U.S. Coast Guard Headquarters, Washington, DC 20593–0001. Appeals must be in writing and contain complete supporting documentation and evidence which the appellant wishes to have considered.

VI. Displaying a Vessel Number

Vessels under the Act are required to display a number or other marking on the vessel as prescribed by the Secretary of Transportation. The purpose of this marking is to aid in identification. The number assigned to the vessel will be stated on the conditional permit as described above.

The vessel number must be displayed on the vessel so that it is readily visible from either side. The vessel number must be clearly legible, displayed against a contrasting background and in block figures that are at least 18 inches in height.

Regulatory Evaluation

There are approximately 400 vessels whose purpose is the transportation of municipal and commercial waste in coastal waters. As explained above, the owner or operator of each of these vessels will be required to apply by letter for a permit to transport municipal and commercial waste in coastal waters and to display a number on the vessel. Conditional permits issued under this rule are in effect for a period no longer than 18 months. At the end of this period, vessel owners or operators who intend to transport municipal or commercial waste will be required to reapply for a permit. The Coast Guard estimates the total cost to the public for completing the application and displaying the vessel number will amount to less than $15,000.00 Appeals, when utilized, are estimated to cost less than $2,000.00. The cost of this regulatory project is so low that no further regulatory evaluation is considered necessary.

The Coast Guard concludes that these regulations are non-major under Executive Order 12291 and nonsignificant under DOT regulatory

policies and procedures (44 FR 11034; February 26, 1979).

Regulatory Flexibility Act

The Coast Guard has considered the impact of these regulations on small entities. The Coast Guard has adopted the Small Business Administration's (SBA) definition of "small business" used when considering SBA loans to concerns engaging in transportation and wharehousing (13 CFR 121.10(f)) as a definition for small entities. A concern is considered small, under this definition, if its annual receipts do not exceed $1.5 million.

These regulations contain only minimal reporting requirements. Respondents are required to complete an application containing only the minimum information necessary for the Coast Guard to fulfill its obligation under the Act. They are also required to display a number on the vessel. The cost of complying with these requirements will be minimal. These costs are proportionally lower for small entities than for larger ones because a small entity will have fewer vessels and therefore will have fewer applications to complete and numbers to display. Since these costs are so low, the cost to any individual small entity will be negligible. Therefore, the Coast Guard certifies that this rule will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This rule will add the new information reporting requirement that all vessels whose purpose is the transportation of municipal and commercial waste apply for a conditional permit. The information reporting requirements have been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). OMB Control Number 2115–0579 has been assigned under the provisions of 5 CFR 1320.18.

Environmental Impact

The permit and numbering system, prescribed by the interim rule, are a part of a regulatory program intended to minimize the amount of municipal or commercial waste entering the coastal waters of the U.S. However, the proposed regulations are administrative in nature and do not prescribe any operational requirements which would have an impact on the environment. The interim rule has been thoroughly reviewed by the Coast Guard and has been determined to be categorically excluded from further environmental documentation as provided for in 10 CFR 51.22(c)(3). Therefore, neither an Environmental Assessment or Environmental Impact Statement has been prepared for this interim rule. The categorical exclusion determination is available in the docket for examination and copying as indicated under "**ADDRESSES**".

Federalism Assessment

This interim rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Regulatory Information Number (RIN)

A regulatory information number has been assigned to this regulatory action and will be listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center (RISC) publishes the Unified Agenda in April and October of each year. The RIN number listed at the heading of this document can be used to follow the progress of this action in the Unified Agenda.

List of Subjects in 33 CFR Part 151

Oil pollution, Reporting and recordkeeping requirements, Water pollution control.

In consideration of the preceding, the Coast Guard amends Part 151 of Title 33, Code of Federal Regulations, as follows:

PART 151—[AMENDED]

1. By removing the authority citation for Part 151 and adding the authority citation for Subpart A to read as follows:

Authority: 33 U.S.C. 1321(j)(1)(C) and 1903(b); E.O. 11735, 3 CFR, 1971–1975 Comp., p. 793; 49 CFR 1.46.

2. By revising the title of Part 151 to read as follows:

PART 151—VESSELS CARRYING OIL, NOXIOUS LIQUID SUBSTANCES, GARBAGE AND MUNICIPAL OR COMMERCIAL WASTE

3. By removing all subpart designations but leaving the headings of those removed subparts and adding a new Subpart A above the undesignated "General" heading to read as follows:

Subpart A—Implementation of MARPOL 73/78

4. By adding a new Subpart B to read as follows:

Subpart B—Transportation of Municipal and Commercial Waste

Sec.

Subpart B—Transportation of Municipal and Commercial Waste

Authority: 33 U.S.C. 2602; 49 CFR 1.46.

§ 151.1000 Purpose.

The purpose of this subpart is to implement the permit provisions of the shore Protection Act of 1988, (33 U.S.C. 2601 *et seq.*).

§ 151.1003 Applicability.

(a) Except as provided by paragraph (b) of this section, this subpart applies to each vessel whose purpose is the transportation of municipal or commercial waste in coastal waters.

(b) This subpart does not apply to public vessels.

§ 151.1006 Definitions.

As used in this subpart—

"Coastal Waters" means—

(1) The territorial sea of the United States;

(2) The Great Lakes and their connecting waters;

(3) The marine and estuarine waters of the United States up to the head of tidal influence; and

(4) The Exclusive Economic Zone as established by Presidential Proclamation Number 5030, dated March 10, 1983.

Note: The Exclusive Economic Zone extends from the baseline of the territorial sea of the United States seaward 200 miles.

"Municpal and commercial waste" means solid waste as defined in section 1004 of the Solid Waste Disposal Act (42 U.S.C. 6903) except–

(1) Solid waste identified and listed under section 3001 of the Solid Waste Disposal Act (42 U.S.C. 6921);

(2) Waste generated by a vessel during normal operations;

(3) Debris solely from construction activities;

(4) Sewage sludge subject to regulation under title I of the Marine Protection, Research, and Sanctuaries Act of 1972 (33 U.S.C. 1401 *et seq.*); and

(5) Dredge or fill material subject to regulation under title I of the Marine Protection, Research and Sanctuaries Act of 1972 (33 U.S.C. 1401 *et seq.*), the Federal Water Pollution Control Act (33 U.S.C. 1251 *et seq.*), or the Rivers and Harbors Appropriation Act of 1899 (33 U.S.C. 401 *et seq.*).

"Public vessel" means a vessel that—

(1) Is owned, or demise chartered, and operated by the United States Government or a government of a foreign country; and

(2) Is not engaged in commercial service.

"Vessel" means every description of watercraft or other artifical contrivance used, or capable of being used, as a means of transportation on water.

§ 151.1009 Transportation of municipal or commercial waste.

A vessel may not transport municipal or commercial waste in coastal waters without—

(a) A conditional permit to transport municpal or commercial waste issued under this subpart; and

(b) Displaying a number in accordance with § 151.104.

§ 151.1012 Applying for a conditional permit.

(a) The owner or operator of each vessel to which this subpart applies shall apply by letter for a conditional permit required by § 151.1009. Applications must be submitted to Commandant (G–MPS–1), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001, Attn: Shore Protection Act Desk and include the following:

(1) The name, address, and telephone number of the vessel owner and operator.

(2) The vessel's name and official number, if any.

(3) The vessel's area of operation.

(4) The vessel's transport capacity.

(5) A history of the types of cargo transported by the vessel during the previous year, including identifying the type of municipal or commercial waste transported as—

(i) Municipal waste;

(ii) Commercial waste;

(iii) Medical waste; or

(iv) Waste of another character.

(6) The types of cargo to be transported by the vessel during the effective period of the conditional permit, including identifying the type of municipal or commercial waste as it is identified in paragraphs (a)(5)(i) through (iv) of this section.

(7) A statement of whether the application for a conditional permit is for a single voyage, a short term operation or a continuing operation. If the application is for a single voyage or a short term operation, the statement must include the duration of the voyage or operation.

(8) An acknowledgment that certifies as to the truthfulness and accuracy of the information provided.

(b) The owner or operator under paragraph (a) of this section shall provide any additional information the Coast Guard may require.

§ 151.1015 Issuing or denying the issuance of a conditional permit.

(a) After reviewing the application made under § 151.1012, the Coast Guard either—

(1) Issues the conditional permit for a vessel under this section; or

(2) Denies the issuance of the conditional permit to the vessel in accordance with paragraph (c) of this section. On denying the issuance of the permit, the Coast Guard notifies the applicant of the—

(i) Denial and the reason for the denial; and

(ii) Procedures under § 151.1021 for appealing the denial.

(b) Each conditional permit issued under this section is effective—

(1) On the date it is issued; and

(2) Until the expiration date stated on the conditional permit unless it is—

(i) Withdrawn under § 151.1018;

(ii) Terminated because—

(A) The vessel is sold; or

(B) This subpart no longer applies to the vessel.

(c) The Coast Guard may deny the issuance of a conditional permit if—

(i) The application does not contain the information required under § 151.1012; or

(ii) There is reason to believe that the information contained on the application is not true and correct.

§ 151.1018 Withdrawal of a conditional permit.

(a) The Coast Guard may withdraw a conditional permit if the Administrator of the EPA requests withdrawal because the Administrator has determined that the owner or operator of the vessel has a record or a pattern of serious violations of—

(1) Subtitle A of the Shore Protection Act of 1988 (33 U.S.C. 2601 *et seq.*);

(2) The Solid Waste Disposal Act (42 U.S.C. 6901 *et seq.*);

(3) The Marine Protection, Research, and Sanctuaries Act of 1972 (33 U.S.C. 1401 *et seq.*);

(4) The Rivers and Harbors Appropriations Act of 1899 (33 U.S.C. 1401 *et seq.*); or

(5) The Federal Water Pollution Control Act (33 U.S.C. 1251 *et seq.*).

(b) Upon reaching a determination to withdraw a conditional permit, the Coast Guard notifies the owner or operator of—

(1) The withdrawal and the reason for the withdrawal;

(2) The procedures for appealing the withdrawal.

(c) After receiving the notice under paragraph (b) of this section, the owner or operator shall ensure that—

(1) The vessel immediately ceases transporting municipal or commercial waste and the marking required by § 151.1024 is removed; and

(2) The conditional permit is returned to the Coast Guard within 5 days after receiving the notice.

§ 151.1021 Appeals.

(a) Any person directly affected by an action taken under this subpart may request reconsideration by the Coast Guard officer responsible for that action.

(b) The person affected who is not satisfied with a ruling after having it reconsidered under paragraph (a) of this section may—

(1) Appeal that ruling in writing within 30 days after the ruling to the Chief, Office of Marine Safety, Security and Environmental Protection, U.S. Coast Guard, Washington, DC 20593–0001; and

(2) Supply supporting documentation and evidence that the appellant wishes to have considered.

(c) After reviewing the appeal submitted under paragraph (b) of this section, the Chief, Office of Marine Safety, Security and Environmental Protection issues a ruling which is final agency action.

(d) If the delay in presenting a written appeal has an adverse impact on the operations of the appellent, the appeal under paragraph (b) of this section—

(1) May be presented orally; and

(2) Must be submitted in writing within five days after the oral presentation—

(i) With the basis for the appeal and a summary of the material presented orally; and

(ii) To the same Coast Guard official who heard the oral presentation.

§ 151.1024 Display of number.

(a) The owner or operator of each vessel under this subpart must ensure that the vessel number stated on the conditional permit issued under § 151.1015 is displayed so that it—

(1) Is clearly legible;

(2) Has a contrasting background;

(3) Is readily visible from either side of the vessel; and

(4) Is in block figures that are at least 18 inches in height.

(b) No person may tamper with or falsify a number required under this section.

J.D. Sipes,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.

April 28, 1989.

[FR Doc. 89–12396 Filed 5–23–89; 8:45 am]

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federal register

Wednesday
May 24, 1989

Part IV

Department of Education

34 CFR Part 755

National Program for Mathematics and Science Education; Notice of Proposed Rulemaking

DEPARTMENT OF EDUCATION

34 CFR Part 755

National Program for Mathematics and Science Education

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary issues a notice of proposed rulemaking for the National Program for Mathematics and Science Education. These amendments are needed to implement section 2012 of the Dwight D. Eisenhower Mathematics and Science Education Act, Title II, Part A of the Augustus F. Hawkins-Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988.

DATE: Comments must be received on or before June 23, 1989.

ADDRESSES: All comments concerning these proposed regulations should be addressed to Daniel Schecter, Office of Educational Research and Improvement, Fund for the Improvement and Reform of Schools and Teaching, Mathematics and Science Program, U.S. Department of Education, 555 New Jersey Avenue NW., Room 522, Washington, DC 20208–5524.

A copy of any comments that concern information collection requirements should also be sent of the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this preamble.

FOR FURTHER INFORMATION CONTACT: Daniel Schecter, (202) 357–6496.

SUPPLEMENTARY INFORMATION: The National Program for Mathematics and Science Education supports projects of national significance in elementary and secondary schools in mathematics and science instruction designed to improve the skills of teachers and instruction in these areas and to increase the access of all students to such instruction.

The Secretary proposes to change the title of the program from the Secretary's Discretionary Program for Mathematics, Science, Computer Learning, and Critical Foreign Languages to the National Program for Mathematics and Science Education to reflect the revised statute.

Because projects in computer learning and critical foreign languages are no longer authorized by the program statute, the Secretary proposes to eliminate all references to these types of projects in the regulations.

The Secretary proposed to add to § 755.12 several priorities established by the Act. These priorities are for projects to train and retrain teachers in methods of scientific inquiry, and to build upon and add to projects that are already developed and disseminated.

The Secretary proposes to amend the definition of magnet school programs for gifted and talented children currently in the regulations at § 755.13(a)(1) to include a school or education center that offers a special curriculum to which students are not automatically assigned but may seek to attend on a voluntary basis because of the special curriculum.

As required by the Act, the Secretary proposes to amend the priority for projects serving historically underrepresented and underserved populations in the fields of mathematics and science at § 744.13(a)(2) of the current regulations and § 755.12(a)(1) of these proposed regulations to include specifically gifted and telented children from these populations.

The Secretary proposes to amend the definition of historically underserved and underrepresented populations to include economically disadvantaged persons in order to be consistent with the language in the statute for the Mathematics and Science Education Program (State grants).

The Secretary proposes to amend the selection criteria concerning the plan of operation and the quality of key personnel to include specific references to the selection of project participants and personnel without regard to race, color, national origin, gender, age, handicapping condition.

In order to emphasize more clearly the impact, outcomes and transferability of project results, the Secretary proposes to modify and synthesize language pertaining to the national significance criterion.

The Department published proposed regulations implementing the amended Part E of the General Education Provision Act on December 2, 1988 at 53 FR 48866, and those regulations, when final, will apply to this program.

Executive Order 12291

These proposed regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities.

The small entities that would be affected by these proposed regulations are small LEAs and small private non-profit organizations receiving Federal funds under this program. However, the regulations would not have a significant economic impact on the small LEAs and organizations affected because the regulations would not impose excessive regulatory burdens or require unnecessary Federal supervision. The regulations would impose minimal requirements to ensure the proper expenditure of program funds.

Paperwork Reduction Act of 1980

Sections 755.20 and 755.32 contain information collection requirements. As required by the Paperwork Reduction Act of 1980, the Department of Education will submit a copy of these sections to the Office of Management and Budget for its review. (44 U.S.C. 3504(h))

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, Room 3002, New Executive Office Building, Washington, DC 20503; Attention: James D. Houser.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in Room 522, 555 New Jersey Avenue NW., Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

To assist the Department in complying with the specific requirements of Executive Order 12291 and the Paperwork Reduction Act of 1980 and their overall requirement of reducing regulatory burden, the Secretary invites comment on whether there may be further opportunities to reduce any regulatory burdens found in these proposed regulations.

Assessment of Educational Impact

The Secretary particularly requests comments on whether the proposed regulations in this document would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 755

Historically underserved and underrepresented populations, Gifted and talented studends, Grant programs—Education, Instruction, Mathematics, Reporting and recordkeeping requirements, Science.

Dated: March 8, 1989.

Lauro F. Cavazos,

Secretary of Education.

(Catalog of Federal Domestic Assistance number 84.168, Mathematics and Science)

The Secretary proposes to amend Title 34 of the Code of Federal Regulations by revising Part 755 to read as follows:

PART 755—NATIONAL PROGRAM FOR MATHEMATICS AND SCIENCE EDUCATION

Subpart A—General

Sec.

Subpart B—What Types of Projects Does the Secretary Assist Under This Program?

Subpart C—How Does One Apply for a Grant?

Subpart D—How Does the Secretary Make a Grant?

Authority: 20 U.S.C. 2992, unless otherwise noted.

Subpart A—General

§ 755.1 What is the National Program for Mathematics and Science Education?

The National Program for Mathematics and Science Education assists projects of national significance in elementary and secondary school mathematics and science instruction designed to improve the skills of teachers and instruction in these areas and to increase the access of all students to that instruction.

(Authority: 20 U.S.C. 2992)

§ 755.2 What parties are eligible for a grant under this program?

The Secretary may award grants to State educational agencies, local educational agencies, institutions of higher education, and public and private nonprofit organizations, including museums, libraries, educational television producers, distributors, and stations, and professional science, mathematics, and engineering societies and associations.

(Authority: 20 U.S.C. 2992)

§ 755.3 What regulations apply to this program?

The following regulations apply to grants made under this program:

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 74 (Administration of Grants to Institutions of Higher Education, Hospitals, and Nonprofit Organizations), Part 75 (Direct Grant Programs), Part 77 (Definitions That Apply to Department Regulations), Part 79 (Intergovernmental Review of Department of Education Programs and Activities), Part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments), and Part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)); and

(b) The regulations in this Part 755.

(Authority: 20 U.S.C. 2992)

§ 755.4 What definitions apply to this program?

(a) *Definitions in the Act.* The following terms used in this part are defined in section 2013 of the Act:

Institution of higher education
State agency for higher education

(b) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR 77.1:

Applicant
Application
Award
Budget
Department
Elementary school
EDGAR
Facilities
Fiscal year
Grant
Local educational agency
Nonprofit
Private
Project
Public
Secondary school
Secretary
State
State educational agency

(c) *Additional definitions.* The following terms are used in this part:

"Act" means the Dwight D. Eisenhower Mathematics and Science Education Act, Title II, Part A of the Elementary and Secondary Education Act of 1965, as amended.

"Gifted and talented student" means a student, identified by various measures, who demonstrates actual or potential high performance capability, particularly in the fields of mathematics and science.

"Historically underserved and underrepresented populations" includes females, minorities, handicapped persons, persons of limited-English proficiency, economically disadvantaged persons, and migrants.

"Magnet school" means a school or education center that offers a special curriculum and to which students are not automatically assigned but may seek to attend on a voluntary basis because of the special curriculum, including but not limited to a school or education center capable of attracting substantial numbers of students of different racial backgrounds.

"Unsolicited application" means an application, not specifically invited by the Secretary, that supports one or more of the activities listed in § 755.11.

(Authority: 20 U.S.C. 2992, 2993)

Subpart B—What Types of Projects Does the Secretary Assist Under This Program?

§ 755.11 What types of projects does the Secretary assist?

(a) The Secretary funds applications proposing projects of national significance in mathematics and science instruction.

(b) Projects of national significance in mathematics and science instruction include those designed to—

(1) Improve teacher recruitment and retention in the fields of mathematics and science;

(2) Improve teacher qualifications and skills in the fields of mathematics and science; and

(3) Improve curricula in mathematics and science, including the use of new technologies.

(c) The Secretary does not provide operating revenue to meet local needs to any applicant under this program.

(Authority: 20 U.S.C. 2992)

§ 755.12 How does the Secretary establish priorities for this program?

(a) The Secretary may establish the following priorities:

(1) Establishing or improving magnet schools.

(2) Providing special services to historically underserved and underrepresented populations, especially gifted and talented children from these populations.

(3) Building upon and adding to a project that is already developed and disseminated.

(4) Training and retraining teachers in methods of scientific inquiry.

(5) Providing materials that aid the education of students.

(b) In addition to the priorities established in paragraph (a) of this section, each year the Secretary may select as a priority one or more of the types of projects listed in § 755.11.

(c) The Secretary may limit any priority to mathematics or science, particular educational levels, or any combination of these subject areas and educational levels.

(Authority: 20 U.S.C. 2992)

Subpart C—How Does One Apply for a Grant?

§ 755.20 What assurances must an applicant make?

(a) An applicant that is a State (including a State educational agency or a State agency for higher education) or a local educational agency shall comply with the provisions of section 2010 of the Act governing the equitable participation of private school children and teachers in the purposes and benefits of the Act.

(b) An applicant described in paragraph (a) of this section shall include an assurance in its application that, in accordance with section 2010 of the Act, it will provide for consultation with appropriate private school representatives and for the equitable participation of children and teachers in private elementary or secondary schools if the applicant proposes to use grant funds to provide benefits to children and teachers in public elementary or secondary schools, including the provision of services, materials, equipment, and inservice or teacher training and retraining.

Note: EDGAR establishes requirements for participation of private school children. See 34 CFR 75.650.

(Authority: 20 U.S.C. 2992)

Subpart D—How Does the Secretary Make a Grant?

§ 755.30 How does the Secretary evaluate applications?

(a) For each competition, the Secretary evaluates an application submitted under this program on the basis of the applicable selection criteria in § 755.32.

(b) The Secretary awards up to 100 points, including a reserved 10 points to be distributed in accordance with paragraph (d) of this section, based on the applicable criteria in § 755.32.

(c) Subject to paragraph (d) of this section, the maximum possible points for each criterion in § 755.32 is indicated in parentheses.

(d) For each competition, as announced through a notice published in the **Federal Register**, the Secretary distributes the reserved 10 points among the applicable criteria listed in § 755.32.

(Authority: 20 U.S.C. 2992)

§ 755.31 How does the Secretary evaluate unsolicited applications?

(a)(1) At any time during a fiscal year, the Secretary may accept and consider for funding an unsolicited application for a project that does not meet a priority established in accordance with § 755.12 if the project—

(i) Furthers the purposes and objectives of the program as described in § 755.1; and

(ii) Satisfies all other requirements for funding under this program.

(2) In a fiscal year in which the Secretary does not establish absolute priorities, the Secretary does not consider unsolicited applications for funding.

(b) Notwithstanding the provisions of 34 CFR 75.100, the Secretary may fund an unsolicited application without publishing an application notice in the **Federal Register**.

(c) The Secretary may select unsolicited applications for funding in accordance with the procedures contained in § 755.30(a)–(c).

(d) The Secretary reviews and evaluates an unsolicited application on the basis of the selection criteria in § 755.32.

(e) The Secretary assigns the reserved 10 points under § 755.30(b) to the selection criterion at § 755.32(f) (National significance) so that the maximum number of possible points for this criterion is 30.

(Authority: 20 U.S.C. 2992)

§ 755.32 What are the selection criteria?

The Secretary uses the following criteria in evaluating each application:

(a) *Plan of operation.* (15 Points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(1) The quality of the design of the project;

(2) The extent to which the plan of management is effective and ensures proper and efficient administration of the project;

(3) The quality of the applicant's plans to use its resources and personnel to achieve each objective; and

(4) For an applicant who makes an assurance under § 755.20 as to the equitable participation of children and teachers in private elementary or secondary schools, how the applicant will ensure that equitable participation.

(b) *Quality of key personnel.* (5 Points)

(1) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(1) (i) and (ii) of this section will commit to the project; and

(iv) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age or handicapping condition.

(2) To determine personnel qualifications under paragraphs (b)(1) (i) and (ii) of this section, the Secretary considers—

(i) Experience and training in fields related to the objectives of the project; and

(ii) Any other qualifications that pertain to the quality of the project.

(c) *Budget and cost-effectiveness.* (5 Points) The Secretary reviews each application to determine the extent to which—

(1) The budget is adequate to support the project; and

(2) Costs are reasonable in relation to the objectives of the project.

(d) *Evaluation plan.* (10 Points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent

to which the applicant's methods of evaluation—

(1) Are appropriate to the project; and

(2) Are objective; and

(3) Document and quantify the project's effectiveness in achieving its stated goals.

Cross-reference. See 34 CFR 75.590 Evaluation by the grantee.

(e) *Improvement of the quality of teaching and instruction in mathematics and science.* (25 Points) The Secretary reviews each application to determine the extent to which the project will contribute to the improvement of teaching and instruction in mathematics and science, including—

(1) The objectives of the project; and

(2) The manner in which the objectives of the project further the purposes of improving the quality of teaching and instruction in mathematics and science.

(f) *National significance.* (20 Points) The Secretary reviews each application to determine the national significance of the project, including—

(1) The magnitude of the need for the proposed project;

(2) The likely impact of the proposed project; and

(3) The potential transferability of the proposed project to other settings with the likelihood of accomplishing similar results.

(g) *Applicant's commitment and capacity.* (10 Points) The Secretary considers the extent of the applicant's commitment to the project, its capacity to continue the project, and the likelihood that it will build upon the project when Federal assistance ends.

(Authority: 20 U.S.C. 2992)

§ 755.33 What special considerations may the Secretary use in selecting an application for funding?

(a) After evaluating applications according to the criteria contained in § 755.32, the Secretary may determine whether the most highly rated applications are broadly and equitably distributed throughout the Nation for each competition or under this program.

(b) The Secretary may select other applications for funding if doing so would improve—

(1) The geographical distribution of projects funded under a particular competition or under this program; or

(2) The diversity of activities or projects funded under a particular competition or under this program.

(c) The Secretary may decline to fund a project that is eligible for funding by the Secretary under a different, specific Department of Education competition or program.

(d) The Secretary does not fund a project that receives Federal funds from other programs authorized under the Act.

(Authority: 20 U.S.C. 2992)

§ 755.34 Are there restrictions on the use of funds for equipment under this program?

Of the funds made available through a grant under this program, the Secretary may restrict the amount of funds used under this part to purchase equipment.

(Authority: 20 U.S.C. 2992)

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Wednesday
May 24, 1989

Part V

Environmental Protection Agency

Preliminary Determination To Cancel Certain Daminozide Product Registrations; Availability of Technical Support Document and Draft Notice of Intent To Cancel; Notice

ENVIRONMENTAL PROTECTION AGENCY

[OPP-30000/40A; FRL-3575-4]

Preliminary Determination To Cancel Certain Daminozide Product Registrations; Availability of Technical Support Document and Draft Notice of Intent To Cancel

AGENCY: Environmental Protection Agency (EPA, Agency).

ACTION: Notice of Preliminary Determination.

SUMMARY: This Notice sets forth EPA's preliminary determination regarding the registrations of pesticide products containing daminozide based on the Agency's assessment of the risks and benefits associated with the use of daminozide as a growth regulator. This Notice announces the Agency's preliminary determination to cancel all registrations of daminozide products that are used on food and to retain the daminozide non-food uses on ornamentals and bedding plants. In addition, this Notice announces the availability of the Daminozide Special Review Technical Support Document, which sets forth the bases for this action, and the Draft Notice of Intent to Cancel.

DATE: Written comments must be received on or before August 22, 1989.

ADDRESS: Submit three copies of written comments, bearing the document control number "OPP-30000/40A"

By mail to: Public Docket and Freedom of Information Section, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

In person bring comments to: Room 246, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

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

FOR FURTHER INFORMATION CONTACT:

By mail: Mark T. Boodée, Special Review Branch, Special Review and Reregistration Division (H7508C), Office of Pesticide Programs, 401 M Street SW., Washington, DC 20460.

Office location and telephone number: Room 1006, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703) 557-7402.

Copies of the Daminozide Technical Support Document and Draft Notice of Intent to Cancel are available from the contact person at the address given above.

SUPPLEMENTARY INFORMATION: This Notice is organized into seven units. Unit I is the Introduction and provides background information related to daminozide and the initiation of the Special Review of all daminozide products. The availability of the Technical Support Document and the draft Notice of Intent to cancel are also discussed. Unit II summarizes the legal background for pesticide regulation and discusses the Special Review process. Unit III provides information regarding dietary and non-dietary exposure to daminozide and UDMH and associated risks, as well as the benefits assessment. Unit IV summarizes the regulatory options considered by the Agency and the regulatory decision proposed. This Notice concludes with Units V, VI, VII and VIII summarizing procedural matters regarding review by the Secretary of the Department of Agriculture and the Scientific Advisory Panel, the References used, the opportunity for public comment, and the availability of the public docket, respectively.

I. Introduction

Daminozide is the active ingredient of Alar®, Kylar®, and B-nine®, formulated products manufactured by Uniroyal Chemical Company, Inc. Daminozide is manufactured by reacting succinic acid with 1,1-(unsymmetrical) dimethylhydrazine (UDMH) to make succinic acid dimethyl hydrazine (SADH) "The Pesticide Manual," 1979). Although daminozide is the parent compound and active ingredient in the products, UDMH is also present as a degradate and metabolite of daminozide. It is a contaminant in both technical and formulated products, and daminozide degradation into UDMH increases as a function of time or increasing temperature. For example, the formulation of UDMH from daminozide residues is known to occur following the boiling and/or cooking of apples. Metabolism data have shown that daminozide hydrolyzes to UDMH in the mammalian body.

Daminozide is a plant growth regulator used in controlling vegetative and reproductive growth of orchard crops such as apples, cherries, nectarines, peaches, and pears and other crops such as peanuts, grapes and tomatoes. On apples, daminozide's major use, it affects flower bud initiation, fruit set and maturity, preharvest fruit drop and the market quality of fruit at harvest and during storage. Daminozide can hasten and concentrate ripening on peaches, sweet and tart cherries, and nectarines. On grapes, it can increase fruit set. Daminozide can also retard stem elongation on tomato transplants. On peanuts, daminozide can produce shorter, more erect peanut vines and can increase yields. The use of daminozide on ornamental plants can produce shorter, more compact growth on chrysanthemums, azaleas, hyrangeas, and bedding plants.

Daminozide was first registered in 1963 by the Uniroyal Chemical Co., Inc., for use on potted chrysanthemums. In 1968, daminozide was first registered for use on crops (apples) and was later registered for use on several other raw agricultural commodities.

A variety of tolerances, which are the maximum permissible residue levels allowed on raw agricultural commodities or as secondary residues such as those found in meat, milk, and eggs, have been established for daminozide in a variety of crops. In instances where pesticides concentrate during processing, food and feed additive regulations have been established. Tolerances for daminozide in or on raw agricultural commodities, processed foods and animal feeds are listed in 40 CFR 180.246, 185.1550 and 186.1550. There are no separate tolerances established for residues of UDMH.

In the early 1980's, the Agency decided to review daminozide through its Registration Standard process and identify outstanding data gaps. This process was completed in 1984 and a Registration Standard was issued in June of that year. Prior to the completion of the Registration Standard, in August 1983, the Agency issued a Data Call-In (DCI) Notice under section 3(c)(2)(B) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) requiring registrants to generate certain metabolism and feeding studies data. In the Registration Standard, the Agency expressed its cancer risk concern about daminozide and UDMH and through the

accompanying DCI required additional data not asked for in the August 1983 Data Call-In Notice.

On July 18, 1984, EPA issued a Notice of Special Review of daminozide products (49 FR 29186) and a Position Document 1 (PD 1), which sets forth the scientific rationale for the Agency's action. This action was based on the Agency finding that registrations of pesticide products containing daminozide met the risk criterion relating to oncogenicity in 40 CFR 162.11(a)(3)(ii)(A) (now 40 CFR 154.7(a)(2)(i)). That section provided that a Special Review shall be conducted if the use of a pesticide "induces oncogenic effects in experimental mammalian species or in man as a result of oral, inhalation or dermal exposure * * *." The PD 1 cited four chronic oncogenicity studies that had been conducted during the 1970's, two studies with daminozide and two studies with UDMH, that suggested a potential basis for concern (Toth, 1973; Toth 1977a; Toth, 1977b; NCI, 1978), each of which had certain deficiencies that limited the usefulness of the studies for cancer risk assessment. The Agency decided to proceed with a cancellation action, despite the limitations in the cancer data base because it believed that all four relevant studies, plus a 1984 inhalation study conducted by the U.S. Air Force (Haun, 1984), were sufficient when considered together to warrant such actions. In addition to causing oncogenic effects in laboratory animals, UDMH also appeared to be mutagenic in both the presence and absence of metabolic activity (Rogers and Back, 1981). The Agency has since received additional data which show a negative UDMH mutagenic response in four assays.

Because of the level of concern about dietary exposure, particularly to young children, the Agency developed a combined draft Preliminary and Final Determination (draft PD 2/3/4) and Draft Cancellation Notice, in September 1985. The Draft PD 2/3/4 and Cancellation Notice were submitted to the Scientific Advisory Panel (SAP) and the United States Department of Agriculture (USDA) as required by FIFRA. The SAP was established by Congress to provide scientific review of pesticide actions taken by the Agency. The SAP believed that the data from these studies were insufficient to support a quantitative risk asssessment for either daminozide or UDMH because of various limitations in methodology and documentation. Although EPA is not bound by SAP's opinion, the Panel's view is an integral part of Agency decisions. Based in large part on the SAP's review, EPA concluded that it should not proceed with the cancellation action at that time, but instead should take steps to minimize exposure to daminozide and UDMH and require Uniroyal to begin a wide range of testing that would enable EPA to base its cancer risk assessment on more complete and sound scientific data. In addition to requiring data, several measures were taken which were intended to reduce exposure. These included:

(1) The application rates for use on apples was reduced from 8 lbs/acre to 4 lbs/acre for Spring treatment and 3 lbs/acre for later treatment.

(2) A use advisory cautioning against the use of daminozide on apples meant for processing was to be included with each product labelled for use on apples.

(3) The use on daminozide on grapes was limited to those not used for raisins.

The Agency also lowered the tolerance for residues of daminozide on apples from 30 parts per million (ppm) to 20 ppm (51 FR 12889); the Agency set an expiration date of July 31, 1987, for the reduced apple tolerance since it believed that some of the required residue data would be completed by then and a further evaluation of the tolerance could be undertaken.

The new data required in 1986 under section 3(c)(2)(B) of FIFRA included a 2-year drinking water oncogenicity study of UDMH using mice and rats. (A 2-year feeding study of daminozide using mice and rats had already been started as a result of the DCI issued with the Registration Standard.) Uniroyal was required to perform interim sacrifices at 8 and 12 months in the mouse UDMH study and at 12 months in the rat UDMH study, with the possibility that regulatory action could be taken on the basis of these interim data, rather than waiting until the studies were finished. In addition to oncogenicity studies, the Agency also required extensive other data submissions including mutagenicity data, plant and animal metabolism studies, livestock feeding data, crop field trials, degradation in food data, storage stability information, market basket surveys, and the development of more sensitive analytical methods.

The majority of the required data have been received and reviewed. Based on this information, EPA has made a preliminary determination to propose cancellation of registrations of all products containing daminozide for use on food and to retain non-food uses as currently registered. EPA's position and a summary of the rationale underlying that position are set forth in this Notice. The basis for the Agency's action is explained more fully in the Daminozide Special Review Technical Support Document. Copies of the Technical Support Document are available upon request from the contact person listed under "**FOR FURTHER INFORMATION CONTACT:**" above. The Technical Support Document also contains references, background information, and other information pertinent to the Special Review of products containing daminozide.

In addition, copies of a draft Notice of Intent to Cancel daminozide products are also available from the contact person listed above. Preparation of the draft Notice of Intent to Cancel is required by 40 CFR 154.31(b)(1). The draft Notice is being forwarded to the SAP and the Secretary of Agriculture to permit their review of the Agency's proposed action. The draft Notice of Intent to Cancel, along with the Daminozide Technical Support Document and other notices and analyses prepared pursuant to 40 CFR 154.31, will be sent to the sole registrant of pesticide products containing daminozide.

The draft Notice of Intent to Cancel is not now legally effective, but is intended only to provide a basis for comment by the SAP, U.S. Department of Agriculture, the registrant, and the public. The draft Notice provides that continued distribution or sale of daminozide products registered for food uses will not be allowed after cancellation. Also, EPA will not allow the continued use of such existing stocks of cancelled products. The draft Notice also discusses procedures for requesting a cancellation or denial hearing after issuance of a final notice of intent to cancel. Comments on the draft Notice of Intent to Cancel, this Notice, and the Technical Support Document must be filed within 90 days of the issuance of this Notice.

II. Legal Background

A. The Statute

A pesticide product may be sold or distributed in the United States only if it is registered or exempt from registration under FIFRA as amended (7 U.S.C. 136 et seq.). Before a product can be registered it must be shown that it can be used without "unreasonable adverse effects on the environment" (FIFRA section 3(c)(5)), that is, without causing "any reasonable risk to man or the environment, taking into account the economic, social, and environmental costs and benefits of the use of the pesticide" (FIFRA section 2(bb)).

The burden of proving that a pesticide meets this standard for registration is, at all times, on the proponent of initial or continued registration. If at any time the Agency determines that a pesticide no longer meets this standard for registration, then the Administrator may cancel this registration under section 6 of FIFRA.

B. The Special Review Process

The Special Review process, formerly called the Rebuttable Presumption Against Registration (RPAR), is a mechanism by which the Agency collects information on the risks and benefits associated with the uses of pesticides to determine whether any use causes unreasonable adverse effects to human health or the environment. The Special Review process is currently governed by 40 CFR Part 154.

Through the Special Review process, the Agency:

(1) Announces and describes the Agency's risk concerns regarding pesticidal use based on certain risk criteria.

(2) Establishes a public docket.

(3) Proposes a regulatory decision.

(4) Solicits comments from the public on the proposed decision and issues concerning the Special Review.

(5) Responds to significant comments from the Secretary of Agriculture and the SAP.

(6) Makes a final regulatory decision based on a balancing of risks and benefits associated with a pesticide's use.

Issuance of this Notice means that the Agency has assessed the potential risks and benefits associated with the food and non-food uses of pesticide products containing daminozide and that the Agency has preliminarily determined that the risks from daminozide outweigh the benefits of its continued use on food commodities. Further, the Agency has preliminarily determined that the benefits of use of daminozide on non-food commodities outweigh the risks of use.

III. Summary of Risk and Benefit Determinations

A. Risk Concerns

Based on information available to date, the Agency has determined that the adverse effect of primary concern from daminozide/UDMH exposure is cancer. An in-depth discussion of the historical data base supporting this conclusion can be found in the Daminozide Technical Support Document. Since issuing the Draft PD 2¾ in 1985, which detailed the then-existing data base regarding the potential for daminozide and UDMH to cause cancer, the Agency has received additional studies and information to support the conclusion that daminozide and UDMH are carcinogenic.

1. Recently received oncogenicity information. EPA evaluated the tumor responses seen in the completed daminozide studies, in which mice (CD–1) fed levels of 0, 300, 3,000, 6,000 and 10,000 ppm for 2 years and rats (Fischer 344) were fed levels of 0, 100, 500, 5,000, and 10,000 ppm for 2 years (Uniroyal, 1988a; and Uniroyal, 1988b, respectively). Review of the daminozide mouse study indicates that there is a statistically significant increase in hemangiosarcomas, and combined hemangiomas/hemangiosarcomas (benign and malignant blood vessel tumors, respectively) with increasing dose in males and females (by the Cochran Armitage test—a statistical recognition of a positive increase in tumors with increasing dose) but not by pairwise comparison (Fisher Exact test—statistical comparison of the control and treated animals). In addition, combined benign and malignant alveolar/bronchiolar tumors showed a dose-related trend in male mice as well as a significant pairwise difference between the 6,000 ppm dose and the controls in males and females. The rate studies did not show a statistically significant increase in tumors of any kind. Although not used for risk calculation, a complete discussion of the daminozide tumor response in the mouse study has been presented in the Daminozide Technical Support Document.

Uniroyal is currently conducting 2-year UDMH drinking water oncogenicity studies in the rat (Fischer 344) and mouse (CD–1). The Agency required that Uniroyal submit interim sacrifice reports from the mouse and rat studies in order to better characterize the formation of tumors and serve as a basis for regulatory action if the data warrant.

In one study (Uniroyal, 1988c), groups of Fischer 344 rats (70 sex/dose) are being administered UDMH in drinking water at 0, 1, 50, and 100 ppm for 2 years. The 1-year interim sacrifice (20 animals per sex/dose) data has been submitted and reviewed by the Agency. Although there was a dose-related increase in the incidence of corneal opacity in all treated female groups, there was no significant difference in the incidence of tumors in any dose group when compared to controls.

The CD–1 mouse is currently being tested for oncogenic effects in two separate studies at several dosage levels. In the first mouse study (Uniroyal, 1988d), UDMH was administered in water using low doses of 0, 1, 5, and 10 ppm UDMH in males and 0, 1, 5, and 20 ppm in females. The test used 90 animals per sex per dose. Fifty animals per sex per dose were dosed for 2 years. Twenty animals each were sacrificed at 8 months and 12 months from the initiation of the study. Although at 8 months some toxicity was observed in the liver, no apparent increase in tumors was seen. The liver toxicity noted was in the form of brown pigment and hypertrophy of the liver in males at the highest dose. The 12-month report did not show a significant increase in tumor formation when comparing treated animals to controls. The terminal sacrifice of this study occurred in January 1989 and the final report of this study is due in September 1989.

On March 19, 1987, EPA required Uniroyal to perform an additional oncogenicity study in mice. This action was taken because the Agency did not believe the maximum tolerated dose (MTD) would be achieved in the CD–1 mouse oncogenicity study with high doses of only 10 to 20 ppm. Uniroyal believed that the results of a 13-week subchronic study (Cranmer, M. and Frith, C., 1987) supported the 20 ppm MTD for mice and that elevating the dose would threaten the lives of the animals and the validity of the study. (Uniroyal's opinion was based on: (1) Microscopic examination of liver, spleen and bone marrow which they believe suggested significant cellular alterations, (2) evaluation of hematological effects from which they suggested significant changes had occurred to critical blood elements resulting in life-threatening anemia, and (3) changes in alkaline phosphatase levels which they considered to be significant and which they correlated with histopathological changes in the liver.) The Agency considered this interpretation of the 13-week data but was not satisfied that the changes noted in the report were biologically meaningful. The Agency was of the opinion that the effects were not life-threatening in nature. EPA believed that higher doses were necessary and required the additional carcinogenicity study at 0, 40, and 80 ppm dose levels.

The second study in the CD–1 mouse is currently underway (Uniroyal, 1988e). Groups of 90 animals/sex/dose are being administered UDMH at 0, 40, and 80 ppm. As with the low dose study, 20 animals/sex/dose were sacrificed at 8 and 12 months. The 8-month interim sacrifice report noted hematological effects (dose-related increases in erythrocyte count, hematocrit and

hemoglobin levels when compared to controls) in high dose males, accentuation of liver lobulation in both dosage groups of males, liver cell hypertrophy, single cell necrosis and bile pigment accumulation in liver of treated males as well as increased bile pigment accumulation in the females. Increases in benign lung tumors (alveolar/bronchiolar adenomas) in both sexes were reported at 80 ppm.

The 12-month interim sacrifice report showed the same toxicity effects as reported in the 8-month sacrifice (liver lobulation, single cell necrosis, etc., in the males). In addition to these effects, there was an increased incidence of vascular tumors of the liver in male and female mice and an increased incidence of alveolar/bronchiolar tumors in the lungs of the male and female mice.

As discussed later in this section, the cancer risk assessment and the basis for Agency regulatory action is the tumor response seen at the 80 ppm UDMH dose level in mice at 1 year. The blood vessel tumors seen in this study are the same type of tumors seen in the earlier UDMH and daminozide studies (Toth, 1977a; Toth, 1977b; Toth, 1973; Haun, 1984). The terminal sacrifice for this study is scheduled for mid-May 1989 and the final report is due to EPA in January 1990. The incidence of vascular liver tumors is noted in the following Table 1.

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Table 1-INTERIM SACRIFICE RESULTS, UDMH (CD-1) MOUSE STUDY
INCIDENCE OF BLOOD VESSEL TUMOR RATES[1,2]

Tumor Type	DOSAGE LEVELS (ppm) AND INCIDENCE OF BLOOD VESSEL TUMORS		
	0	40	80
Males			
Hemangiomas	0/45(0)[3]	1/45(2)	2/53(4)
Hemangiosarcomas	0/45(0)**	0/45(0)	9/53(18)**
COMBINED INCIDENCE	0/45(0)**	1/45(2)	11/53(22)**
Females			
Hemangiomas	0/43(0)	1/47(2)	2/51(4)
Hemangiosarcomas	0/43(0)**	0/47(0)	6/51(12)*
COMBINED INCIDENCE	0/43(0)**	1/47(2)	8/51(16)**

NOTE: Significance of trend denoted at control. Significance of pairwise comparison with control denoted at dose level. For quantitative risk assessment, these tumor proportions may be amended very slightly due to differences in necropsy interpretation. However, these differences do not affect the estimate of upper bound risk.
* denotes $p<0.05$
** denotes $p<0.01$

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[1] Source: September 9, 1988 EPA memorandum from W.B. Greear based on data from Uniroyal, 1988e.

[2] rate= number of tumor bearing animals/number of animals examined.

[3] the number in parentheses indicates the percentage incidence.

The incidence of lung tumors is presented in Table 2.

Table 2-INTERIM SACRIFICE RESULTS, UDMH (CD-1) MOUSE STUDY
INCIDENCE OF ALVEOLAR/BRONCHIOLAR TUMOR RATES[4,5]

Tumor Type	DOSAGE LEVELS (ppm) AND INCIDENCE OF BLOOD VESSEL TUMORS		
	0	40	80
Males			
Adenomas	6/45(13)[6]**	11/45(24)	22/53(41)**
Adenocarcinomas	0/45(0)	0/45(0)	1/53(2)
COMBINED INCIDENCE	6/45(13)**	11/45(24)	23/53(43)**
Females			
Adenomas	4/44(9)**	13/47(30)*	19/51(37)**
Adenocarcinomas	0/44(0)	1/47(2)	0/51(0)
COMBINED INCIDENCE	4/44(9)**	14/47(32)*	19/51(16)**

NOTE: Significance of trend denoted at control. Significance of pairwise comparison with control denoted at dose level. For quantitative risk assessment, these tumor proportions may be amended very slightly due to differences in necropsy interpretation. However, these differences do not affect the estimate of upper bound risk.
* denotes $p<0.05$
** denotes $p<0.01$

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[4] Source: September 9, 1988 EPA memorandum from W.B. Greear based on data from Uniroyal, 1988e.

[5] rate = number of tumor bearing animals/number of animals examined.

[6] the number in parentheses indicates the percentage incidence.

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The Agency estimated an interim cancer potency factor for use in risk calculation based on the data from the "high dose" UDMH mouse study. (Cancer potency is a quantitative measure or estimate of the relationship between exposure to increasing doses of the chemical substance in question and the increased severity (e.g., number of tumors) of the carcinogenic effect.) The Agency used the linearized multi-stage model to extrapolate from effects seen at high doses to predict tumor response at low doses. The actual calculation of the Q^*_1 for UDMH is described in greater detail in the Daminozide Technical Support Document.

The Agency believes that data from the 1-year interim sacrifice of the "high dose" UDMH mouse study are appropriate to use for estimating oncogenic potency for the following reasons: (1) Hemangiosarcomas are uncommon malignant tumors and have a low background rate in the strain of mouse used; (2) hemangiosarcomas are the same type of tumors seen in the earlier UDMH and daminozide studies; and (3) since malignant blood vessel tumors have already been noted at the 40 ppm dose level at the one year interim sacrifice, it is very likely that a dose-response relationship will be observed for the occurrence of hemangiomas/hemangiosarcomas by the termination of the UDMH mouse study after two years. The daminozide mouse study was not used for potency estimation since no statistically significant increase in tumors by pairwise comparison was noted in the study. In addition, because at this stage the lung tumors have not yet been shown to be outside the normally high incidence of lung tumors in CD–1 mice, for purposes of this document these tumors were not included in the interim potency estimation used in the Preliminary Determination.

Based on the incidence of the vascular tumors at 80 ppm UDMH after 1 year of treatment, the Agency calculated an interim cancer potency factor of 0.88 $(milligrams/kilogram/day)^{-1}$ $((mg/kg/day)^{-1})$ using the Crump Global 86 model. In addition, an interim Q^*_1 of 2.9 $(mg/kg/day)^{-1}$ was calculated on the incidence of lung tumors seen in this same study. As noted above, for purposes of this document, the Q^*_1 calculated on the basis of the increased incidence of blood vessel tumors alone was used in the risk estimates.

Considered with the results of the earlier oncogenicity studies on daminozide and UDMH, which showed the same tumor types as the newer Uniroyal studies, the Agency has classified both daminozide and UDMH as Group B_2 chemicals, probably human carcinogens.

2. *Metabolism data.* The Agency has recently received and reviewed the results from a metabolism study in miniature swine (Uniroyal, 1987d). This study utilized Charles River miniature swine which were administered approximately 5 mg/kg (approximately 100 ppm) daminozide orally. Daminozide was found in almost all tissues, at levels up to 73 ppb, with the liver and kidney containing the highest levels. Analysis of urine indicates that both UDMH and dimethyl nitrosamine (NDMA) were excreted in the urine. From the urine analysis data, the Agency estimates that approximately 1 ppm average (or 1 percent) of daminozide was metabloized to UDMH. NDMA levels ranged from 0.01 to 0.69 ppm. However, the Agency believes that most of the UDMH and NDMA were excreted in the feces in the first 24 hours. Because fecal data were not analyzed for the 0–24 hour portion of the study, analysis of urine and feces is considered incomplete. This study is described in greater detail in the Daminozide Technical Support Document.

3. *Mutagenicity information.* The Agency evaluated information concerning the potential of daminozide and UDMH to cause mutagenic effects, or damage to the genetic material of cells. The results of several mutagenicity assays on daminozide tend to indicate that daminozide *per se* is not mutagenic. These studies are discussed in greater detail in the Daminozide Technical Support Document.

Conflicting results for mutagenicity have been reported in several studies for UDMH, however. Uniroyal (Uniroyal, 1988g) has recently submitted reports of several mutagenicity studies which were negative for mutagenic activity. Based solely on these studies, UDMH does not appear to be mutagenic.

However, open literature reports of several studies with positive results for UDMH provide a basis for a mutagenicity concern. These studies are discussed in greater detail in the Technical Support Document.

4. *Exposure.* A chemical's cancer potency is one of two components of cancer risk assessment. The other component is exposure. The Agency calculated dietary exposure to daminozide and UDMH for the general population, nursing infants, non-nursing infants, and children aged 1 to 5 years, and non-dietary exposure for mixers, loaders, and/or applicators exposed dermally to daminozide and UDMH.

a. *Dietary exposure.* Dietary exposure consists of two parts. First, the residue value, or the amount of daminozide and UDMH found or estimated on raw and processed food, was estimated. Second, residue values were considered in relation to food consumption patterns of differing age groups to determine exposure.

1. *Residue Estimates.* Daminozide and UDMH residues were determined from (1) market basket survey data, (2) data from controlled field trials conducted in 1986 and 1987, and (3) estimates of residues in meat, eggs, and meat by-products based on livestock feeding studies. The studies from which these data were obtained were submitted by Uniroyal in response to the 1986 Data Call-In Notice. The studies are described in greater detail in the Daminozide Technical Support Document.

The residue estimates used to calculate human dietary exposure have been tabulated in Tables 3 and 4 for both raw and processed foods. The following Table 3 shows the estimates of UDMH levels in raw and processed foods.

TABLE 3.—ESTIMATES OF UDMH LEVELS IN RAW AND PRODUCED FOODS

Commodity	Percent of crop treated	Average, ppb UDMH*
Apples	NA	2.6
Apple sauce (—baby)	NA	33.3
Appled sauce (—adult)	NA	14.0
Apple juice (—baby)	NA	44.0
Apple juice (—adult)	NA	23.9
Dried raw apples	NA	**20.8
Dried cooked apples	NA	**352.0
Cherries, sweet and sour	30	18.6
Cherry filling (and juice)	NA	108.1
Grapes	NA	0
Grape juice	NA	1.5
Grape preserves	NA	1.5
Nectarines	3	25.0
Peaches	3	21.3
Peaches, canned	NA	*21.3
Peanuts	NA	24.9
Peanut butter	NA	24.9
Peanut oil	NA	24.9
Pears	3	11.9
Pears, canned	NA	11.9
Beef meat	NA	2.0
Beef kidney	NA	2.0
Beef fat	NA	2.0
Beef milk	NA	2.0
Poultry meat	NA	0.5
Poultry eggs	NA	0.5
Tomatoes, whole	10	1.6
Tomato juice	10	**2.4
Tomato puree	10	**5.3
Tomato paste	10	**8.6
Catsup	10	**4.0

*For commodity items beef, beef byproducts, milk, poultry, and eggs, the residue values were extrapolated from feeding studies.

** Residue levels of dried apples include a concentration factor of 8. For processed tomato products, the average residue of 1.6 ppb was multiplied by the following concentration factors to derive the value used in estimating exposure: 1.5 for tomato

juice, 3.3 for tomato puree, 5.4 for tomato paste, and 2.5 for catsup.

The following Table 4 shows the estimates of daminozide levels in raw and processed foods.

TABLE 4.—ESTIMATES OF DAMINOZIDE LEVELS IN RAW AND PROCESSED FOODS

Commodity	Percent of crop treated	Average ppm Daminozide*
Apples	NA	1.00
Apple sauce (-baby)	NA	0.50
Apple sauce (-adult)	NA	0.40
Apple juice (-baby)	NA	0.50
Apple juice (-adult)	NA	0.40
Dried raw apples	NA	**8.00
Dried cooked apples	NA	**4.00
Cherries, sweet and sour	30	23.7
Cherry filling (and juice)	NA	1.5
Grapes	NA	0
Grape juice	NA	0.02
Grape preserves	NA	0.02
Nectarines	3	14.5
Peaches	3	11.3
Peaches, canned	NA	11.3
Peanuts	NA	0.80
Peanut butter	NA	0.80
Peanut oil	NA	0.80
Pears	3	8.8
Pears, canned	NA	8.8
Beef meat	NA	0.01
Beef kidney	NA	0.2
Beef fat	NA	0.01
Beef milk	NA	0.01
Poultry meat	NA	0.001
Poultry eggs	NA	0.002
Tomatoes, whole	10	0.20
Tomato juice	10	**0.30
Tomato puree	10	**0.66
Tomato paste	10	**1.10
Catsup	10	**0.50

*For commodity items beef, beef byproducts, milk, poultry, and eggs, the residue values were extrapolated from feeding studies.

**Residue levels of dried apples include a concentration factor of 8. For processed tomato products, the average residue of 0.20 ppm was multiplied by the following concentration factors to derive the value used in estimating exposure: 1.5 for tomato juice, 3.3 for tomato puree, 5.4 for tomato paste, and 2.5 for catsup.

ii. *Consumption.* The Agency used the residue values in treated commodities, discussed in the previous section, and food consumption estimates to calculate dietary exposure. The model for calculating dietary exposure is called the Tolerance Assessment System (TAS). Using TAS, the Agency determined exposure profiles for several different age groups, including the U.S. population as a whole, nursing infants, non-nursing infants, and children aged 1 to 6 years old.

The food consumption data files used to calculate dietary exposure were derived from a nationwide survey of individual food consumption patterns of 30,770 people, conducted by the U.S. Department of Agriculture (USDA) in 1977–1978 (White, et al., 1983). This survey, TAS, and the assumptions considered when assessing dietary exposure are described in greater detail in the Daminozide Technical Support Document.

Average daily consumption values from the USDA survey were multiplied by residue information for each commodity. Residue information from crop field trials was adjusted by percent of crop treated estimates. Residue data from the market basket survey were not adjusted for percent of crop treated. Multiplication of average daily consumption values and residue information results in the daily anticipated residue contribution (ARC) for each food-form and for the pesticide as a whole. The ARC represents the Agency's dietary exposure estimate.

The following Table 5 shows the average daily consumption, UDMH residue, and exposure values for each commodity containing residues of UDMH. The exposure estimate is for the general population and includes various sub-group exposures.

TABLE 5.—ESTIMATES OF UDMH DIETARY EXPOSURE FOR THE U.S. POPULATION *

Commodity	Average daily consumption (g food/kg bwt/day)	Residue levels (in ppb)	Exposure (μg/kg/day)
Apples, fresh	0.3074	2.6	0.000799
Apples, cooked: Fresh and juice	.2004	44.0	.008818
Dried raw apples	.0001	20.8	**.000002
Dried cooked apples	.0001	352.0	**.000035
Apple juice, raw	.1709	33.3	.005691
Cherries, raw fresh and raw juice	.0105	5.6	.000059
Cherries, cooked: Fresh and juice	.0251	108.1	.002713
Eggs	.5803	0.5	.000290
Grapes	.0438	0	.000000
Grape juice	.0901	1.5	.000135
Wine and sherry	.0842	1.5	.000126
Nectarines	.0130	0.8	.000010
Peaches	.2154	0.6	.000129
Peanuts, raw, cooked, and oil	.0748	24.9	.001863
Pears	.1225	0.4	.000049
Meat	2.2318	2.0	.004464
Milk	1.3705	2.0	.021068
Tomatoes, whole	.4920	1.6	.000787
Tomato juice	.0551	2.4	**.000132
Tomato puree	.1702	5.3	**.000902
Tomato paste	.0395	8.6	**.000340
Catsup	.0420	4.0	**.000168
Total			.000047 or 4.7×10^{5} mg/kg/day

* For commodity items meat, milk, and eggs, the residue values were extrapolated from feeding studies data. All beef, beef byproducts and poultry were combined under "meat" in this table.

** Residue levels for dried apples includes a concentration factor of 8. For processed tomato products, average residue of 1.6 was multiplied by the following concentration factors: 1.5 for tomato juice, 3.3 for tomato puree, 5.4 for tomato paste, and 2.5 for catsup.

The following Table 6 shows the average daily consumption for each commodity containing residues of daminozide.

TABLE 6.—ESTIMATES OF DAMINOZIDE DIETARY EXPOSURE FOR THE U.S. POPULATION *

Commodity	Average daily consumption (g food/kg bwt/day)	Residue levels (in ppm)	Exposure (mg/kg/day)
Apples, fresh	0.3074	1.00	0.000307
Apples, cooked: Fresh and juice	.2004	0.50	.001000
Dried raw apples	.0001	8.00	**.000001
Dried cooked apples	.0001	4.00	**.0000004
Apple juice, raw	.1709	0.50	.000085
Cherries, raw fresh and raw juice	.0105	7.11	.000075
Cherries, cooked: Fresh and juice	.0251	1.50	.000038
Eggs	.5803	0.002	.000001
Grapes	.0438	0.02	.000001
Grape juice	.0901	0.02	.000002
Wine and sherry	.0842	0.02	.000002
Nectarines	.0130	0.45	.000006
Peaches	.2154	0.34	.000073
Peanuts, raw, cooked, and oil	.0748	0.80	.000060
Pears	.1225	0.26	.000032
Meat	2.2318	0.20	.000446
Milk	1.3705	0.01	.000014
Tomatoes, whole	.4920	0.20	.000098
Tomato juice	.0551	0.30	**.000017
Tomato puree	.1702	0.66	**.000112
Tomato paste	.0395	1.10	**.000043
Catsup	.0420	0.50	**.000021
Total			.000951 or 9.5×10^{-4} ***mg/kg/day

* For commodity items meat, milk, and eggs, the residue values were extrapolated from feeding studies data.
** Residue levels for dried apples includes a concentration factor of 8. For processed tomato products, average residue of 0.2 ppm was multiplied by the following concentration factors: 1.5 for tomato juice, 3.3 for tomato puree, 5.4 for tomato paste, and 2.5 for catsup.
*** 1 percent of total daminozide exposure (0.95×10^{-5}) used in risk estimates for UDMH contribution from metabolic conversion of daminozide to UDMH.

Table 7 shows the average daily dietary exposure to UDMH for the overall U.S. population and selected age groups.

TABLE 7.—TAS ESTIMATES OF AVERAGE DAILY EXPOSURE TO UDMH FOR SELECTED AGE SUBSETS

Subset (age)	Exposure (mg/kg/day)
Overall U.S. population	0.000047
Nursing infants (<1 year old)	0.000229
Non-nursing infants (<1 year old)	0.000410
Children (1–6 years old)	0.000138
Children (7–12 years old)	0.000071
Males (13–19 years old)	0.000042
Females (13–19 years, not pregnant or nursing)	0.000034
Females (13+ years, pregnant)	0.000027
Females (13+ years, nursing)	0.000037
Females (20+ years, not pregnant or nursing)	0.000023
Males (20+ years old)	0.000025

The UDMH exposure values are slightly lower than the values presented in the apple tolerance extension document published on February 10, 1989 (54 FR 6392). The lower exposure results from an adjustment in the TAS.

Table 8 shows the average daily dietary exposure to daminozide for the overall U.S. population and selected age groups.

TABLE 8.—TAS ESTIMATES OF AVERAGE DAILY EXPOSURE TO DAMINOZIDE SELECTED AGE SUBSETS

Subset (age)	Exposure (mg/kg/day)
Overall U.S. population	0.000951
Nursing infants (<1 year old)	0.003396
Non-nursing infants (<1 year old)	0.005427
Children (1–6 years old)	0.002786
Children (7–12 years old)	0.001514
Males (13–19 years old)	0.000730
Females (13–19 years, not pregnant or nursing)	0.000662
Females (13+ years, pregnant)	0.000692
Females (13+ years, nursing)	0.000824
Females (20+ years, not pregnant or nursing)	0.000575
Males (20+ years old)	0.000523

b. *Non-dietary Exposure.* The exposure component of non-dietary risk was calculated for daminozide and UDMH for the use of daminozide in greenhouses. This estimation was used to calculate carcinogenic risk for workers believes the Agency that greenhouse workers are likely to receive the highest exposures of any workers.

The Agency received a daminozide greenhouse worker exposure study in response to the 1986 DCI Notice. However, this study was found to be deficient for several reasons which are further explained in the Daminozide Technical Support Document. To calculate non-dietary exposure for workers who mix, load and/or apply daminozide, EPA used a recently reviewed study on exposure of greenhouse workers to acephate (Sumagic PGR) to assess non-dietary exposure. The Agency believes it appropriate to use acceptable surrogate data instead of relying on the uncertain results of a more limited study when more suitable exposure data are not available for an exposure assessment.

The surrogate study (Merricks, 1987) was based on the dermal exposure to nine workers as they filled the spray tank with pesticide, diluted the spray, and then sprayed the plants by hand in a 20' by 100' greenhouse to run-off. Dermal exposure was monitored using cellulose patch dosimeters placed on the shoulders, chest, back, head, forearms, upper arms, thighs, and shins. Further description of this study has been provided in the Technical Support Document. From this study, dermal exposure per pound active ingredient for mixer/loaders was calculated to be 87

mg/lb a.i. and 74 mg/lb a.i. for applicators. The geometric mean (unit exposure) of these data sets was calculated to be 58 mg/lb a.i. and 59 mg/lb a.i., respectively.

Daminozide exposure and risk to mixers, loaders and applicators was calculated for typical application scenarios. The Agency used several assumptions in its exposure calculations which are described in the Technical Support Document. The following calculation was used to estimate mixer/loader and applicator exposure for UDMH:

Average Daily UDMH Exposure (mg/kg/day) = Application Rate × 1A treated/application × 2 applications/year × Unit Exposure × 1.00 UDMH absorbed × 0.00005 UDMH in daminozide × 1/70 kg × 365 days/year

where the Application Rate is 5.1 lb a.i./A for chrysanthemums and 0.61 lb a.i./A for tomato transplants, and the Unit Exposure is 58 mg/lb a.i. for mixer/loaders and 59 mg/lb a.i. for applicators. Dermal exposure estimates for mixer/loaders and applicators calculated using this equation is summarized in the following Table 9:

TABLE 9.—AVERAGE DAILY DERMAL EXPOSURE TO UDMH

Worker	Greenhouse tomatoes (mg/kg/day)	Greenhouse chrysanthemums (mg/kg/day)
Mixer/loader	1×10^{-3}	1×10^{-5}
Applicator	1×10^{-3}	1×10^{-6}
Mixer/loader applicator	2×10^{-3}	2×10^{-5}

5. *Risk calculation.* Although the previous section presented exposure values to both the parent compound, daminozide, and the metabolite, UDMH, cancer risk was calculated using the UDMH interim cancer potency factor. As noted previously, the Agency has not received the final results of the Uniroyal UDMH carcinogenicity studies in mice and rats. Although the same types of tumors were observed in the daminozide mouse study (hemangiomas/hemangiosarcomas), only biological trends were observed. Therefore, no cancer potency factor was calculated from the daminozide study. The Agency has identified UDMH as the primary chemical of oncogenic concern at this time.

a. *Dietary risks.* The 95 percent upper bound lifetime increased cancer risk for the general population was obtained by taking the interim UDMH Q^*_1 (cancer potency factor) from the Dose-Response Assessment (0.88 per mg/kg/day^{-1}) and multiplying it by the exposure estimate found in Table 5. Lifetime risk for non-nursing infants, the highest exposure group, was obtained by taking the exposure value in Table 7 and multiplying it by the cancer potency factor. This value was then divided by 70 average lifetime years.

When calculating risk from exposure to UDMH, EPA separately calculated metabolic conversion from daminozide to UDMH. Based on the incomplete results of the miniature swine metabolism study described earlier in this Notice and in the Technical Support Document, the Agency estimated that approximately 1 percent of ingested daminozide is converted into UDMH in the gut. Any conversion from daminozide to UDMH in apple, peanut and cherry products due to processing is assumed to be included in the residue estimates from the market basket survey. The additional UDMH exposure/risk from metabolism is noted at the end of the following Table 10.

TABLE 10.—ESTIMATES OF UDMH DIETARY RISK FOR THE U.S. POPULATION

(interim Q^*_1 + 0.88 mg/kg/day)

Commodity	Dietary exposure (μg/kg/day)	Dietary risk*
Milk	0.021068	1.8×10^{-5}
Apples	0.015331	1.4×10^{-5}
Red meat	0.004464	3.9×10^{-6}
Cherries	0.002772	2.4×10^{-6}
Peanuts	0.001863	1.6×10^{-6}
Eggs	0.000290	2.5×10^{-7}
Grapes	0.000261	2.3×10^{-7}
Poultry	0.000252	2.2×10^{-7}
Tomatoes	0.000234–0.00234	2.1×10^{-7}–2.1×10^{-6}
Peaches	0.000129	1.1×10^{-7}
Pears	0.000049	4.3×10^{-8}
Nectarines	0.000010	8.8×10^{-9}
Totals	0.046715	4.1×10^{-5}
	+ [0.009500 metabolic UDMH from daminozide]	$0.84\times2.^{-5}$
		4.9×10^{-5}

Oncogenic risk for the general population from exposure to UDMH is based on lifetime (70 years) dietary exposure. Risk estimates posed by exposure to UDMH residues for individuals in different age subgroups are also lifetime risks in that a tumor response can occur anytime the person's lifetime, but the level of exposure (and calculated risk) changes as a person grows older and enters different age subgroups. Exposure estimates for infants and children are higher than those of adults because consumption patterns very and because infants consume more food (particularly certain fruit) per unit body weight than adults. Infants and children have greater relative UDMH exposure than do adults and, therefore, may incur a substantial portion of lifetime risk during these exposure periods. Estimates of potential lifetime carcinogenic risk posed by 1 year exposure to UDMH residues for the general population and selected age subgroups is shown in the following Table 11.

TABLE 11.—ESTIMATES OF RISKS TO SELECTED AGE SUBJECTS FROM ONE YEAR EXPOSURE TO UDMH

Subset (age and other)	Dietary exposure (mg/kg/day)	1-year exposure lifetime risk
Nursing infants (<1 year old)	0.000229	2.9×10^{-6}
Non-nursing infants (<1 year old)	0.000410	5.2×10^{-6}
Children (1–6 years old)	0.000138	1.7×10^{-6}
Average 1-year risk for all age groups	0.000047	4.9×10^{-7}

The dietary exposure values used for risk calculation, except for tomatoes, are found in Table 5. The exposure estimates for tomatoes used to calculate risk are 10 times the value reported in Table 5. The Agency made this exposure adjustment to reflect exposure situations where the consumer grows and cans his own tomatoes, puree and/or juice. The exposure value in Table 5 reflects a 10 percent-of-crop treated assumption. That value was derived from usage estimates which show that 50 percent of the tomato transplants intended for the home grower market are treated and no tomato transplants used for commercially grown tomatoes are treated. The home garden market accounts for approximately 20 percent of the tomatoes consumed nationally (50 percent×20 percent=ten percent of crop treated). This approach to calculating risk spreads total dietary risk over the entire population and does not account for those situations where people grow their own markets and can tomato products. For this reason, a range of risks from consuming tomatoes was calculated based on 10 percent-of-crop-treated and 100 percent of crop treated. Table 10 lists the dietary risk estimates from individual food commodities.

b. *Non-dietary risks.* The non-dietary exposure estimates discussed above in Unit III.A.4.b. are used as a basis for estimating non-dietary carcinogenic risk. The Agency assumed that the cancer potency factor for the dermal route of exposure is equivalent to that for the dietary route (0.88 (mg/kg/day)$^{-1}$ and that the length of lifetime exposure is 35 years worked/70 years lived. To calculate non-dietary carcinogenic risk from exposure to UDHM, the Agency used the following equation:

UDMH risk=UDMH exposure×35/70×W*Q_1

where the Q_1 is (0.88 (mg/kg/day)$^{-1}$). Based on this calculation, the carcinogenic risks from worker exposure to UDMH is tabulated in the following Table 12:

TABLE 12.—QUANTITATIVE ASSESSMENT OF RISKS FROM EXPOSURE TO UDMH TO WORKERS APPLYING DAMINOZIDE

(Interim Q^*_1=0.88 (mg/kg/day)$^{-1}$)

Worker	Greenhouse tomatoes, risk	Greenhouse chrysanthemums, risk
Mixer/loader	6×10^{-8}	5×10^{-7}
Applicator	6×10^{-8}	5×10^{-7}
Mixer/loader-applicator	1×10^{-7}	1×10^{-6}

Uncertainties in both the dietary and non-dietary risk assessments that could underestimate or overestimate risk are described in the Daminozide Technical Support Document.

B. Benefits

The Agency's benefit analysis examined in-depth the following use sites: (1) the food commodities apples, peanuts, cherries, grapes, peaches/nectarines, pears and tomatoes, and (2) ornamentals and bedding plants. In the Daminozide Technical Support Document, the Agency reviewed the biological effects associated with the use of daminozide on these crops, methods of application, agricultural practices, and chemical and nonchemical alternatives and estimated the impacts of cancellation of daminozide's registration upon growers, consumers and society as a whole. The Technical Support Document provides an in-depth discussion of the benefits associated with each use of daminozide which are summarized in Tables 13–15.

TABLE 13.—SUMMARY OF DAMINOZIDE BENEFITS

Use (site/site category)	Extent of usage		Key effects	Economic Impacts—Grower Annual Income Impacts (millions)			Significance
	A.I./year (1000 lbs.) (% of total)	Percent of 1988 site treated		Users	Non-users	Total	
Apples:							
Red Delicious		14	Improve storage, fruit color	−$4.28	+$7.73	+$3.45	(1)
Golden Delicious		13	Improve storage	−.55	+1.93	+1.38	(1)
McIntosh		18	Stop drop, improve fruit color	−5.68	+.98	−4.70	(1)
Stayman		17	Prevent	−1.82	+.29	−1.53	(1)
All Apples		10		−14.56	+16.11	+1.55	(1)

[1] Insignificant users impacts offset by non-users windfall gains. McIntosh/Stayman growers most adversely impacted (30% reduction in total revenue/treated acre); some growers may go out of business or must replant with other varieties.

TABLE 13.—SUMMARY OF DAMINOZIDE BENEFITS—Continued

Use (site/site category)	Extent of Use		Key effects	Economic Impacts	Significance
	A.I./year (1000 lbs.) (% of total)	Percent of 1988 site treated			
Apples				Market:	
				Fresh—Reduced quantity of 160.6 million lb. (−3.4%); price increases from $.156 to $.161/lb.	Moderate; impacts to diminish over time.
				Processed—Increased quantity of 47.7 million lb. (+1.3%); price decreases from $.051 to $.050/lb.	
				Consumer:	
				Fresh—Price increases from $.6274 to $.6401/lb. (+4.9%). Total expenditures decrease $109.5 million (−3.7%) for 160.6 million fewer pounds.	Moderate.
				Processed—Price decreases from $.3254 to $.318/lb. (−2.3%). Total expenditures increase $8.4 million (+.7%) for 47.7 million more pounds.	Insignificant.
				Total—Total apple expenditures decrease $101.1 million/year (−2.4%) for 270.9 million fewer pounds.	
				Microeconomic: Increased importations of fresh apples in the summer from Southern Hemisphere countries may augment seasonal supply shortfall.	Minor.
				Welfare/Efficiency: Net social cost estimates current usage (10%) of apples treated $18 to 81 million 1985 usage (24%) of apples treated: $44 to 198 million.	Minor.
Grapes	1985: 45.1 to 51.3	1985: 42–47%	Increase set and yield	Users:	
	1988: Negligible	1988: Negligible		1985: $2.4 million annual income loss	Minor
				1988: Negligible	Negligible.
				Consumers:	
				1985: 1 to 5% price increase for 2 to 5% reduction in quantity.	Minor
				1988: Negligible	Negligible.
Cherries	1985:	1985:	Enhanced color; uniform ripening increased yield; less bruising; easier pit removal.	Users:	
	Tart: 48—112.8	Tart: 57–72%		1985:	
	Sweet: 0.2—1.2	Sweet: <2%		Tart: $2.2 million net income loss/year	Minor.
	1988:	1988:		Sweet: Negligible	
	Tart: Negligible	Tart: Negligible		1988: Sweet and tart: Negligible	Negligible.
	Sweet: Negligible	Sweet: Negligible			
				Consumers: Sweet and Tart: Negligible for 1985 and 1988.	Negligible.
Ornamentals	1985 and 1988: 30 to 40.	1985 and 1988: 90% for mums to 50% of bedding plants.	Produces compact plants with greener foliage.	Users: 1985: Costs increase $0.7 to $4.7 for 1985 and 1988.	Minor.
				Consumers: 1985: Lower quality plants, higher prices for 1985 and 1988.	Minor.
Tomato Trans	1985 and 1988: 1.4	1985 and 1988: 50% of sales for home gardeners.	Shorter plants, more easily shipped.	Users: Losses of crop quality with lower grade prices and income for 1985 and 1988.	Minor.
				Consumers: Lower quality plants, higher prices for 1985 and 1988.	Minor.
Peaches & Nectarines.	1985 and 1988: 6.5 to 18.	1985 and 1988: <5%	Increased color and hastened maturity.	Users: $1.5–$5.5 million loss of income for 1985 and 1988.	Minor.
				Consumers: Negligible for 1985 and 1988	Negligible.
Pears	1985 and 1988: Negligible.	1985: and 1988: 1–3%.	Reduces premature ripening of Bartlett pears.	Users:	
				1985: <$500,000 income loss	Minor.
				1988 Negligible	
				Consumers: Negligible for 1985 and 1988	Negligible.
Peanuts	1985: 175—225; 1988: 42.5.	1985: 11–12%; 1988: 3%.	Shorter, more erect vines; assists harvesting.	Users:	
				1985: About $2.0 million; <1% of total grower income.	Minor.
				1988: $260,000 income loss	Negligible.
				Consumers: Negligible for 1985 and 1988	Negligible.

[a] Usage for several minor use sites (ornamentals, tomato transplants and peaches/nectarines) appeared stable between 1985 and 1988. For apples, the economic impact estimates were based on a currently representative usage level for daminozide.

[b] Usage for mid-season/summer treatments only; usage by variety for early bearing and pruning reduction is unknown.

TABLE 14.—ANNUAL DAMINOZIDE USAGE BY SITE: 1985 AND CURRENT MARKET

Site	1,000 lbs. A.I./Year		Percent of site treated	
	1985	Current market	1985	Current market
Apples	327.4–423.6	136–177	24	10.
Grapes	45.1–51.3	(1)	42–47	(1).
Cherries				
Tart	48.0–112.8	(1)	57–72	(1).
Sweet	.2–1.2	(1)	<2	(1).
Ornamentals	30–40	30–40	50 bedding plants, 90 mums	50 bedding plants, 90 mums.
Tomato Transplants	1.4	1.4	50 home/garden	50 home/garden.
Peaches/Nectarines	6.5–18	6.5–18	<5	<5.
Pears	(1)	None	1–3	None.
Peanuts	175–225	42.5	11–12	<3.
Total	633.6–873.3	216.4–278.9		

[1]Negligible.

TABLE 15.—USE LEVELS AND EFFECTS OF DAMINOZIDE CANCELLATION—BY APPLE VARIETY

	Percent fresh crop treated		Increased dropped/ cracked as percent of treated fresh [3]	Reduction in storage life[3] (months)
	Current usage [1]	1985 usage[2]		
Red Delicious	16	39	5	3.3
Gold Delicious	18	43	1	3.3
McIntosh	23	55	35	2.
Jonathan	8	19	3	1.
Stayman	24	56	35	2.

[1] Current assumed total usage distributed among varieties in same proportions as 1985 usage.
[2] From expert opinion gathered from 1984/85 telephone survey (EPA, 1985).
[3] From expert opinion gathered from 1984/85 telephone survey (EPA, 1985); supported by scientific literature and SAP hearing testimony.

The Agency has reviewed the available information and has concluded that, with the exception of use on ornamentals and bedding plants, the impacts of cancellation would be insignificant to minor on both growers and consumers. In assessing benefits, the Agency considered usage information from 1985, which might reflect the higher end of the use-spectrum, and from 1988 when use was significantly lower.

One benefits consideration, not readily quantifiable but recognized, is the nature of the benefit resulting from daminozide use. Unlike pesticides used to protect the existence of the crop, many of the biological benefits of daminozide use are related to the appearance of the crops.

There are no alternatives to daminozide that alone will accomplish all of the growth regulator benefits attributed to daminozide. For the principal apple varieties that have historically had the highest percent of crop treated with daminozide, there are no alternatives for the key biological effects of use (i.e., Red Delicious—reduce watercore, improve storage and fruit color; Golden Delicious—improve storage; McIntosh—delay premature ripening, prevent fruit drop, improve fruit color and increase storage life; Stayman—prevent splitting).

The impact of cancellation of registrations for use on apples at 1988 usage levels is estimated to be insignificant to the apple industry in the aggregate; the overall effect on all growers is estimated to be an increase of $1.5 million annually in income. Growers of certain varieties, particularly Eastern McIntosh and Stayman, may be most adversely affected. Growers of these two varieties which use daminozide are estimated to have annual income losses of $5.68 and $1.82 million, respectively, and may have a greater than 30 percent reduction in total revenues per treated acre; some growers may not be able to stay in business or may need to replant to other apple varieties or crops over time. Non-users of daminozide may experience a significant gain in income from higher market apple prices.

A cancellation of daminozide is expected to reduce the supply of fresh apples by 160 million lbs (annual U.S. production is 8 billion lbs) and apples available for processing may increase by 47.7 million lbs. These changes are estimated to result in a corresponding 3 percent price increase and a 2 percent price decrease for fresh and processed apple products, respectively.

The net social cost (total society cost) based on 10 percent of the crop treated is estimated to range from $18 to $81 million as compared to $44 to $198 million for 1985 usage levels. (The 10 percent estimate is higher than the earlier 1989 estimate, discussed in conjunction with the apple tolerance extension **Federal Register** Notice (54 FR 6392; February 10, 1989), which were 4 to 8 percent. The increase in the usage estimates is from additional and more in-depth use information gathered in February and March 1989.) The Agency expects the net social cost will be closer to the lower end of the presented ranges because of the large transfer payments expected between the farm and retail markets.

For the remaining food crops (grapes, sweet and tart cherries, pears, peaches, nectarines, and peanuts), grower level economic impacts of a cancellation based on 1988 usage estimates are estimated to be negligible except for peach/nectarine growers who could suffer a minor $1.5 to $5.5 million loss of income. Based on 1985 usage estimates, annual grower level impacts may be minor for all crops except sweet cherries, which are estimated to be negligible. Annual income losses for these crops were estimated as: grapes—$2.4 million; peaches/nectarines—$1.5 to $5.5 million; pears—<$500,000; and peanuts—$2.0 million.

Economic impacts of a daminozide cancellation upon consumers for non-apple food crops at 1988 usage levels is estimated to be negligible. Based on

1985 usage levels, consumer impacts are estimated to be negligible for sweet and tart cherries, peaches/nectarines, pears, and peanuts. However, grape consumers may experience a 1 to 5 percent price increase and a 2 to 4 percent reduction in the marketed qualtity, which is minor.

Tomato growers may suffer income losses from reduced crop quality. Consumers may experience higher prices and lower quality plants based on 1985 and 1988 usage data.

If the use of daminozide on ornamentals and bedding plants were cancelled, both users and consumers could be significantly affected. Based on 1985 and 1988 usage data (90 percent of chrysanthemums and 50 percent of bedding plants are treated), users might suffer cost increases from $700,000 to $4.7 million. Accordingly, consumers could expect to pay higher prices for lower quality plants.

IV. Regulatory Options

The Agency has concluded that, when daminozide is used as currently registered, the combined dietary risk from all daminozide treated food crops outweighs the benefits based on either 1988 or 1985 usage levels. Therefore, the purpose of evaluating regulatory options is to determine if there are modifications in the terms and conditions of use that would result in benefits outweighing risks for some or all uses. The specific regulatory options considered and the resultant reduction in exposure and risk are discussed in this unit.

A. Apples

1. Reducing Application Rate and Increasing Pre-Harvest Intervals.

Reducing application rates can, in general, be a practical action for reducing exposure. The use rate on apples was reduced in 1986 as an interim exposure reduction measure and further reductions would adversely affect the efficacy of daminozide. Since daminozide is a systemic growth regulator and is incorporated into the flesh of the fruit, EPA believes that increasing the pre-harvest interval would not generate a significant reduction in the level of daminozide and UDMH residues present in the fruit.

2. Reducing UDMH Exposure From Applies, Apple Sauce and Juice, and Apple Pomace Used in Animal Feed.

With apples accounting for the majority of daminozide's use, any meaningful dietary exposure reduction would have to come from lower UDMH residues in raw apples, apple products, and apple pomace used as cattle feed. Thirty-three percent of UDMH exposure comes from residues found in fresh apples (2 percent) and apple products (31 percent). The Agency estimates that cancer risks based on dietary exposure to apple products alone would be sufficient to warrant consideration of regulatory action. Theoretical residues in milk (42 percent) and meat (9 percent) account for 51 percent of UDMH's estimated dietary exposure used in calculating risk. Although no actual market basket residues have been found in milk, meat, poultry or eggs, residues are possible because data from feeding studies show that daminozide and UDMH residues do transfer from apple pomace as well as from other daminozide treated foods that are fed to cattle such as grape pomace, and peanut byproducts.

Two possible modifications to apple use were evaluated. Prohibiting use on apples used in processing would theoretically eliminate UDMH residues in apple sauce and juice and residues in animal and cattle feed from apple pomace by almost 90 percent (assuming other animal feeds, such as peanut by-products, were also eliminated). This restriction would lower dietary risk to almost 10^{-6}, but the Agency still believes that the risks outweigh benefits. Limiting use to certain varieties could also further reduce exposure. In particular, the Agency looked at limiting use to McIntosh and Stayman apples intended for the fresh market. Both varieties are widely marketed as fresh apples and the Agency estimates that growers of these varieties would suffer the biggest economic losses from the cancellation of daminozide. The McIntosh and Stayman varieties account for approximately 15 percent of total apple treatments. A rough estimate of the UDMH dietary contribution from fresh McIntosh and Stayman apples is 0.3 percent of the total apple/apple product contribution (2 percent UDMH from all fresh apples $\times$15 percent of fresh apples that are McIntosh and Stayman). The total risk contribution from McIntosh and Stayman fresh apples is approximately 4×10^{-8} (1.35×10^{-5} risk from all fresh apples and apple products $\times$0.3 percent, the percentage of exposure from these two varieties).

While such a reduction in risk would appear to warrant reconsideration of the risk/benefit assessment, as a practical matter, the Agency does not believe it can reasonably ensure that use will be confined to these varieties, or to apples that are not processed. Many users grow more than one variety and virtually all growers hope to be able to sell as much of their harvest as possible in the fresh market where prices are significantly higher. Rejected apples, often treated, are then sold for processing. Daminozide products have a caution included on the label since 1986 warning growers not to treat apples intended for processing. However, the high number of positive samples for apple sauce and juice as seen in recent surveys, such as those conducted by Consumers Union ("Consumer Reports", May 1988) show that treated apples are being used in processed apple products. [Consumers Union reported in the May, 1989, issue that 23 out of 31 (71 percent) adult apple juice samples contained daminozide residues above the 0.02 ppm detection limit of the analytical method and an overall average residue of 0.11 ppm.] As a note, however, the high number of positve samples in the Consumers Union report may be in part a result of the sampling area, New York City, where McIntosh and Stayman apples are more likely to be incorporated into processed apple products. Carryover in trees sprayed in previous years may also account for some of the positive samples.

Thus, although there are very restrictive use limitations that could theoretically result in significantly reduced risks, the Agency does not believe that for daminozide use on apples, a practical, enforceable way of ensuring adherence to these limited use restrictions can be achieved.

B. Peanuts and Cherries

Because apples account for such a large percentage of daminozide's use, cancellation of daminozide use on peanuts and/or cherries alone, the two food commodities with the highest exposure contribution after apples (not including theoretical residues in meat and milk), would have little effect on total dietary risk. Risk would be reduced from 4.1×10^{-5} to 3.7×10^{-5}. Benefits are estimated to be minor for peanuts ($2.0 million in net income loss to growers; <1 percent of total peanut farm income) and minor to negligible for cherries (sweet cherries, negligible; tart cherries, $2.2 million in net income loss) based on 1985 data. Based on 1988 usage, grower and consumer losses are estimated to be negligible. Even if apples were cancelled, the remaining risk from peanuts (1.6×10^{-6}) and cherries (2.4×10^{-6}) both exceed the estimated benefits and cancellation is being proposed.

C. Grapes, Pear, Peaches/Nectarines, and Tomatoes

Cancellation of daminozide on any or all of these crops would not appreciably affect total dietary risk or aggregate

benefits related to daminozide use. Individual dietary risk from exposure for these crops is presented below:

Commodity	Dietary risk
Tomatoes	9.3×10^{-7}-9.3×10^{-6}
Grapes	2.3×10^{-7}
Peaches	1.1×10^{-7}
Pears	4.3×10^{-8}
Nectarines	8.8×10^{-9}

Total dietary risk from exposure to these crops is approximately 1×10^{-6} (using the low end of the tomato risk range). These risks are based on 1988 percent of crop treated and therefore reflect the lower end of the risk range. If usage returned to 1985 levels, the risks from dietary exposure would increase but it would still be likely that most individual crop risks would be below 10^{-6}.

Impacts on growers and consumers of sweet and tart cherries, peaches, pears, nectarines, peanuts and grapes would be minor or negligible based on 1985 or 1988 usage. There may even be various intangible benefits to the grower from renewed consumer confidence supported by the fact that daminozide and UDMH residues would no longer be present in the marketplace. Although the dietary risk from exposure to peanuts, grapes, pears, and peaches/nectarines is small, the Agency has concluded that these risks outweigh the negligible to minor benefits and cancellation is being proposed.

Although an estimated 50 percent of tomato transplants grown for home garden use are reportedly treated with daminozide, quantitative economic impacts could not be calculated because of a lack of specific data. Loss of daminozide on tomato transplants would result in "lower quality" plants and higher prices to the consumer with a loss of crop quality and subsequent income to the grower based on either 1985 or 1988 usage data. In balancing the risks and benefits of daminozide use on tomatoes, the Agency was particularly concerned about home gardeners whose source of fresh tomatoes and tomato products may be totally from treated plants. The 20 percent of tomatoes grown by home gardeners likely represents the highest percentage of home grown versus commercially grown crop of the major food commodities. The Agency believes a significant portion of the population, particularly in warmer geographic regions where tomatoes can be easily grown, may be experiencing risks closer to the upper end of the risk range. Further, the risk range for tomatoes was based on "average" consumption patterns. It is possible that people who can tomato products are likely to eat more tomato products than those who do not. The Agency has therefore concluded that the risks of 9×10^{-7} to 9×10^{-6} (1988 or 1985 usage estimates) outweigh the benefits and is proposing cancellation of use on tomato transplants.

The Agency recognizes that, in some instances where significant benefits have been demonstrated or assumed, it has considered risks of the magnitude estimated for these minor uses sufficiently negligible to forego regulatory action (see, e.g., "Delaney Paradox", 53 FR 41104, October 19, 1988). However, the Agency's current assessment of the benefits related to these minor uses indicates that they are so insignificant as to be trivial. Accordingly, given some level of risk and almost no benefit, the risk/benefit balance shifts in favor of cancellation. The Agency acknowledges that more data on the economic impacts of daminozide use on tomatoes are needed and is requesting information during the public comment period.

D. Ornamentals and Bedding Plants

With regard to the use of daminozide on ornamentals and bedding plants, the Agency estimated the greatest individual lifetime cancer risks posed by non-dietary exposure to UDMH from use on greenhouse ornamentals to be 1×10^{-6}. In addition, the Agency believes that annual grower and consumer losses (as high as $4.7 million in an industry with an annual wholesale value of $78.5 to $104.5 million) would be substantial if the greenhouse uses of daminozide on ornamentals were cancelled. Therefore, the Agency believes that the benefits of continued use outweigh the carcinogenic risks for non-dietary use of daminozide on ornamentals and bedding plants and is proposing to continue the registration of these uses.

E. Conclusions and Proposed Regulatory Actions

The Agency has concluded that all food uses of daminozide should be cancelled because the resultant risk from dietary exposure to daminozide and/or its metabolite, UDMH, outweigh the benefits of continued use of each food commodity.

EPA has also determined that the benefits outweigh the risks for the non-food uses of daminozide and that all registrations for use on ornamentals and other uses on non-food bedding plants should be retained without modifications in the label.

In a related action, the Agency will also propose in the near future to revoke the daminozide tolerances for all raw agricultural commodities as well as the daminozide food and feed additive regulations for processed commodities.

F. Existing Stocks

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 section 6 of FIFRA] to such extent, under such conditions, and for such uses 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." For purposes of this action, EPA defines the term "existing stocks" as any quantity of daminozide products subject to this Notice that:

(1) is the United States,

(2) was formulated, packaged, and labelled for use on the date of publication in the Federal Register of this Notice, and

(3) is being held for shipment or release or was shipped and released into commerce prior to the date on which the registration of the product is cancelled pursuant to this Notice.

The Agency has determined that no further shipment, distribution, sale or use of existing stocks of daminozide products labelled for cancelled uses will be permitted after the effective date of cancellation. In addition to daminozide products in channels of trade, this existing stocks prohibition is applicable to daminozide products in the hands of end users. The Agency made this determination based on several factors. First, daminozide is a systemic pesticide that remains in plants for a considerable time after application and may result in residues in subsequent harvests. In addition, much of daminozide use is on crops for processed foods that can remain in the market system for long periods of time. In both of these instances, allowing use of existing stocks would effectively extend potential exposure well beyond the final use season—an option that the Agency believes will result in unreasonable adverse effects on human health. Finally, because of the extensive regulatory history leading to the cancellation of daminozide, users will have ample time to prepare themselves for this eventuality by exploring alternative options, including discontinuance of daminozide use.

Accordingly, after May 24, 1989, no person who is a registrant or producer of a product subject to this Notice may release for shipment existing stocks of any product whose registration is cancelled or denied by this action or no

persons may distribute, sell, offer for sale, hold for sale, ship, deliver for shipment, or receive and (having so received) deliver or offer to deliver existing stocks of products whose registration is cancelled by this action. EPA has found this disposition of existing stocks to be consistent with the purposes of FIFRA.

V. Procedural Matters

As required by FIFRA sections 6(b) and 25(d), and 40 CFR 154.31(b), EPA has transmitted copies of a draft Notice of Intent to Cancel consistent with this Notice, together with support documents, to the Secretary of Agriculture and the Scientific Advisory Panel for comment. EPA will publish any comments received from the Secretary or the Panel, and EPA's responses, in the Notice of Final Determination.

VI. References

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(14) Uniroyal Chemical Company, Inc. (1988c) Two Year UDMH Rat Study—12-Month Interim Sacrifice. Submitted to Uniroyal Chemical Company by Johnson, D. of International Research and Development Corp., March 1988, MRID 405520–01.

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VII. Public Comment Opportunity

The Agency is providing a 90-day period for the public to comment on this Notice and on the Daminozide Technical Support Document. Comments must be submitted by August 22, 1989. All comments and information should be submitted in triplicate to the address given in this Notice under ADDRESS. The comments and information should bear the identifying notation OPP–30000/40A.

All comments, information, and analyses which come to the attention of EPA may serve as a basis for final determination of regulatory action during the Special Review.

VIII. Public Docket

The Agency has established a public docket (OPP–30000/40A) for the daminozide Special Review. This public docket will include (1) this Notice; (2) the Technical Support Document; (3) any other notices pertinent to the daminozide Special Review; (4) non-CBI documents and copies of written comments or other materials submitted to the Agency in response to this Notice, and any other documents regarding daminozide submitted at any time during the Special Review process by any person outside the government; (5) a transcript of all public meetings held by the Agency for the purpose of gathering information on daminozide; (6) memoranda describing each meeting on daminozide held during the Special Review process between Agency personnel and any person outside government; and (7) a current index of materials in the public docket.

Dated: May 12, 1989.

John A. Moore,

Acting Deputy Administrator.

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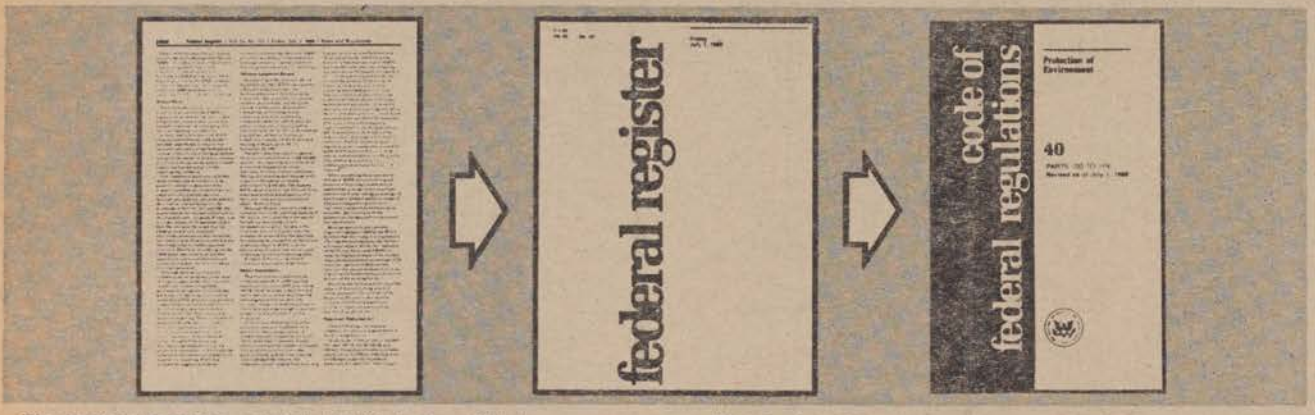

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