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DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 2

Delegations of Authority by the Secretary of Agriculture and General Officers of the Department

AGENCY: Office of the Secretary, USDA.

ACTION: Final rule.

SUMMARY: This document amends the delegations of authority from the Secretary of Agriculture and the General Officers of the Department to delegate the authority of the Secretary of Agriculture under the Immigration Reform and Control Act of 1986 to the Assistant Secretary for Economics.

EFFECTIVE DATE: July 31, 1990.

FOR FURTHER INFORMATION CONTACT: Thomas R. Fox, Office of the General Counsel, Research and Operations Division, United States Department of Agriculture, 14th and Independence Avenue SW., Washington, DC 20250–1400; telephone (202) 447–2320.

SUPPLEMENTARY INFORMATION: The delegations of authority of the Department of Agriculture are amended to delegate to the Assistant Secretary for Economics the authority of the Secretary of Agriculture contained in the Immigration Reform and Control Act of 1986 (IRCA), Pub. L. No. 99–603, as amended by the Immigration Technical Amendments Act of 1988, Pub. L. No. 100–525.

Specifically, the delegations of authority of the Department of Agriculture are amended to delegate to the Assistant Secretary for Economics: (1) The authority of the Secretary of Agriculture contained in section 214(c) of the Immigration and Nationality Act (INA) (8 U.S.C. 1184(c)), as added by section 301(b) of the IRCA, to provide consultation to the Attorney General and the Secretary of Labor concerning the question of the importation of aliens as nonimmigrant temporary agricultural workers, known as "H–2A" workers, under section 1101(a)(15)(H)(ii)(a) of title 8, United States Code; (2) The authority of the Secretary contained in section 218(e) of the INA (8 U.S.C. 1188 note), as added by section 301(c) of the IRCA, to provide consultation to the Attorney General and the Secretary of Labor concerning all regulations to implement sections 101(a)(15)(H)(ii)(a) and 218 of the INA providing for the importation of H–2A workers; (3) The authority of the Secretary of Agriculture contained in section 210(h) of the INA (8 U.S.C. 1160(h)), as added by section 302(a) of the IRCA, to promulgate regulations to define "seasonal agricultural services" for purposes of the special agricultural worker (SAW) program; (4) The authority of the Secretary contained in section 210A(a) of the INA (8 U.S.C. 1161(a)), as added by section 303(a) of the IRCA, to determine jointly with the Secretary of Labor the number (if any) of additional special agricultural workers, known as "replenishment agricultural workers" (RAWs), who should be admitted to the United States or otherwise acquire the status of aliens lawfully admitted for temporary residence during fiscal years 1990 through 1993 to meet a shortage of workers to perform seasonal agricultural services in the United States during each such fiscal year, and to determine jointly with the Secretary of Labor emergency requests to increase the shortage number and requests to decrease the number of man-days of seasonal agricultural services required of RAWs under section 210A(d)(5) (A) and (B) of the INA (8 U.S.C. 1161(d)(5) (A) and (B)), as added by section 303(a) of the IRCA, to avoid deportation and for naturalization; (5) The authority of the Secretary contained in section 210A(b)(1) of the INA (8 U.S.C. 1161(b)(1)), as added by section 303(a) of the IRCA, to calculate jointly with the Secretary of Labor the annual numerical limitation on the number of RAWs who may be admitted or otherwise acquire the status of aliens lawfully admitted for temporary residence during fiscal years 1990 through 1993 under section 210A(c)(1) of the INA (8 U.S.C. 1161(c)(1)); and (6) The authority of the Secretary contained in section 210A(b)(2) of the INA (8 U.S.C. 1161(b)(2)), as added by section 303(a) of the IRCA, to establish jointly with the Secretary of Labor the information that must be reported by any person or entity who employs SAWs or RAWs in seasonal agricultural services during fiscal years 1989 through 1992, and to designate jointly with the Secretary of Labor the official to whom the person or entity must furnish such certification.

This rule relates to internal agency management. Therefore, pursuant to 5 U.S.C. 553, notice of proposed rulemaking and opportunity for comment are not required, and this rule may be made effective less than 30 days after publication in the **Federal Register**. Further, since this rule relates to internal agency management, it is exempt from the provision of Executive Order No. 12291. Finally, this action is not a rule as defined by the Regulatory Flexibility Act, Public Law No. 96–354, and, thus, is exempt from the provisions of that Act.

List of Subjects in 7 CFR Part 2

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PART 2—DELEGATIONS OF AUTHORITY BY THE SECRETARY OF AGRICULTURE AND GENERAL OFFICERS OF THE DEPARTMENT

Accordingly, part 2, title 7, Code of Federal Regulations is amended as follows:

1. The authority citation for part 2 continues to read as follows:

Authority: 5 U.S.C. 301 and Reorganization Plan No. 2 of 1953.

Subpart C—Delegations of Authority to the Deputy Secretary, the Under Secretary for International Affairs and Commodity Programs, the Under Secretary for Small Community and Rural Development, and Assistant Secretaries

2. A new paragraph (i) is added to § 2.27 to read as follows:

§ 2.27 Delegations of authority to the Assistant Secretary for Economics.

* * * * *

(i) Related to agricultural labor affairs. Exercise the following functions of the Secretary under the Immigration and Nationality Act (INA), as amended by the Immigration Reform and Control Act of 1986 (IRCA), Pub. L. No. 99–603:

(1) Pursuant to section 214(c) of INA (8 U.S.C. 1184(c)), as added by section 301(b) of the IRCA, provide consultation to the Attorney General and the Secretary of Labor concerning the question of the importation of aliens as nonimmigrant temporary agricultural workers, known as "H–2A" workers, under section 1101(a)(15)(H)(ii)(a) of title 8, United States Code.

(2) Pursuant to section 218(e) of the INA (8 U.S.C. 1188 note), as added by section 301(c) of the IRCA, provide consultation to the Attorney General and the Secretary of Labor concerning all regulations to implement sections 101(a)(15)(H)(ii)(a) and 218 of the INA providing for the importation of H–2A workers.

(3) Pursuant to section 210(h) of the INA (8 U.S.C. 1160(h)), as added by section 302(a) of the IRCA, promulgate regulations to define "seasonal agricultural services" for purposes of the special agricultural worker (SAW) program.

(4) Pursuant to section 210A(a) of the INA (8 U.S.C. 1161(a)), as added by section 303(a) of the IRCA, determine jointly with the Secretary of Labor the number (if any) of additional special agricultural workers, known as "replenishment agricultural workers" (RAWs), who should be admitted to the United States or otherwise acquire the status of aliens lawfully admitted for temporary residence during fiscal years 1990 through 1993 to meet a shortage of workers to perform seasonal agricultural services in the United States during each such fiscal year.

(5) Pursuant to section 210A(a)(7) of the INA (8 U.S.C. 1161(a)(7)), as added by section 303(a) of the IRCA, determine jointly with the Secretary of Labor emergency requests to increase the shortage number.

(6) Pursuant to section 210A(a)(8) of the INA (8 U.S.C. 1161(a)(8)), as added by section 303(a) of the IRCA, determine jointly with the Secretary of Labor requests to decrease the number of man-days of seasonal agricultural services required of RAWs to avoid deportation and for naturalization under section 210A(d)(5) (A) and (B) of the INA (8 U.S.C. 1161(d)(5) (A) and (B)), as added by section 210A(d)(5) (A) and (B) of the IRCA.

(7) Pursuant to section 210A(b)(1) of the INA (8 U.S.C. 1161(b)(1)), as added by section 303(a) of the IRCA, calculate jointly with the Secretary of Labor and annual numerical limitation on the number of RAWs who may be admitted or otherwise acquire the status of aliens lawfully admitted for temporary residence during fiscal years 1990 through 1993 under section 210A(c)(1) of the INA (8 U.S.C. 1161(c)(1)).

(8) Pursuant to section 210A(b)(2) of the INA (8 U.S.C. 1161(b)(2)), as added by section 303(a) of the IRCA, establish jointly with the Secretary of Labor the information that must be reported by any person or entity who employs SAWs or RAWs in seasonal agricultural services during fiscal years 1989 through 1992, and to designate jointly with the Secretary of Labor the official to whom the person or entity must furnish such certification.

Done at Washington, DC, this 25th day of July, 1990.

Clayton Yeutter,

Secretary of Agriculture.

[FR Doc. 90–17767 Filed 7–30–90; 8:45 am]

BILLING CODE 3410–01–M

Agricultural Marketing Service

7 CFR Part 958

[Docket No. FV–90–122]

Onions Grown in Designated Counties in Idaho and Malheur County, OR; Interim Inspection Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule allows onions that have been inspected and certified as meeting marketing order requirements and that are subsequently peeled, chopped, sliced or otherwise further prepared for fresh market to be shipped without being reinspected. The intent of this action is to allow handlers of Idaho-Eastern Oregon onions to expand their markets and provide the trade with a product it desires.

DATES: The interim final rule is effective July 31, 1990; comments which are received by August 30, 1990, will be considered prior to issuance of a final rule.

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

FOR FURTHER INFORMATION CONTACT: Kenneth G. Johnson, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456, telephone (202) 447–5331.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 130 and Marketing Order No. 958 (7 CFR part 958), both as amended, regulating the handling of onions grown in certain designated counties in Idaho and Malheur County, Oregon. The marketing agreement and order are authorized by the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This interim final rule has been reviewed by the Department in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

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

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

There are approximately 30 handlers and 450 producers of Idaho-Eastern Oregon onions under this marketing order. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of handlers and producers may be classified as small entities.

The vast majority of onions grown in the Idaho-Eastern Oregon production area are utilized in fresh market outlets. About 10 percent of the crop is processed. Onions destined for fresh markets are subject to the grade, size, maturity, pack and container requirements specified in § 958.328 (as amended at 53 FR 32797, August 26, 1988). Currently, fresh shipments are required to be at least U.S. No. 2 grade, with a minimum diameter of 1 inch for white varieties and 1½ inches for all other varieties.

Under the terms of the marketing order, onions that are shipped to processors for dehydration, canning, freezing, extraction or pickling are exempt from the handling regulation, subject to certain safeguard procedures. Exemptions are also provided for minimum quantities, certain types of onions (*e.g.* braided red onions) and onions for other specified purposes, including planting.

Onions subject to the handling regulation are required to be inspected by the Federal-State Inspection Service (FSIS) and be covered by a valid inspection certificate at the time of shipment. Pursuant to § 958.60(b) of the order, regrading, resorting or repacking any lot of onions invalidates any inspection certificate issued prior to rehandling. Handlers who ship onions that are regraded, resorted, repacked or in any other way further prepared for market are therefore required to have such onions reinspected.

The Idaho-Eastern Oregon Onion Committee (committee), the agency responsible for local administration of the Federal marketing order, unanimously recommended a revision in these inspection requirements. Specifically, the committee recommended that onions that have been inspected and certified as meeting marketing order requirements and that are subsequently peeled, chopped, sliced or otherwise further prepared for fresh market, be exempt from the reinspection requirement. This action is authorized by §§ 958.53 and 958.60 of the marketing order.

Recently, there has been increased interest by handlers in the production area in mechanically peeling onions and marketing them as fresh onions. These onions are being prepared for use primarily by foodservice establishments. Such onions are for immediate use in the fresh form in salad bars and condiment stands. Onions that have been peeled, chopped or sliced are desired by the trade because of the convenience of handling the product. Foodservice operators are able to provide a quality product with minimal effort and reduced labor costs.

However, peeled onions are generally unable to meet the established minimum grade requirement because of the damage incurred during the peeling process. In addition to having the outer layers of skin removed, mechanically peeled onions often have their tops (stem ends) and bottoms (root ends) removed. During this process the inner, fleshy onion layers may also be cut. If the inner layers are cut, such onions are scored as having serious grade defects, and are unable to meet the minimum grade requirement. This would be true even though, prior to alteration, the onions had met marketing order requirements. The committee believes that if onions meet the fresh market quality requirements prior to being peeled, sliced or chopped, handlers should be allowed to ship these onions to fresh markets without reinspection. The committee therefore recommended that such onions not be subject to reinspection subsequent to peeling, chopping or slicing. This action will help to expand markets for the Idaho-Eastern Oregon onion industry, and thereby improve returns to producers and handlers.

In its deliberations, the committee considered several alternative means of facilitating the movement of peeled, chopped or sliced onions. Included was an exemption for such onions from all handling requirements, including that of an initial inspection. The committee rejected this option, however, because it believes that peeled onions compete directly in the marketplace with other fresh packed onions. As such, it is necessary that these onions be subject to the same minimum quality standards so as not to thwart the industry's objective of providing acceptable quality onions to all fresh market outlets. To allow uninspected cull onions to be used for this purpose would be contrary to this goal, which the industry believes is necessary to maintain and increase its share of the fresh onion market.

The committee also recommended safeguard procedures to ensure that only onions of acceptable quality are peeled, sliced or chopped for the fresh market. Handlers shipping onions for this purpose will be required to submit to the committee a copy of the inspection certificate issued by the FSIS. This certificate will serve to verify that the onions had been inspected and the minimum marketing order requirements had been met. Such handlers will also be required to document on forms provided by the committee, in quadruplicate, the intended use and destination of the onions, referencing the inspection certificate number. Two copies of such forms will be sent on shipment to the handler intending to peel, chop or slice the onions for fresh market, and one copy will be mailed to the committee. The handler responsible for peeling, chopping or slicing the onions will then be required to document the weight of the finished product and promptly return one signed copy of the form to the committee.

Handlers in the production area that peel, slice or chop onions grown outside the production area will be required to provide the committee with documentation to verify that the onions so handled were not subject to the initial inspection requirement.

The committee believes that these reporting requirements are necessary to enable the committee to determine whether peeled, sliced or chopped onions had been previously inspected and whether they were in compliance with the applicable minimum quality requirements.

In compliance with the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the information collection requirements contained in this interim final rule have been approved by the Office of Management and Budget (OMB), and have been assigned OMB No. 0581–0087.

In addition to the changes recommended by the committee, this action makes minor revisions in the introductory paragraph and paragraphs (c) and (f) of § 958.328 which are needed to correct those paragraphs.

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

After consideration of all relevant matter presented, including the information and recommendations submitted by the committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) Shipments of 1990 crop onions from the production area are about to begin, and to be of maximum benefit, this relaxation should apply to as many shipments as possible; (2) onion shippers are aware of this action which was unanimously recommended by the committee at a public meeting; and (3) this interim final rule provides a 30-day comment period, and all comments timely received will be considered prior to finalization of this action.

List of Subjects in 7 CFR Part 958

Marketing agreements, Onions, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 958 is amended as follows:

PART 958—ONIONS GROWN IN CERTAIN DESIGNATED COUNTIES IN IDAHO, AND MALHEUR COUNTY, OR

1. The authority citation for 7 CFR part 958 continues to read as follows:

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

2. Section 958.328 is amended by redesignating paragraphs (d) through (h) as paragraphs (e) through (i), revising the introductory text and paragraphs (c) and (f) introductory text, and adding a new paragraph (d) to read as follows:

Note: This section will be published in the Code of Federal Regulations.

§ 958.328 Handling regulation.

No person shall handle any lot of onions, except braided red onions, unless such onions are at least "moderately cured," as defined in paragraph (h) of this section, and meet the requirements of paragraphs (a), (b), and (c) of this section, or unless such onions are handled in accordance with paragraphs (d), (e) and (f) or (g) of this section.

* * * * *

(c) *Inspection.* No handler may handle any onions regulated hereunder unless such onions are inspected by the Federal-State Inspection Service and are covered by a valid applicable inspection certificate, except when relieved of such requirement pursuant to paragraph (d), (e) or (g) of this section.

(d) *Onions for peeling, chopping or slicing.* Onions that have been inspected and certified as meeting the requirements of paragraphs (a) and (b) of this section and that are subsequently peeled, chopped, or sliced for fresh market within the production area may be handled without reinspection. Each handler making shipments of onions for such purposes shall provide the committee with a copy of the original inspection certificate verifying that minimum marketing order requirements have been met. Such handlers shall also document on forms provided by the committee, in quadruplicate, the intended use and destination of the onions, referencing the inspection certificate number. Two copies of such forms shall be sent on shipment to the handler altering the onions destined for fresh market, and one copy will be mailed to the committee. Upon receipt, the handler responsible for altering such onions will document the weight of the finished product and promptly return one signed copy to the committee. Handlers who peel, chop or slice onions grown outside the production area shall provide the committee with acceptable documentation that the onions so prepared were produced outside the production area.

* * * * *

(f) *Safeguards.* Each handler making shipments of pearl onions or onions for dehydration, planting, canning, freezing, extraction or pickling pursuant to paragraph (e) of this section shall:

* * * * *

Dated: July 25, 1990.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 90–17727 Filed 7–30–90; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 316a

[INS No. 1276–90]

Residence, Physical Presence, and Absence; Recognized American Institutes

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This rule adds Iowa State University, the Solar Energy Research Institute (SERI) and the University of Alabama to the list of recognized American institutes conducting research abroad, in accordance with section 316(b) and 319(b) of the Immigration and Nationality Act, as amended (8 U.S.C. 1427(b) and 1430(b)). This rule will allow alien employees and alien spouses of United States citizen employees of Iowa State University, the Solar Energy Research Institute and the University of Alabama, if these employees are active in scientific research on behalf of their respective institutions, to be eligible for constructive residence for naturalization pursuant to the special residence requirements of section 316(b) and 319(b), respectively.

EFFECTIVE DATE: July 31, 1990.

FOR FURTHER INFORMATION CONTACT: Raymond R. Jaroneski, Jr., Senior Immigration Examiner, Immigration and Naturalization Service, 425 I Street NW., Washington, DC 20536, Telephone: (202) 514–3946.

SUPPLEMENTARY INFORMATION: Section 316(b) of the Immigration and Nationality Act, as amended, 8 U.S.C 1427(b), allows for certain absences abroad by lawful permanent residents of the United States to preserve residence and be counted towards the residence requirements for naturalization. 8 CFR 316a.2 lists American institutions of research that have been recognized by the Attorney General to qualify for the constructive resident benefit. Absences abroad in the employment of these institutions will be counted as constructive residence in establishing the residence for naturalization, provided all conditions of section 316(b), which lists the requirements for naturalization, are satisfied.

Section 319(b) of the Act, 8 U.S.C. 1430(b), provides in pertinent part that any person whose spouse is (1) a citizen of the United States, (2) employed by an American institute of research recognized as such by the Attorney General, (3) regularly stationed abroad, and who is in the United States at the time of naturalization and declares an intention to take up residence in the United States after citizen spouse terminates his/her employment, may be naturalized with certain exceptions from the regular requirements, including the residence requirements.

The addition of Iowa State University, Solar Energy Research Institute (SERI) and the University of Alabama to the list of institutions conducting research abroad will enable alien employees and alien spouses of United States citizen employees of Iowa State University, Solar Energy Research Institute (SERI) and the University of Alabama to be deemed eligible for the benefits of sections 316(b) and 319(b) of the Act, if the employees are regularly stationed abroad in the conduct of research.

Compliance with 5 U.S.C. 553 as to notice of proposed rulemaking and delayed effective date is unnecessary because the amendment merely amends an existing list.

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

List of Subjects in 8 CFR Part 316a

Citizenship and naturalization, Immigration and Nationality Act, Residence.

Accordingly, part 316a of chapter 1 of title 8 of the Code of Federal Regulations is amended as follows:

PART 316a—RESIDENCE, PHYSICAL PRESENCE AND ABSENCE

1. The authority citation for 8 CFR part 316a is revised to read as follows:

Authority: 8 U.S.C. 1103 and 1443; 8 CFR 2.

§ 316a.2 [Amended]

In § 316a.2, American institutions of research, the listing of organizations is amended by adding in alphabetical sequence "Iowa State University, Solar Energy Research Institute (SERI) and the University of Alabama".

Dated: July 3, 1990.

James A. Puleo,

Acting Associate Commissioner, Examinations, Immigration and Naturalization Service.

[FR Doc. 90-17733 Filed 7-30-90; 8:45 am]

BILLING CODE 4410-10-M

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8 CFR Part 334

[INS No. 1278-90]

Citizenship and Naturalization

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This rule amends 8 CFR 334.13 by removing the reference to the fee amount of $25. This fee amount is already included in 8 CFR 103.7(b)(3) and reflects the proper amount of $50. This change is necessary to ensure that all fee amounts are listed in one section of 8 CFR.

EFFECTIVE DATE: July 31, 1990.

FOR FURTHER INFORMATION CONTACT: Raymond R. Jaroneski, Jr., Senior Immigration Examiner, Immigration and Naturalization Service, 425 I Street NW., Washington, DC 20536, Telephone: (202) 514-3946.

SUPPLEMENTARY INFORMATION: The fee amounts for all petitions, applications and other documents requiring fees are displayed in 8 CFR 103.7(b) (1), (2) and (3). This action is being taken to ensure that fee amounts are not listed in numerous places which might lead to an incorrect fee being requested or taken.

Compliance with 5 U.S.C. 553 as to notice of proposed rulemaking and delayed effective date is unnecessary because the amendment merely removes an outdated fee amount from the existing text and poses no extra burden on the public.

In accordance with 5 U.S.C. 605(b), the Commissioner of Immigration and Naturalization certifies that this rule will not have significant impact on a substantial number of small entities. This is not a major rule within the meaning of section (1)(b) of E.O. 12991, nor does this rule have federalism implications warranting the preparation of a Federal Assessment in accordance with E.O. 12612

List of Subjects in 8 CFR Part 334

Citizenship and naturalization, Fees.

Accordingly, part 334 of chapter I of title 8, Code of Federal Regulations, is amended as follows:

PART 334—PETITION FOR NATURALIZATION

1. The authority citation for part 334 is revised to read as follows:

Authority: 8 U.S.C. 1103, 1443, 1445, 1446 , 8 CFR 2.

§ 334.13 [Amended]

2. In § 334.13, the fifth sentence is amended by removing the phrase "a fee of $25," and inserting the phrase "the fee as set forth in § 103.7(b)(3)," immediately after the word "filed," and immediately preceding the word "unless"

Dated: June 5, 1990.

James A. Puleo,

Acting Associate Commissioner, Examinations, Immigration and Naturalization Service.

[FR Doc. 90-17734 Filed 7-30-90; 8:45 am]

BILLING CODE 4410-10-M

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8 CFR Part 341

[INS No. 1279-90]

Certificates of Citizenship

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This rule provides citizenship certificate eligibility information that was inadvertently deleted from a portion of 8 CFR 341.7.

EFFECTIVE DATE: July 31, 1990.

FOR FURTHER INFORMATION CONTACT: Thomas Cook, Senior Immigration Examiner, Immigration and Naturalization Service, 425 I Street NW., Room 7223, Washington, DC 20536, Telephone (202) 633-3946.

SUPPLEMENTARY INFORMATION: On April 22, 1987 the Immigration and Naturalization Service (INS) published an interim final rule with request for comments at 52 FR 13229 to change 8 CFR 341.7 to implement section 22 of Public Law 99-653, regarding issuance of Certificates of Citizenship for adopted children. On June 23, 1988, the INS published a final rule at 53 FR 23603 amending § 341.7 to be consistent with the Immigration and Nationality Act. The 1988 final rule inadvertently omitted the final three sentences of the 1987 interim rule. This rule restores the previously omitted citizenship certificate eligibility information to § 341.7.

Compliance with 5 U.S.C. 553 as to notice of proposed rule making and delayed effective date is unnecessary since this rule corrects an inadvertent error in a previously issued final rule.

In accordance with 5 U.S.C. 605(b), the Commissioner of Immigration and Naturalization certifies that this rule does not have significant adverse economic impact on a substantial number of small entities.

This rule is not a major rule within the meaning of sectin 1(b) of E.O. 12291, nor does this rule have a Federalism implications warranting the preparation of a Federal Assessment in accordance with E.O. 12612.

List of Subjects in 8 CFR Part 341

Certificates of citizenship.

Accordingly, chapter I to title 8, of the Code of Federal Regulations, is amended as follows:

PART 341—CERTIFICATES OF CITIZENSHIP

1. The authority citation for part 341 is revised to read as follows:

Authority: 66 Stat. 173, 238, 254, 264, as amended; 8 U.S.C. 1103, 1409(c), 1443, 1444, 1448, 1452, 1455; 8 CFR part 2.

2. Section 341.7 is revised to read as follows:

§ 341.7 Issuance of certificate.

(a) If the application is granted, a Certificate of Citizenship shall be issued and, unless the claimant is unable by reason of mental incapacity or young age to understand the meaning thereof, he or she shall take and subscribe to the oath of renunciation and allegiance, prescribed by part 337 of this chapter, before a member of the Service within the United States. Thereafter, delivery of the certificate shall be made in the United States to the claimant or the acting parent or guardian, either personally or by certified mail.

(b) The child on whose behalf an application for issuance of a Certificate of Citizenship is made pursuant to section 341(c) of the Act must meet the requirements of section 341(c)(2) at the time the application is approved. The child becomes a citizen of the United States upon approval of the application. The Certificate of Citizenship issued pursuant to such approval will reflect the approval date of the application.

Dated: June 5, 1990.

James A. Puleo,

Acting Associate Commissioner, Examinations.

[FR Doc. 90-17735 Filed 7-30-90; 8:45 am]

BILLING CODE 4410-01-M

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 747

Administrative Actions, Adjudicative Hearings and Rules of Practice and Procedure

AGENCY: National Credit Union Administration ("NCUA").

ACTION: Technical amendment.

SUMMARY: The NCUA Board ("Board") issued final rules on investigations, 12 CFR part 747. In approving the rules, the Board intended that the heading for the part contain the term, "Investigations." This change was inadvertently not incorporated into the changes sent to the Federal Register.

EFFECTIVE DATE: This change is effective July 31, 1990.

ADDRESSES: NCUA Board, 1776 G Street NW., Washington, DC 20456.

FOR FURTHER INFORMATION CONTACT: Allan Meltzer, Associate General Counsel, at the above address or telephone: (202) 682-9630.

SUPPLEMENTARY INFORMATION:

List of Subjects in 12 CFR Part 747

Administrative practice and procedure, Credit unions.

By the National Credit Union Administration Board on July 24, 1990.

Becky Baker,

Secretary of the Board.

Accordingly, NCUA amends 12 CFR part 747 as follows:

PART 747—[AMENDED]

1. The authority citation for part 747 continues to read as follows:

Authority: 12 U.S.C. 1766, 12 U.S.C. 1784, 12 U.S.C. 1786, 12 U.S.C. 1787, 12 U.S.C. 1789, 12 U.S.C. 1995c.

2. The heading for part 747 is revised to read as follows:

PART 747—ADMINISTRATIVE ACTIONS, ADJUDICATIVE HEARINGS, RULES OF PRACTICE AND PROCEDURE, AND INVESTIGATIONS

[FR Doc. 90-17691 Filed 7-30-90; 8:45 am]

BILLING CODE 7535-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 90-NM-86-AD; Amdt. 39-6683]

Airworthiness Directives; Boeing Models 727, 737 and 757 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Clarification of final rule.

SUMMARY: This action clarifies an existing airworthiness directive (AD), applicable to certain Boeing Model 727, 737, and 757 series airplanes, which currently requires inspection and replacement, if necessary, of frayed and broken escape slide release cables. The FAA has determined that certain escape slide installations do not have release cables; therefore, these installation are not required to be inspected. This action clarifies this aspect of the existing AD.

DATES: This clarification is effective July 31, 1990.

The effective date for the requirements of Amendment 39-6626 remains June 25, 1990, as specified at 55 FR 23188, June 7, 1990.

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

FOR FURTHER INFORMATION CONTACT: Mr. Jayson B. Claar, Airframe Branch, ANM-120S; telephone (206) 431-1932. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: On May 29, 1990, the FAA issued Airworthiness Directive 90-12-11, Amendment 39-6626 (55 FR 23188, June 7, 1990), applicable to certain Boeing Model 727, 737, and 757 airplanes, which requires inspection and replacement, if necessary, of frayed and broken escape slide release cables.

Since issuance of that AD, the FAA has received inquiries from affected operators with airplanes having certain escape slide installations which do not use release cables; these operators questioned whether the inspection requirements of AD 90-12-11 apply to those airplanes. It was not the FAA's intent to require inspections of slide installations without release cables. Therefore, action is taken herein to clarify AD 90-12-11 to specify that the inspection requirements are applicable only to airplanes having release cables installed.

Since this action merely clarifies the applicability of an AD, it has no adverse economic impact and imposes no additional burden on any person. Therefore, notice and public procedure hereon are unnecessary and the amendment may be made effective upon publication in the **Federal Register**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Clarification

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by clarifying the applicability and paragraph A. of AD 90-12-11, Amendment 39-6626 (55 FR 23188, June 7, 1990), to read as follows:

Boeing: Applies to Model 727, 737, and 757 series airplanes, equipped with escape slide release cables, certificated in any category. Compliance required as indicated, unless previously accomplished.

To ensure proper escape slide release from the escape slide compartment, accomplish the following:

A. Within 45 days after the effective date of this AD, unless previously inspected within the last three months, perform a visual inspection of each escape slide release cable, if installed. Replace frayed (one or more broken strands) or broken cables prior to further flight.

B. Repeat the inspection for frayed or broken release cables required by paragraph A. of this AD at intervals not to exceed 12 months.

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

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or

comment, and then send it to the Manager, Seattle Aircraft Certification Office.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

This clarification is effective July 31, 1990.

The effective date for the requirements of this amendment remains June 25, 1990, as specified in Amendment 39-6626, AD 90-12-11.

Issued in Seattle, Washington, on July 24, 1990.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-17799 Filed 7-30-90; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 90-AAL-5]

Revision of Talkeetna, Bethel, McGrath, and Galena AK, Transition Areas and Removal of Lonely DEW Station, AK, Transition Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule revises and extends the Talkeetna, Bethel, McGrath, and Galena, Alaska transition areas and revokes the Lonely DEW Station transition area. The FAA expanded controlled airspace to the north, central, and eastern part of Anchorage Air Route Traffic Control Center (ANC ARTCC) as the first seven (7) radars became available. ANC ARTCC presently has fifteen (15) different radar sites in the system and this additional controlled airspace will improve radar service and efficiency in western Alaska by using off airway areas and areas outside of existing transition areas below 14,500 feet MSL for radar services. Lonely DEW Station has been closed by the United States Air Force and the transition area is no longer required.

EFFECTIVE DATE: 0901 U.t.c., October 18, 1990.

FOR FURTHER INFORMATION CONTACT: Robert C. Durand, Airspace and Procedures Specialists (AAL-531), Air Traffic Division, Federal Aviation Administration, 222 West Seventh Avenue, Box 14, Anchorage, AK 99513-7587, Telephone (907) 271-5898.

SUPPLEMENTARY INFORMATION:

History

On April 3, 1990, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to revise and extend the Talkeetna, Bethel, McGrath, and Galena, Alaska transition areas and revoke the Lonely DEW Station transition area (55 FR 12384). The proposed action will provide additional controlled airspace needed to improve radar service and efficiency in western Alaska by using off airway areas and areas outside of existing transition areas below 14,500 feet MSL for radar services, plus revoke the transition area associated with the Lonely DEW Station because it is no longer required.

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 change to correct one word in the Bethel, AK, description where it reads "from the southwest control zone extension to 11.5 miles southeast", southeast should be southwest, this amendment is the same as that proposed in the notice. Section 71.181 of part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6F dated January 2, 1990.

The Rule

This amendment to part 71 of the Federal Aviation Regulations revises and extends additional controlled airspace around major terminal and off airway areas in the western part of ANC ARTCC airspace and revokes the Lonely DEW Station transition area. The ability to provide radar separation services over much of the Anchorage Air Route Traffic Control Center (ANC ARTCC) airspace has been limited by the lack of controlled airspace since the existing transition areas in the western part of the airspace contained only the IFR non-radar routes and departure paths. The FAA has expanded controlled airspace to the north, central, and eastern part of ANC ARTCC as the first seven (7) radar sites became available. ANC ARTCC presently has fifteen (15) different radar sites in the system and this additional controlled airspace will improve radar service and efficiency in western Alaska by using off airway areas for radar services. While these additional airspace designations would exclude aircraft from conducting flight under visual flight rules (VFR) when the visibility is less than 3 miles, it would enhance the safety of aircraft conducting flight under IFR. Lonely DEW Station has been closed by the United States Air Force and the transition area is no longer required.

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, Transition areas.

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.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Talkeetna, AK [Revised]

That airspace extending upward from 1,200 feet above the surface within 23 miles west and 69 miles east of the 022° and 202° bearings from the Peters Creek NDB (lat. 62°19'54" N., long. 150°05'39" W.), extending from 55 miles north to 15 miles south of the NDB, excluding Federal airways and the portions within the Anchorage, AK, and Fairbanks, AK transition areas.

Bethel, AK [Revised]

That airspace extending upward from 700 feet above the surface within 3 miles each side of the Bethel VORTAC (lat. 60°47'08" N., long. 161°49'19" W.) 007° radial, extending from the north control zone extension to 11.5 miles north of the Bethel VORTAC; from the southwest control zone extension to 11.5 miles southwest of the Bethel VORTAC; and that airspace extending upward from 1,200 feet above the surface within a 57.5-mile radius of the Bethel VORTAC; and within 46 miles each side of the Bethel VORTAC 068° radial, extending from the 57.5-mile radius to a point 98 miles northeast of the Bethel VORTAC, excluding the portion within Federal airways and the Aniak, AK transition area.

McGrath, AK [Revised]

That airspace extending upward from 700 feet above the surface within 5 miles northeast and 3 miles southwest of the McGrath VORTAC (lat. 62°57'00" N., long. 155°36'33" W.) 123° radial extending from the control zone extension to 12.5 miles southeast of the McGrath VORTAC; within 4 miles each side of the McGrath VORTAC 008° radial extending from the control zone extension to 14.5 miles north of the McGrath VORTAC; and that airspace extending upward from 1,200 feet above the surface within the area bounded by a line beginning at lat. 64°00'00" N., long. 155°00'00" W.; to lat. 64°00'00" N., long. 153°00'00" W.; to lat. 63°00'00" N., long. 151°10'00" W.; to lat. 62°00'00" N., long. 154°00'00" W.; to lat. 62°00'00" N., long. 157°00'00" W.; to lat. 63°20'00" N., long. 157°00'00" W.; to point of beginning, excluding the portions within Federal airways and the Farewell, AK transition area.

Galena, AK [Revised]

That airspace extending upward from 700 feet above the surface within a 19-mile radius of the Galena VORTAC (lat. 64°44'20" N.,long. 156°46'29" W.); and that airspace extending upward from 1,200 feet above the surface within the area bounded by a line beginning at lat. 66°00'00" N., long. 159°00'00" W.; to lat. 66°00'00" N., long. 153°00'00" W.; to lat. 64°00'00" N., long. 153°00'00" W.; to lat 64°00'00" N.; 159°00'00" W.; to point of beginning, excluding the portions within the Huslia, AK transition area and Federal airways.

Lonely DEW Station, AK [Remove]

That airspace extending upward from 700 feet above the surface within 4.5 miles north and 9.5 miles south of the 293° bearing from the Lonely NDB, extending from the NDB to 18.5 miles northwest of the NDB.

Issued in Anchorage, Alaska on July 20, 1990.

Henry A. Elias,

Manager, Air Traffic Division.

[FR Doc. 90-17793 Filed 7-30-90; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 90-AGL-4]

Transition Area Alteration, South Bend, IN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The nature of this action is to alter the published description of the South Bend, IN, transition area by updating the Michiana Regional Airport coordinates and deleting the words, "excluding that airspace which overlies the Dowagiac, MI, Transition Area" from the legal description. These words are not necessary. The Dowagiac, MI, transition area published description excludes the airspace which overlies the South Bend, IN, transition area. The existing designated airspace area remains unchanged.

EFFECTIVE DATE: 0901 U.t.c., October 18, 1990.

FOR FURTHER INFORMATION CONTACT: Douglas F. Powers, Air Traffic Division, System Management Branch, AGL-530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (312) 694-7568.

The Rule

This amendment to part 71 of the Federal Aviation Regulations will alter the South Bend, IN, transition area published description by updating the Michiana Regional Airport coordinates and deleting the words, "excluding that airspace which overlies the Dowagiac, MI, Transition Area" from the legal description. There will be no changes to the existing designated airspace area or designated altitudes.

I find that notice and public procedure under 5 U.S.C. 553(b) are unnecessary because this action is a minor amendment in which the public would not be particularly interested. Section 71.181 of part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6F dated January 2, 1990.

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, Transition areas.

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.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

South Bend, IN [Revised]

That airspace extending upward from 700 feet above the surface within a 6-mile radius of Michiana Regional Airport, South Bend, IN, (lat. 41°42'24" N., long. 86°19'01" W.) and within 5 miles south and 8 miles north of the South Bend ILS localizer east course, extending from Michiana Regional Airport to 12 miles east of the ILS outer marker and within 5 miles west and 8 miles east of the South Bend, IN, VOR 360 radial, extending from the Michiana Regional Airport to 12 miles north of the VOR and within a 5-mile radius of Jerry Tyler Memorial Airport, Niles, MI, (lat. 41°50'30" N., long. 86°13'30" W.), extending from the Jerry Tyler Memorial Airport 2.5 miles either side of the South Bend, IN, VORTAC 045 radial to 8 miles northeast of the Jerry Tyler Memorial Airport.

Issued in Des Plaines, Illinois, on July 17, 1990.

Teddy W. Burcham,

Manager, Air Traffic Division.

[FR Doc. 90-17794 Filed 7-30-90; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 89-AEA-9]

Alteration of VOR Federal Airway; West Virginia

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment alters the description of Federal Airway V-45 located in the State of West Virginia. This action establishes a portion of V-45 between Charleston and Henderson, WV. This action lessens the workload associated with flight plan filing and facilities clearance delivery along this route by air traffic facilities.

EFFECTIVE DATE: 0901 U.t.c., October 18, 1990.

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

SUPPLEMENTARY INFORMATION:

History

On August 17, 1989, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to alter the description of VOR Federal Airway V–45 located in the State of West Virginia (54 FR 33941). This action extends V–45 from Charleston to Henderson, WV, eliminating a break in the continuity of the route. This action serves to lessen the workload associated with filing a flight plan as well as facilitating clearance delivery along the route. 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 the proposed in the notice. § 71.123 of part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6F dated January 2, 1990.

The Rule

This amendment to part 71 of the Federal Aviation Regulations alters the description of VOR Federal Airway V–45 located in the State of West Virginia. This action extends V–45 from Charleston to Henderson, WV, eliminating a break in the continuity of the route.

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–45 [Amended]

By removing the words "Charleston, WV. From Henderson, WV;" and substituting the words "Charleston, WV; Henderson, WV;"

Issued in Washington, DC, on July 20, 1990.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 90–17795 Filed 7–30–90; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 97

[Docket No. 26291; Amdt. No. 1431]

Standard Instrument Approach Procedures

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) establishes, amends, suspends, or revokes 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 (FAR). 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 documents 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 are 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 July 20, 1990.

Daniel C. Beaudette,

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).

2. Part 97 is amended as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

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 October 18, 1990

Jasper, GA—Pickens County, NDB RWY 34, Amdt. 1
Bolivar, TN—Bolivar-Hardeman County, NDB RWY 36, Amdt. 2

Effective September 20, 1990

Lake Havasu City, AZ—Lake Havasu City, VOR/DME-A, Amdt. 4
Ash Flat, AR—Cherokee Village, NDB RWY 4, Orig.
Half Moon Bay, CA—Half Moon Bay, RNAV-A, Amdt. 1, Cancelled
Orville, CA—Orville Muni, NDB RW-Y 1, Orig.
Washington, DC—Washington National, ILS RWY 36, Amdt. 37
Louisville, KY—Bowman Field, VOR RWY 19, Amdt. 3
Louisville, KY—Bowman Field, VOR RWY 24, Amdt. 3
Thibodaus, LA—Thibodaux Municipal, VOR-A, Amdt. 1
Reno, NV—Reno/Stead, NDB-F, Orig.
Fort Drum, NY—Wheeler Sack AAF, NDB-B, Orig., Cancelled
Altus, OK—Altus Muni, RADAR-1, Amdt. 1, Cancelled
Austin, TX—Lakeway Airpark, VOR/DME-C, Amdt. 1
Austin, TX—Lakeway Airpark, RNAV RWY 16, Amdt. 1
Decatur, TX—Decatur Muni, VOR-A, Amdt. 3
Denton, TX—Denton Muni, ILS RWY 17, Amdt. 5
Denton, TX—Denton Muni, NDB RWY 17, Amdt. 5
Ennis, TX—Ennis Muni, VOR/DME-A, Amdt. 1
Mount Pleasant, TX—Mount Pleasant Muni, NDB RWY 35, Amdt. 2
Mount Pleasant, TX—Mount Pleasant Muni, VOR/DME-A, Amdt. 3
Waller, TX—Skylake, VOR/DME RWY 17, Amdt. 1
Wheeler, TX—Wheeler Muni, VOR/DME-A, Amdt. 1
Winnsboro, TX—Winnsboro Muni, VOR-A, Amdt. 4
Richmond, VA—Richard Evelyn (Byrd Intl), ILS RWY 34, Amdt. 12

Effective August 23, 1990

Jacksonville, FL—Jacksonville Intl, LOC RWY 25, Amdt. 6
Jacksonville, FL—Jacksonville Intl, LOC BC RWY 31, Amdt. 7
Jacksonville, FL—Jacksonville Intl, NDB RWY 7, Amdt. 9
Jacksonville, FL—Jacksonville Intl, ILS RWY 13, Amdt. 4
Jacksonville, FL—Jacksonville Intl, RADAR-1, Amdt. 6
Ocala, FL—Ocala Muni/Jim Taylor Field, VOR RWY 36, Amdt. 15
Ocala, FL—Ocala Muni/Jim Taylor Field, LOC RWY 36, Amdt. 7
Ocala, FL—Ocala Muni/Jim Taylor Field, NDB RWY 36, Amdt. 3
Augusta, GA—Bush Field, VOR/DME RWY 17, Amdt. 1
Augusta, GA—Bush Field, NDB RWY 17, Amdt. 14
Augusta, GA—Bush Field, NDB RWY 35, Amdt. 27
Fort Leavenworth, KS—Sherman AAF, RNAV RWY 15, Amdt. 1
Fort Leavenworth, KS—Sherman AAF, VOR-A, Amdt. 3
Fort Leavenworth, KS—Sherman AAF, NDB RWY 33, Amdt. 3
Lawrence, KS—Lawrence Muni, VOR/DME-A, Amdt. 7
Lawrence, KS—Lawrence Muni, NDB-B, Amdt. 4, Cancelled
Lawrence, KS—Lawrence Muni, NDB RWY 33, Orig.
Lawrence, KS—Lawrence Muni, RNAV RWY 33, Amdt. 2
Olathe, KS—Johnson County Industrial, VOR-A, Amdt. 4
Olathe, KS—Johnson County Industrial, NDB RWY 35, Amdt. 4
Olathe, KS—Johnson County Industrial, ILS RWY 35, Amdt. 4
Topeka, KS—Philip Billard Muni, ILS RWY 13, Amdt. 30
Cameron, MO—Cameron Memorial, NDB RWY 35, Orig.
Tulsa, OK—Tulsa Intl, ILS RWY 17R, Amdt. 3
Tulsa, OK—Tulsa Intl, ILS RWY 35R, Amdt. 27
Tulsa, OK—Tulsa Intl, NDB RWY 35R, Amdt. 18
Tulsa, OK—Tulsa Intl, ILS RWY 17L, Amdt. 9
Tulsa, OK—Tulsa Intl, NDB RWY 17L, Amdt. 7
Tulsa, OK—Tulsa Intl, RADAR-1, Amdt. 15
Tulsa, OK—Tulsa Intl, VOR/DME or TACAN RWY 8, Amdt. 3
Tulsa, OK—Tulsa Intl, VOR or TACAN RWY 26, Amdt. 22
Tulsa, OK—Richard Lloyd Jones Jr., VOR RWY 36L, Amdt. 2
Tulsa, OK—Richard Lloyd Jones Jr., VOR/DME-A, Amdt. 4
Aiken, SC—Aiken Muni, NDB RWY 24, Amdt. 9
Sevierville, TN—Gatlinburg-Pigeon Forge, VOR/DME RWY 10, Amdt. 4

Effective July 12, 1990

Los Angeles, CA—Los Angeles Intl, VOR or TACAN RWY 25L/R, Amdt. 15

Effective July 11, 1990

Provincetown, MA—Provincetown Muni, ILS RWY 7, Amdt. 4

Note at end of § 97.27.

The FAA published an Amendment in Docket No. 26279, Amdt. No. 1430 to part 97 of the Federal Aviation Regulations (Vol 55 FR No. 137 page 29013; dated July 17, 1990) under § 97.27 effective July 26, 1990, which is hereby amended as follows:

Change effective date to August 23, 1990. For the following procedures:

Clinton, MO—Clinton Memorial, NDB RWY 4, Amdt. 5.

Clinton, MO—Clinton Memorial, NDB RWY 22, Amdt. 6.

Note at end of § 97.27.

The FAA published an Amendment in Docket No. 26270, Amdt. No. 1429 to Part 97 of the Federal Aviation Regulations (Vol 55 FR No. 132 Page 28190; dated July 10, 1990) under § 97.27 effective June 11, 1990, which is hereby amended as follows:

Change the airport name to Washington Dulles Intl vice Dulles Intl.

[FR Doc. 90-17800 Filed 7-30-90; 8:45 am]

BILLING CODE 4910-13-M

Office of the Secretary

Coast Guard

33 CFR Part 52

[OST Docket No. 46911; Reissuance]

RIN 2105-AB59

Coast Guard Board for Correction of Military Records; Procedural Regulations

AGENCY: Office of the Secretary, Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Department is amending its regulations concerning the Board for Correction of Military Records of the Coast Guard to conform with section 212 of the Coast Guard Authorization Act of 1989 (Pub. L. 101-225). The amendments also streamline the Board's procedures and make the regulations more readable.

EFFECTIVE DATE: August 30, 1990.

FOR FURTHER INFORMATION CONTACT: Robert H. Joost, Chairman, Board for Correction of Military Records of the Coast Guard, Office of the General Counsel, U.S. Department of Transportation, 400 Seventh Street SW., Washington, DC 20590, (202) 366-9335.

SUPPLEMENTARY INFORMATION:

Statutory Requirements

Section 212 of the Coast Guard Authorization Act of 1989 (Pub. L. 101-225), signed by the President on December 12, 1989, directed the Secretary of Transportation to amend the Board's regulations within 6 months of the date of enactment of the law "to ensure that a complete application is processed expeditiously and that final action on the application is taken within 10 months of its receipt."

Comments on Proposed Rulemaking

Proposed rulemaking was published on pages 18001-18005 of the **Federal Register** of April 30, 1990 (55 FR 18001), and invited comments for 30 days ending May 30, 1990. Comments were received from the following sources: (1) The American Legion; (2) Michael J. Calabro, *Esq.*, an attorney in private practice; and (3) Congressmen Walter Jones and Robert Davis, the Chairman and Ranking Minority Member of the House Merchant Marine and Fisheries Committee of the Congress. The comments and the actions taken in response to the comments are summarized below.

The American Legion approved the proposed definition of the term "complete application." The proposal provided that a complete application was one in which each of six elements has been received by the Board or has occurred: (1) A signed application form accompanied by substantial proof, (2) the applicant's military record, (3) any relevant medical records of the Department of Veterans Affairs, (4) any written views of the Coast Guard on the application, (5) the applicant's rebuttals to the Coast Guard views, and (6) any hearing.

Mr. Calabro disagreed with the proposed definition and argued that the term complete application should include only the signed application form with substantial proof.

The Chairman and Ranking Minority Member of the House Committee stated that the term should include the application form, the applicant's military record, and any applicable medical records in the custody of the Department of Veterans Affairs. This comment was based on the following language in the Section-by-Section analysis of the House Merchant Marine and Fisheries Committee Report on H.R. 2459, the Coast Guard Authorization Act of 1989, which was published in the *Congressional Record* on November 21, 1989 at page H9311:

> This section requires that an application for relief be complete before the ten-month time period begins. An application is complete when the military record of the applicant and any applicable Veterans' Administration medical records have been received by the BCMR. This requirement should not be used by the BCMR to unreasonably extend the 10-month time period. For example, the time period necessary to complete a hearing, including oral argument, is included in the 10-month period.

The Committee Report, including a Section-by-Section analysis of the House Merchant Marine and Fisheries Committee on H.R. 2459, the Coast Guard Authorization Act of 1989, was published in the *Congressional Record* for November 20, 1989 (pp. H9179 to H9184). That report, which the Department of Transportation considered in issuing the Notice of Proposed Rulemaking, did not contain the quoted passage above. That passage was included in the *Congressional Record* published for November 21, 1989. The Department of Transportation was not aware of the November 21, 1989 revision when it issued the NPRM.

Based on the comments the proposed rulemaking has been modified to define a complete application as one in which the following have been received or have occurred: (1) A signed application form that provides all necessary responses and is accompanied by substantial proof in support of the allegation of error or injustice; (2) the applicant's military record; and (3) any relevant Department of Veterans Affairs medical records concerning the applicant.

The American Legion comment indicated that the Coast Guard should be required by Act of Congress, to respond to each application. No action was taken on this suggestion because it called for congressional action.

Both Mr. Calabro and the American Legion also referred to the proposed changes in the Board's regulations regarding the time limitation for filing an application. The veterans' organization stated that there was no provision in section 212 of the Coast Guard Authorization Act of 1989 for the Board to redefine the three-year statute of limitations contained in title 10, United States Code, 1552(b). The statute of limitations has not been redefined. The Board has only explained that it considers the 3-year time limitation to begin when the applicant discovers or reasonably should have discovered the alleged error or injustice, a clarification contained in the corresponding Air Force Board regulations (32 CFR part 865 subpart A). Another comment states that the Board should detail in the regulation how the 3-year time limitation is applied. It is not possible to describe in the regulation all of the factors on which the Board bases such determinations.

Mr. Calabro objects to making application to the Coast Guard's Personnel Records Review Board

(PRRB) a prerequisite to applying to the Board. The PRRB regulation (Commandant Instruction 1070.10) states that applications to the PRRB must be received within one year of the date on which the contested information was entered or should have been entered into the official record. The Board regulations provide that no application will be considered until the applicant has exhausted all effective administrative remedies. The Board therefore does not consider any application until the PRRB remedy either has been exhausted or is unavailable.

Mr. Calabro stated that requiring individuals to exhaust their PRRB remedy before they may apply to the Board should be terminated as the policy is contrary to the Congressional intent as expressed in section 212. The Department rejects this view on the ground that neither section 212 nor its legislative history mentions the PRRB, even though it has existed since 1982. Congress, in the Department's view, did not intend to change the relationship between the PRRB and the Board. The regulations therefore will not be revised in this regard. An individual may still apply to the Board if his or her case is beyond the PRRB time restriction.

Final Rule

This final rule implements section 212 of the Coast Guard Authorization Act of 1989 (Pub. L. 101–225) by including a requirement that the Secretary ensure that final action is taken on a complete application within ten months of receipt by the Board and by defining the term "complete application." The final rule also modifies and clarifies the rules governing the time limit for filing applications.

The final rule makes additional changes to the Board's regulations that will speed the processing of applications, clarify the application of certain existing rules that were set forth in subparts dealing with hearings but that applied to all cases, and eliminate references to a Board position (Executive Secretary) no longer in existence.

The final rule also streamlines procedures to assist the Board in meeting the ten month requirement. For example, (1) An applicant will be allowed 15 days, rather than 60 days, to respond to any views of the Coast Guard; (2) an applicant will no longer be able to ask the Board to reverse the Chairman's denial of a hearing; and (3) an applicant will have to file a new application for further consideration of issues raised in a withdrawn application. The Chairman will advise applicants that they should submit all evidence in support of their application either with the application or while the military record is being obtained, and that submission of additional items of substantive evidence after receipt of the military record may impede the processing of the case so as to make it difficult, and in some cases impossible, to meet the 10-month requirement.

The final rule also renumbers all of the sections of 33 CFR part 52 and reissues the entire part.

DERIVATION TABLE

New	Source
§ 52.1	§ 52.01–1
§ 52.2	§ 52.01–5
52.11	52.05–1
52.12	52.05–5
52.13	52.05–10
52.21	52.10–1
52.22	52.10–5
52.23	52.25–1
52.24	52.30–10
52.25	52.30–15
52.26	52.30–25
52.31	52.15–1
52.32	52.15–5
52.33	52.15–10
52.41	NEW
52.42	52.20–10
52.43	52.25–5
52.44	52.25–10
52.45	52.20–20
52.51	52.30–5
52.52	52.35–10
52.61	52.35–1
52.62	52.35–5
52.63	52.35–10
52.64	52.35–15
52.65	52.35–20
52.66	52.35–25
52.67	52.35–30
52.68	NEW
52.71	52.40–1
52.72	52.40–5
52.73	52.40–10
52.74	52.40–15
52.81	52.45–1
52.82	52.45–5

Technical changes (including combining closely-realted sections and abolishing of archaic sections) have been made to make the text more readable and gender-neutral.

Section-by-Section Analysis

The new section numbers are listed first in the section-by-section analysis with the old section number in parentheses.

Section 52.2 (§ 52.01–5), Authority, is amended to add the new requirement, imposed by Congress in section 212 of the Coast Guard Authorization Act of 1989, that the Board must ensure that final action on a "complete application for correction * * * is taken within 10 months of its receipt." The amendment restates the language in the Coast Guard Authorization Act of 1989.

The revision to paragraph (c) of § 52.11 (§ 52.05–1), Establishment and composition, deletes the reference to the Executive Secretary of the Board and replaces it with a reference to the Deputy Chairman.

In paragraph (a) of § 52.21 (§ 52.10–1), General requirements, the term Executive Secretary is deleted and replaced with the term Chairman. The section states that applications should be sent to the Chairman who will, if necessary, send explanatory material to the applicant.

New subsection (c) of § 52.21 (§ 52.05–10), General Requirements, sets forth the requirements for a complete application. A complete application is defined as one in which the following have been received by the Board or have occurred: (1) A signed application form that provides all necessary responses and is accompanied by substantial proof in support of the allegation of error or injustice; (2) the applicant's military record; and (3) any relevant Department of Veterans Affairs medical records concerning the applicant.

Former § 52.10–5, Time limit for filing application, is deleted and replaced with a new § 52.22, which retains the three-year statute of limitations required by section 1552 of title 10, United States Code. It states tht the three years will begin to run at the time when the applicant discovered or reasonably should have discovered the alleged error or injustice. It also states that an untimely application will be denied if the applicant has presented evidence insufficient to warrant excusal.

Former § 52.20–1, Entitlement to hearing, which referred to the procedure followed when an applicant requested a hearing, is deleted. Under the former rules, the Chairman granted a hearing whenever he determined that "a hearing would be likely to produce additional information material to the case." Former § 52.20–5, Denial of hearing, which discussed the procedure followed when an applicant requested reconsideration of the Chairman's denial of a hearing within 45 days of notice of the hearing denial, is deleted. The Board could not issue a decision until after that time had passed. The new § 52.41, General provision, provides a more straightforward procedure.

Section 52.42 (§ 52.20–10), Notice of hearing, is amended by deleting the requirement that the Board reconsider the Chairman's denial of an applicant's request for a hearing.

Former § 52.20–15, Postponement of hearing, is deleted. This change makes this Board's rules consistent with those of other Boards (32 CFR 581.3 (Army); 32

CFR part 723 (Navy); and 32 CFR part 865 subpart A (Air Force)).

Former § 52.25–1, Counsel, is redesignated as § 52.23, to place it within the subpart that pertains to all applications rather than only those applications where a hearing was held. This definition of "counsel" remains the same. The title Administrator of Veterans Affairs is changed to the Secretary of Veterans Affairs because the Veterans Administration is now an Executive Department. The section also amends the term "applicant" in the regulation to mean an applicant of his or her counsel, except that the applicant, rather than counsel, must personally sign the application form unless the applicant is deceased, incapacited, or his or her whereabouts are unknown.

Former § 52.30–10, Procurement of evidence, governs the applicant's responsibility to obtain such evidence as he or she wishes to present in support of the application. This section is redesignated as § 52.24, Evidence, so that it appears under subpart C, General Provisions Regarding Application, governing all applications for correction.

Former § 52.30–15, Access to official records, pertains to an applicant's access to his or her official records and any other information in the custody of the Coast Guard. This section is redesignated as § 52.25, Access to official records, so that it appears under subpart C, General Provisions Regarding Applications, governing all applications for correction, instead of a subpart that pertains only to applications where a hearing takes place.

Former § 52.30–25, Withdrawal, concerns an applicant's withdrawal of his or her application to the Board prior to a final determination. This section is redesignated as § 52.26, Withdrawal, to appear in subpart C, General Provisions Regarding Applications, which concerns all applications for correction rather than in a subpart that pertains only to applications where a hearing is held. The section also requires an applicant who has withdrawn an application to file a new application to obtain further consideration of the issues raised in the first application. The former section did not address how an applicant could obtain further consideration of the issues after withdrawing an application.

Section 52.61 (§ 52.35–1), Deliberations and decision, is amended by adding text previously found in § 52.52, Record of hearing, formerly § 52.30–30, Reporting, on deliberations of the Board and stating that they are conducted in executive session and are not reported. This sentence appeared previously in a subpart on procedure at hearings. The statement, however, applies to both hearings and non-hearing cases.

Section 52.68 (§ 52.35–15), Final action, restates the requirement that final action on a complete application must be taken within 10 months of its receipt.

Section 52.74 (§ 52.40–15), Report of Settlement, is amended by deleting the references to the term Executive Secretary, a position no longer in existence, and replacing it with the term Chairman.

Section 52.82, Submissions sent to or received from the Coast Guard, provides that an applicant has 15 days from the date the Board sends the applicant a copy of the views of the Coast Guard to rebut or respond to such submission.

Executive Order 12291, Regulatory Flexibility Act, and Paperwork Reduction Act of 1980

This action has been reviewed under Executive Order 12291, and it has been determined that this is not a major rule. It will not result in an annual effect on the economy of $100 million or more. There will be no increase in production costs or prices for consumers, individual industries, Federal, State or local governments, agencies, or geographic regions. Furthermore, this rule will not adversely affect competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Accordingly, a regulatory impact analysis is not required.

This regulation is not significant under the Department's Regulatory Policies and Procedures, dated February 26, 1979, because it involves a subject of interest to a limited number of individuals and merely changes procedures without reducing the substantive rights of these individuals. The number of affected individuals does not change. A full regulatory evaluation has not been prepared since the overall economic impact of the rule is expected to be minimal.

I certify that this rule will not have a significant economic impact on a substantial number of small entities. It has no impact on the environment. It does not impose any reporting or paperwork requirements under the Paperwork Reduction Act.

Federalism

This action has been reviewed under Executive Order 12612 on Federalism and the Department has determined that this action does not have implications for principles of federalism that warrant the preparation of a Federalism Assessment. This rule does not limit the policymaking and administrative discretion of the States, nor does it affect the States' abilities to discharge traditional State governmental functions or otherwise affect any aspect of State sovereignty.

List of Subjects in 33 CFR Part 52

Administrative practice and procedure, Archives and records, Military personnel.

Final Rule

For the reasons set forth in the preamble, 33 CFR part 52 is revised to read as follows:

PART 52—BOARD FOR CORRECTION OF MILITARY RECORDS OF THE COAST GUARD

Subpart A—Purpose and Authority

Sec.

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Authority: 10 U.S.C. 1552; 49 App. U.S.C. 1655(b); Pub. L. 101-225.

Subpart A—Purpose and Authority

§ 52.1 Purpose.

This part establishes the procedure for application for correction of military records of the Coast Guard, for consideration of applications by the Department of Transportation Board for Correction of Military Records of the Coast Guard (hereinafter "the Board"), and for settling claims or determining monetary benefits.

§ 52.2 Authority.

(a) The Secretary of Transportation, acting through boards of civilians, is authorized to correct any military record of the Coast Guard when the Secretary considers it necessary to correct an error or remove an injustice. 10 U.S.C. 1552. Section 212 of the Coast Guard Authorization Act of 1989 provides that the Secretary shall ensure that final action on a complete application for correction is taken within 10 months of its receipt.

(b) Corrections made under this authority are final and conclusive on all officers of the Government except when procured by fraud.

Subpart B—Establishment, Function, and Jurisdiction of Board

§ 52.11 Establishment and composition.

(a) Pursuant to 10 U.S.C. 1552 and 49 U.S.C. 108(a), the Board for Correction of Military Records of the Coast Guard is established in the Office of the Secretary of Transportation.

(b) The Secretary appoints a panel of civilian officers or employees of the Department of Transportation to serve as members of the Board, and designates one such member to serve as Chairman of the Board. The Chairman designates members from this panel to serve as the Board for each case requiring consideration by a Board. The Board consists of three members, and two members present constitute a quorum of the Board.

(c) The Deputy Chairman of the Board exercises the functions prescribed by these regulations and such other duties as may be assigned by the Chairman.

§ 52.12 Function.

The function of the Board is to consider all applications properly before it, together with all pertinent military records to determine:

(a) Whether an error has been made in the applicant's Coast Guard military record, whether the applicant has suffered an error or injustice as the result of an omission or commission in his or her record, or whether the applicant has suffered some manifest injustice in the treatment accorded him or her; and

(b) Whether the Board finds it necessary to change a military record to correct an error or remove an injustice.

§ 52.13 Jurisdiction.

(a) The Board has jurisdiction to review and determine all matters properly brought before it, consistent with existing law and such directives as may be issued by the Secretary.

(b) No application shall be considered by the Board until the applicant has exhausted all effective administrative remedies afforded under existing law or regulations, and such legal remedies as the Board may determine are practical, appropriate, and available to the applicant.

Subpart C—General Provisions Regarding Applications

§ 52.21 General requirements.

(a) An application for correction of a Coast Guard record shall be submitted on DD Form 149 (Application for Correction of Military or Naval Record) or an exact copy thereof, and shall be addressed to: Chairman, Board for Correction of Military Records of the Coast Guard (C-60), United States Department of Transportation, Washington, DC 20590. Forms and explanatory material may be obtained from the Chairman of the Board.

(b) The application shall be signed by the person alleging error or injustice in his or her military record, except that an application may be signed by a family member or legal representative with respect to the record of a deceased, incapacitated, or missing person.

(c) No application shall be processed until it is complete. An application for relief is complete when all of the following have been received by the Board:

(1) A signed DD Form 149, providing all necessary responses, including a specific allegation of error or injustice, accompanied by substantial proof in support of such allegation;

(2) The military records of the applicant; and

(3) Any applicable Department of Veterans Affairs medical records.

§ 52.22 Time limit for filing application.

An application for correction of a record must be filed within three years after the applicant discovered or reasonably should have discovered the alleged error or injustice. If an application is untimely, the applicant shall set forth reasons in the application why its acceptance is in the interest of justice. An untimely application shall be denied unless the Board finds that sufficient evidence has been presented to warrant a finding that it would be in the interest of justice to excuse the failure to file timely.

§ 52.23 Counsel.

As used in this part, the term "counsel" includes attorneys who are members in good standing of any bar; accredited representatives of veterans' organizations recognized by the Secretary of Veterans Affairs pursuant to 38 U.S.C. 3402; and other persons who, in the opinion of the Board, are competent to represent the applicant for correction. Whenever the term "applicant" is used in these rules, except in § 52.21, the term shall mean an applicant or his or her counsel.

§ 52.24 Evidence.

It is the responsibility of the applicant to procure such evidence, including official records, as the applicant desires to present in support of his case.

§ 52.25 Access to official records.

The applicant shall have access to official records or to any information pertaining to the applicant which is in the custody of the Coast Guard, as provided in 49 CFR part 10. The applicant shall also have access to other Coast Guard records as provided in 49 CFR part 7.

§ 52.26 Withdrawal.

The board may, in its discretion, permit the applicant to withdraw his or her application at any time before a final determination by the Secretary. Any further consideration by the Board of the issues raised in the withdrawn application shall occur only upon the filing of a new application.

Subpart D—Consideration of Application, Denial of Relief, and Stay of Proceedings

§ 52.31 Consideration of application.

Each application shall be reviewed by the Chairman to determine whether it meets the requirements of § 52.21(c). The Chairman shall decide in appropriate cases whether to grant a hearing or to recommend disposition on the merits without a hearing.

§ 52.32 Denial of relief.

(a) The Chairman may, notwithstanding § 52.64, and without written findings and conclusons, deny in writing all requested relief to an applicant at any time prior to consideration of the applicant's case by a Board if:

(1) The information or evidence submited by the applicant is insufficient to demonstrate probable substantial error or injustice;

(2) Effective relief cannot be granted by the Board;

(3) The Board does not have jurisdiction to determine the issues presented; or

(4) The application has not been timely filed under § 52.22 and the interest of justice does not require its acceptance.

(b) Denial of relief pursuant to this section is without prejudice to further considration by the Board if the applicant requests further consideration and submits evidence in addition to that contained in his or her complete application. A request for further consideration shall be regarded as a new application for purpose of § 52.68.

(c) If relief is denied under this section, the applicant shall be advised of the right to further proceedings.

§ 52.33 Stay of proceedings.

An application to the Board for correction of a military record does not operate as a stay of any proceeding or administrative action taken with respect to or affecting the applicant.

Subpart E—Hearings

§ 52.41 General provision.

In each case in which the Chairman determines that a hearing is warranted, the applicant will be entitled to be heard orally in person, by counsel, or in person with counsel.

§ 52.42 Notice of hearing.

(a) If the Chairman determines that a hearing is warranted, the Chairman shall notify the appliant that a hearing has been granted.

(b) The date of hearing shall be not less than 21 days from the date of this notification. Written notice stating the date, time and place of the hearing shall be given to the applicant and the Coast Guard.

§ 52.43 Witnesses.

(a) In any case in which the Chairman has granted a hearing, the applicant shall have the right to present witnesses.

(b) It is the responsibility of the applicant to notify witnesses and to ensure their appearance at the date, time and place set for the hearing.

§ 52.44 Expenses.

No expenses of any nature whatsoever incurred by an applicant, his or her counsel, witnesses, or others acting on behalf of the applicant shall be paid by the Government.

§ 52.45 Nonappearance.

An applicant who fails without good cause to appear in person or by counsel at the appointed date, time, and place for hearing, is deemed to have waived the right to a hearing. The application is then considered by the Board on the basis of all the material of record.

Subpart F—Procedure at Hearings

§ 52.51 Conduct of hearing.

(a) The Chairman or the Chairman's designee shall conduct a hearing so as to ensure a full and fair presentation of the evidence.

(b) The hearing is not limited by legal rules of evidence but reasonable standards of competency, relevancy, and materiality are observed for the receipt and consideration of evidence.

(c) All testimony shall be given under oath or affirmation.

§ 52.52 Record of hearing.

A hearing pursuant to this subpart in open session shall be recorded verbatim and, at the discretion of the Board or direction of the Secretary, shall be transcribed.

Subpart G—Judgment and Disposition

§ 52.61 Deliberations and decision.

(a) The Board is convened at the call of the Chairman and its meetings are recessed or adjourned by order of the Chairman. Only members of the Board and its staff may be present during the deliberations of the Board. The Board's deliberations are conducted in executive session and are not reported.

(b) When the Board finds that the facts have not been fully and fairly disclosed by the records, testimony, and any other evidence before the Board, the Board may request the applicant and/or the Coast Guard to obtain and submit such further evidence as it considers essential to a complete and impartial understanding of the facts and issues.

(c) An applicant may submit to the board any further evidence relevant to an application at any time prior to final action. The Chairman shall accept any such submission if, and only if, the applicant agrees that § 52.68 shall not apply to the case.

(d) Following the receipt of all evidence, the Chairman shall cause to be prepared and shall submit to the Board for its consideration a draft decision containing proposed findings and conclusions and a proposed order. A majority vote of the members of the board present at a meeting on any matter relating to a draft decision before the Board shall constitute the action of the Board. If a draft decision is approved by the Board, it shall become a decision of the Board.

(e) The decision of the Board shall specify with particularity any change, correction, or modification of records to be made by the Coast Guard, and any other action deemed necessary to carry out the Board's recommendation.

(f) If the Board deems it necessary to submit a comment or recommendation to the Secretary as to a matter arising from, but not directly related to, the issues in a case, it does so by separate communication.

§ 52.62 Minority report.

In case of disagreement among Board members, a minority report may be submitted dissenting from or concurring with the decision of the Board.

§ 52.63 Record of proceedings.

The Board shall prepare a complete record of each proceeding. The record shall include the application for relief; the written views of the Coast Guard, if any; any transcript of testimony; affidavits and documents considered by the Board; briefs and written arguments filed in the case; the findings, decisions, and recommendations of the Board; minority reports, if any; and all other materials necessary to reflect a true and complete history of the proceedings.

§ 52.64 Final action.

(a) The Board, provided that it acts unanimously, may take final action on behalf of the Secretary, pursuant to 10 U.S.C. 1552, as follows:

(1) The Board may deny an application for the correction of military records.

(2) Unless the Chief Counsel of the Coast Guard, in submitting its views pursuant to § 52.82(c), states that the application involves a significant issue of Coast Guard policy, the Board may approve an application for the correction of military records in any of the following categories:

(i) An application to correct an enlistment or reenlistment contract or agreement to extend an enlistment for the purpose of effecting or increasing entitlement to a Selective Reenlistment Bonus;

(ii) An application to modify an election to participate in the Survivor Benefit Plan;

(iii) An application to change a reenlistment eligibility code;

(iv) An application to correct the character of, or reason for, a discharge or separation.

(3) The Board may approve any application for correction of military records not falling into one of the categories in paragraph (a)(2) of this section, if the Chief Counsel of the Coast Guard recommends the same or substantially same relief as that requested by the applicant.

(b) Except in cases where the Board takes final action under paragraph (a) of this section, the Board shall forward the record of its proceedings to the Secretary for approval, disapproval, or return for additional consideration. After taking final action, the Secretary shall return the record to the Board for disposition.

§ 52.65 Orders.

(a) The Board shall issue such orders or directives as may be necessary to carry out a final action.

(b) The Board may ask the Coast Guard to submit a written report to the Board specifying the action taken and the date thereof with respect to any final action.

(c) Unless doing so is likely to nullify the relief granted, copies of the final decision shall be placed in the military record of the applicant.

§ 52.66 Notification.

Subject to Department of Transportation regulations, the Board shall transmit to the applicant a copy of a decision. The applicant may inspect the record of proceedings at Board offices.

§ 52.67 Reconsideration.

(a) The recommendation of the Board, as approved, shall constitute a final determination of the issues presented and considered.

(b) The Board may grant an application for reconsideration of a final determination only if newly discovered evidence or information, not previously considered by the Board, is presented by the applicant or otherwise comes to the attention of the Board, and if newly discovered evidence or information would, if true, result in a determination other than that originally made. The Board may refuse to consider evidence or information claimed to be newly discovered if it finds that such materials could have been presented to the Board prior to its original determination if the applicant had exercised reasonable diligence.

(c) A denial of reconsideration must be approved by the Secretary.

§ 52.68 Time limit for final action.

Final action on an application for correction of a military record shall be taken within 10 months after all the elements of a complete application, as defined in § 52.21(c), have been received by the Board.

Subpart H—Payment of Claims and Implementation of Orders

§ 52.71 Authority To pay.

(a) The Coast Guard is authorized to pay the claims of any person as the result of any action heretofore or hereafter taken under 10 U.S.C. 1552.

(b) The Coast Guard is not authorized to pay any claim heretofore compensated by Congress through enactment of private law, or to pay any amount as compensation for any benefit to which the claimant might subsequently become entitled under the laws and regulations administered by the Secretary of Veterans Affairs.

§ 52.72 Procedures.

(a) In each case the Board transmits a copy of its decision or the Secretary's decision to the proper Coast Guard authority for determination of monetary benefits due, if any, as a result of the action of the Board and for corrections of the military record ordered by the Board.

(b) Upon request, the claimant is required to furnish any information necessary to determine the proper parties to the claim for payment under applicable provisions of law.

(c) Appropriate records shall be examined in light of the Board's decision to determine all amounts which may be due. Amounts found due are subject, to the extent authorized by law or regulations, to setoff in the amount of existing indebtedness to the Government arising from Coast Guard service.

(d) At the time of payment, the claimant shall be advised as to the nature and amount of the various benefits represented by the total settlement, and of the fact that acceptance of the settlement constitutes a complete release by the claimant of any claim against the United States on account of the correction of record ordered by the Board.

§ 52.73 Interpretation.

If the intent or import of the final decision is not clear to the Coast Guard or if the Coast Guard believes that executing all or part of the order in the final decision is beyond the Coast Guard's authority, the final decision shall be returned to the Board for clarification or technical amendment.

§ 52.74 Report of settlement.

When payment is made pursuant to the order of the Board, the Board may request the Coast Guard to notify it of the name of any person to whom payment was made and of the amount of the payment.

Subpart I—Miscellaneous Provisions

§ 52.81 Assistance.

The Board may request such advice, opinion, assistance, or use of the facilities of any other bureau, board, or office of the Department of Transportation as the Board deems necessary.

§ 52.82 Submissions sent to or received from the Coast Guard.

(a) The Board shall transmit to the Chief Counsel of the Coast Guard a copy of each application for relief submitted under subpart C of this part that has not been denied pursuant to § 52.32, together with any briefs, memoranda, and documentary evidence submitted or obtained in the case.

(b) The Board may request the Coast Guard to submit any additional pertinent facts not disclosed in an application and its supporting documents.

(c) The Chief Counsel may forward to the Board the written views of the Coast Guard on any case before the Board.

(d) A copy of each submission made by the Coast Guard under this section shall be transmitted to the Board, which shall promptly send a copy to the applicant involved. Each applicant has 15 days, from the date the Board sends the submission, to rebut or respond to such submission.

(e) Information and views furnished by the Coast Guard under this section shall not be binding upon the Board, but shall be considered by the Board along with all other information and material submitted in the particular case.

Issued at Washington, DC on July 25, 1990.

Samuel K. Skinner,

Secretary of Transportation.

[FR Doc. 90-17730 Filed 7-30-90; 8:45 am]

BILLING CODE 4910-62-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3786-4]

Approval and Promulgation of Implementation Plans; IN

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Notice of final rulemaking; direct final.

SUMMARY: USEPA is approving revisions to the Indiana State Implementation Plan (SIP) for ozone and carbon monoxide (CO). The revisions pertain to the approval of (1) the State's 1982 CO plan and attainment demonstration for the nonattainment area in Lake County, Indiana, (2) its vehicle inspection and maintenance (I/M) program, including Indiana's I/M rule, 326 IAC 13–1, in Clark, Floyd, Lake, and Porter Counties, and (3) its transportation control plan (TCP) for Clark and Floyd Counties. The I/M program and TCP are required parts of both Indiana's 1982 ozone plan and its 1982 CO plan. USEPA's action is based upon revision requests which were submitted by the State in response to requirements of part D of the Clean Air Act (Act).

The approval of the Indiana I/M program eliminates the basis for USEPA's February 3, 1983, (48 FR 5106), August 3, 1983, (48 FR 35316), January 21, 1986, (51 FR 2732), and March 13, 1989, (54 FR 10381) proposals to restrict certain Federal funding and stationary source construction. Therefore, elsewhere in today's **Federal Register**, USEPA is withdrawing the August 3, 1983, and January 21, 1986, notices, and those portions of the February 3, 1983, and March 13, 1989, notices which proposed restrictions on Federal funding and stationary source construction.

EFFFECTIVE DATE: October 1, 1990.

ADDRESSES: Copies of the SIP revisions and other materials related to this rulemaking action are available at the following addresses for review: (It is recommended that you telephone Cheryl L. Newton, at (312) 886–6081, before visiting the Region V Office.)

U.S. Environmental Protection Agency, Region V, Air and Radiation Branch, 230 South Dearborn Street, Chicago, Illinois 60604.

Indiana Department of Environmental Management, Office of Air Management, 105 South Meridian Street, P.O. Box 6015, Indianapolis, Indiana 46206–6015.

Copies of the SIP revisions are available at:

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

Comments, if any, on this rulemaking should be addressed to: (Please submit an original and three copies, if possible.)

Gary Gulezian, Chief, Regulatory Analysis Section, Air and Radiation Branch (5AR–26), U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Cheryl L. Newton, Air and Radiation Branch (5AR–26), U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 886–6081.

SUPPLEMENTARY INFORMATION: Congress amended the Act, 42 U.S.C. 7401 *et seq.*, in 1977 to address the major health problems posed by the failure of certain areas to attain the National Ambient Air Quality Standards (NAAQS). Congress required States to revise their SIP to provide for attainment of the standards by December 31, 1982, and to submit the revised plans to USEPA by January 1, 1979. For areas with serious ozone or CO problems which the States demonstrated were unable to attain these standards by the end of 1982, even with the implementation of all reasonably available measures, Congress allowed an extension of the attainment date up to December 31, 1987, (section 172(a)(2)).

In return for this extension, the Act requires States to submit additional air pollution control measures in their 1979 ozone and CO SIP revisions (section 172(b)(11)). One such additional measure was a schedule for implementation of an I/M program, along with certification that the State and local governments had the legal authority to implement and enforce the program (sections 172(b)(10) and 172(b)(11)(B)).

History of Indiana's Ozone and CO Plans for Extension Areas

The State of Indiana requested an extension of the attainment deadline to December 31, 1987, and submitted 1979 plans for ozone for Clark, Floyd, Lake, and Porter Counties, and for CO for Lake County. On January 2, 1981, (46 FR 96), USEPA conditionally approved, as a part of Indiana's 1979 ozone and CO SIP, the State's commitment to implement I/M. USEPA approved the extension request, Indiana's 1979 attainment demonstrations, and the TCPs on February 11, 1982, (47 FR 6274).

When USEPA approves a State's extension request, the Act requires the State to implement an I/M program in these counties. However, Indiana's draft 1982 revisions submitted on September 2, 1982, would have formally withdrawn the 1979 commitment to implement an I/M program. The plan additionally stated that a new I/M program would not be readopted unless attainment would not otherwise occur by December 31, 1987, as indicated by future air quality data.

On February 3, 1983, (48 FR 5106), USEPA proposed to disapprove the 1982 Indiana ozone and CO SIP and proposed a stationary source construction moratorium under section 110(a)(2)(I) of the Act because the plan did not contain the various elements required under USEPA's 1982 SIP policy, in that there were no commitments to implement I/M by December 31, 1982, and no rules and regulations for I/M were included. Further, on August 3, 1983, (48 FR 35316), USEPA proposed restrictions on air quality control funding and stationary source construction under sections 176(b) and 173(4) of the Act, respectively, for the State's failure to implement the approved 1979 Indiana ozone and CO SIP; in particular, the I/M commitment USEPA had approved and incorporated into the State's 1979 SIP.

Subsequently, the State of Indiana renewed its commitment to implement an I/M program and adopted 325 Indiana Administrative Code (IAC) 13.1–1, Motor Vehicle Inspection and Maintenance Requirements. A contract was established with Indiana Vocational Technical College to conduct the biennial testing program. The program began inspecting vehicles on May 31, 1984.

On October 9, 1984, (49 FR 39574), USEPA proposed to approve Indiana's I/M program on the condition that the State provide the following four elements during the public comment period: (1) an approvable, detailed description of its enforcement mechanisms, (2) a description of the resources it would use to implement its I/M enforcement plan, (3) a demonstration that its I/M program meets the Act's reasonably available control technology requirement, and (4) a commitment to rectify the remaining deficiencies within 1 year or less.

Throughout the development of the I/M program, USEPA sought a detailed description of the I/M program enforcement mechanism. On January 21, 1986, (51 FR 2732), USEPA proposed to disapprove the I/M portion of the ozone and CO SIP and to impose Federal funding restrictions in Clark, Floyd, Lake, and Porter Counties, pursuant to section 176(a) of the Act, for the State's failure to submit a detailed description of its enforcement mechanism. On April 7, 1986, (51 FR 11756), further action to impose restrictions on Federal funding and stationary source construction was indefinitely postponed due to the State Legislature's passage of an enforcement mechanism which authorized vehicle registration suspension and a $100.00 fine to owners of untested vehicles.

On July 14, 1987, (52 FR 26404), USEPA proposed to disapprove the Indiana 1982 ozone plan as not meeting all the

requirements of Part D.[1] This notice included a proposed disapproval of that portion of the I/M program which addresses funding and resources for enforcement, because of a failure by the State to provide funding for program enforcement. USEPA further proposed to approve all other portions of the I/M program because the State's submittals of September 30, 1986, and February 18, 1987, addressed the outstanding issues cited in the October 9, 1984, (49 FR 39574) notice. The State had not, however, adequately addressed funding and resources for enforcement.

In addition to addressing I/M in the July 14, 1987, notice, USEPA also reproposed approval of the State's TCP for Clark, Floyd, Lake, and Porter Counties. USEPA withdrew its proposed disapproval of January 26, 1987 (52 FR 2728), because the State resolved the deficiencies cited in the January 26, 1987, notice in its submittals of May 14, 1986, June 10, 1986, and April 6, 1987. Subsequently, on November 18, 1988 (53 FR 46608), USEPA approved the State's TCP for Lake and Porter Counties, while disapproving the State's overall ozone plan for these counties.[2]

In a March 13, 1989, (54 FR 10381) notice, USEPA proposed to disapprove the enforcement portion of Indiana's I/M program in Lake and Porter Counties because it did not meet USEPA policy requirements that enforcement be as routine and expeditious as are vehicle registration violations. (A complete discussion of the State's enforcement mechanism and USEPA's findings can be found in the May 26, 1988, TSD which is available at the Region V Office listed above.) At that time, USEPA reproposed certain restrictions on Federal funding and stationary source construction in Lake and Porter Counties, including: (1) the imposition of a construction moratorium under section 173(4) and air quality control funding restrictions under section 176(b) for the State's failure to implement its approved 1979 ozone and CO SIP; and (2) the imposition of Federal highway and air quality control funding restrictions under section 176(a) for the State's failure to submit or make reasonable efforts to submit an adequate 1982 ozone and CO SIP revision. USEPA also proposed imposition of section 316(b) sewage treatment funding restrictions for the State's failure to implement the approved 1979 ozone and CO SIP and for failure to submit an approvable 1982 SIP. USEPA took no action on the I/M SIP for Clark and Floyd Counties at that time.

In addition, USEPA proposed to disapprove the CO SIP for the nonattainment area of Lake County due to the State's failure to submit an adequate I/M enforcement program as part of its 1982 CO SIP. USEPA proposed imposition of a stationary source construction moratorium for new and modified CO sources in the CO nonattainment area in Lake County as required by section 110(a)(2)(I). USEPA had previously proposed approval of Indiana's CO plan and attainment demonstration for the CO nonattainment area in Lake County. However, because of the I/M program deficiencies, USEPA proposed disapproval of the CO SIP for the nonattainment area of Lake County.[3]

Current I/M Program

In order to increase the efficacy of the Indiana I/M program, the State began the legislative process for authorization of a registration denial enforcement mechanism and to provide funding to operate the program. On May 3, 1989, Governor Bayh signed House Enrolled Act 1905 which authorized a registration denial enforcement mechanism beginning in January 1990. The State subsequently provided funding to operate the program for the 1989/1991 biennium.

On October 27, 1989, and January 19, 1990, the State formally submitted 326 IAC 13-1, Motor Vehicle Inspection and Maintenance Requirements, as a revision to Indiana's ozone and CO SIP for Clark, Floyd, Lake, and Porter Counties. With the January 19, 1990, submittal, the State requested that all previous submittals of its I/M rules be withdrawn from the rulemaking process.

USEPA has reviewed Indiana Rule 326 IAC 13-1 and discusses its conclusions in two TSDs dated June 27, 1989, and December 28, 1989, which are available from the Region V office listed above. The rule includes a registration denial enforcement mechanism for the I/M program, which requires owners in Clark, Floyd, Lake, and Porter Counties to have their vehicles tested and to provide proof of passing the test prior to registering their vehicle with the Bureau of Motor Vehicles (BMV). The rule also requires that all subject vehicles be inspected to ensure that the catalytic convertor, fuel inlet restricter, and gas cap are present and have not been tampered with. In addition, other changes were made to 326 IAC 13-1 from previous versions of the rule. These include expansion of the model year coverage to 1976 and newer vehicles (it was previously the most recent 13 model years), and a cost increase under the waiver provision.

The rule requires implementation of these revisions in January 1990. In November 1989, BMV and the State began sending notices regarding emission testing and registration denial to motorists whose vehicles were to be registered in January 1990.

USEPA's review of Indiana's SIP revision submittal shows that the State has adopted an enforcement mechanism that can be approved by USEPA as meeting all current Clean Air Act and policy requirements. Registration denial enforcement has been demonstrated to result in routine and expeditious enforcement against non-complying vehicles. The addition of the tamper inspection and the other program changes are also acceptable under USEPA Policy. Further, the State has provided funding to operate the program for the 1989/1991 biennium.

With this I/M SIP revision, the State has submitted an I/M program which adequately fulfills all related requirements for approval, as specified in the January 22, 1981, (46 FR 7182) notice titled, "State Implementation Plans; Approval of 1982 Ozone and Carbon Monoxide Plan Revisions for Areas Needing an Attainment Date Extension." All conditional approval items, as specified in the January 22, 1981, notice, have now been addressed by Indiana through revisions to the SIP or have become moot. Therefore, USEPA is approving Indiana's I/M program, including 326 IAC 13-1.

Clean Air Act Restrictions

USEPA's decision to give final approval to the State's I/M program as part of the State's ozone and CO SIPs eliminates the basis for the February 3, 1983, (48 FR 5106), August 3, 1983, (48 FR 35316), January 21, 1986, (51 FR 2732), and March 13, 1989 (54 FR 10381) proposed restrictions on Federal funding and stationary source construction. Therefore, elsewhere in today's **Federal Register**, USEPA is withdrawing the August 3, 1983, and January 21, 1986, notices and those portions of the February 3, 1983, and March 13, 1989, notices dealing with these restrictions.

TCP for Clark and Floyd Counties

On July 14, 1987, USEPA reproposed approval of the State's TCP for Clark

[1] USEPA disapproved Indiana's overall part D ozone plan for Lake and Porter Counties on November 18, 1988, (53 FR 46606). It will take action on the Clark and Floyd Counties plan in future **Federal Register** notice(s).

[2] In today's notice, USEPA is taking final action to approve the TCP for Clark and Floyd Counties.

[3] An I/M program is a required element in any approved CO plan for an area where the State requested and received an extension of the 1982 attainment deadline.

and Floyd Counties. This plan consisted of ridesharing and transit improvements, plus a commitment to annually review transportation improvements projects for their emission impact. Analyses of this plan are included in USEPA's January 27, 1984, and May 13, 1987, TSDs. Today, USEPA is approving Indiana's TCP for Floyd and Clark Counties.

Lake County CO Plan

The State of Indiana requested an extension of the attainment deadline to December 31, 1987, for CO for Lake County. USEPA approved the request on February 11, 1982, and Indiana's revised 1979 Indiana CO SIP. USEPA then several times proposed action on Indiana's CO plan, as detailed above. On January 26, 1987, USEPA proposed that the CO plan was approvable if Indiana implemented an adequate I/M program.

Indiana's attainment demonstration for the CO nonattainment area in Lake County is based on an estimated 35 percent emission reduction from 1981 to 1987 provided by the Federal Motor Vehicle Control Program (October 9, 1984,—49 FR 39574 and January 26, 1987,—52 FR 2728). Available monitoring data showed that a CO emission reduction of only 10 percent from 1981 levels was necessary to achieve the NAAQS by 1987. Based on this analysis and Indiana's implementation of an approvable I/M program, USEPA is approving Indiana's 1982 CO plan for Lake County.

Public Comment Discussion

Public comment was solicited on previous SIP revisions and on USEPA's proposed rulemaking actions. No adverse public comments were received on USEPA's proposal to approve the State's transportation control plan for Clark and Floyd Counties nor on USEPA's proposal to approve Indiana's CO plan for Lake County. Because USEPA is withdrawing all previous Federal Register proposals regarding sanctions, it is not necessary to address public comments received on these proposals. Comments received on previous I/M rulemaking, proposals disapproving the enforcement portion of the I/M program are moot.

Conclusions

The State has submitted an approvable registration denial enforcement mechanism and I/M program that meets all current ozone and CO SIP approval criteria. Based on the State's submittals, USEPA is taking the following final rulemaking actions.[4]

1. The State's 1982 CO plan and attainment demonstration for the nonattainment area in Lake County are approved.

2. The State's I/M program for Clark, Floyd, Lake, and Porter Counties, including 326 IAC 13–1, is approved as part of both the Indiana 1982 ozone and CO SIP.

3. Based on the State's submittals and previous proposals, USEPA is approving Indiana's Transportation Control Plan for Clark and Floyd County as part of both the Indiana ozone and CO SIP.

USEPA is publishing this action without prior proposal on the specific I/M program ultimately adopted by Indiana, because the Agency views this as noncontroversial amendments and anticipates no adverse comments. Approval of the I/M program and the Lake County CO plan will be effective 60 days from the date of publication unless, within 30 days of its publication, notice is received that adverse or critical comments will be submitted.[5]

If such notice is received, USEPA's approval of the Indiana I/M program and Lake County CO plan will be withdrawn before the effective date by publishing two subsequent notices. One notice will withdraw these final actions and another will begin a new rulemaking by announcing a proposal of the actions and establishing a comment period. If no such comments are received, the public is advised that this action will be effective October 1, 1990.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

This action has been classified as a Table Two action by the Regional Administrator under procedures published in the Federal Register on January 19, 1989, (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget waived Tables Two and Three SIP revisions (54 FR 222) from the requirements of section 3 of Executive Order 12291 for a period of 2 years.

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

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 1, 1990. This action may not be challenged later in proceedings to enforce requirements. (See section 307(b)(2).)

Lists of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide, Environmental Protection, Hydrocarbons, Intergovernmental relations, Ozone.

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

Dated: June 1, 1990.

Valdas V. Adamkus,

Regional Administrator.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Title 40 of the Code of Federal Regulations, chapter I, part 52, is amended as follows:

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

Authority: 42 U.S.C. 7401–7642.

2. Section 52.770 is amended by adding new paragraphs (c) (84) and (85) to read as follows:

§ 52.770 Identification of plan.

* * * * *

(c) * * *

(84) On October 27, 1989, and January 19, 1990, Indiana submitted its vehicle inspection and maintenance plan for Clark, Floyd, Lake, and Porter Counties.

(i) *Incorporation by reference.* (A) Title 326, Air Pollution Control Board, of the Indiana Administrative Code (IAC), Rule 13–1, Motor Vehicle Inspection and Maintenance Requirements, Adopted at 13 Indiana Register 500, effective January 1, 1990.

(85) On December 2, 1983, Indiana submitted its transportation control plan for Clark and Floyd Counties as one

[4] Although USEPA is approving these elements as direct final rulemakings, USEPA has proposed previous versions of both Indiana's I/M program and CO plan for Lake County. These proposals included specific descriptions of those elements of Indiana's plans which were deficient. Indiana has now rectified the deficiencies listed in these notices.

[5] USEPA proposed on several occasions that the Lake County CO plan was approvable, if an acceptable I/M program were implemented by Indiana. Therefore, the only element of the Lake County CO plan that is being approved without prior proposal is the specific I/M program ultimately adopted by Indiana. USEPA's has previously proposed approval of the Clark and Floyd Counties TCPs, and, therefore, USEPA's action on these plans is not a direct final rulemaking. Thus, this approval is effective in 60 days regardless of whether adverse or critical comments are submitted.

element in its ozone plan for the area. Additional material was submitted on May 14, 1986.

(i) *Incorporation by reference.* (A) Chapter 7, Mobile Source Strategies and Reductions, sections A.1.b and exhibits 7–2 and 7–4, as adopted by the Indiana Air Pollution Control Board at its November 2, 1983, meeting.

(ii) *Additional material.* (A) On May 14, 1986, Indiana submitted an April 23, 1986, Letter from Jim Thorne, Transportation Director, Kentuckiana Regional Planning and Development Agency, discussing the Clark and Floyd Counties portion of the Louisville, Kentucky transportation control plan.

* * * * *

3. Section 52.773 is revised by removing and reserving paragraphs (d) and (e) and by adding new paragraphs (j) to read as follows:

§ 52.773 Approval status.

* * * * *

(d)–(e) [Reserved]

* * * * *

(j) The Administrator finds that the following portions of Indiana's ozone and CO plans satisfy the related requirements of part D, title 1 of the Clean Air Act, as amended in 1977:

(1) The transportation control plans for Lake, Porter, Clark and Floyd Counties, submitted on May 14, 1986, June 10, 1986, and April 6, 1987.

(2) The vehicle inspection and maintenance plan for Clark, Floyd, Lake, and Porter Counties, submitted October 27, 1989, and January 19, 1990.

(3) The demonstration of attainment, submitted December 2, 1983, and the carbon monoxide plan as a whole for the designated nonattainment area in Lake County.

* * * * *

4. Section 52.786 is amended by removing and reserving paragraph (h) as follows:

§ 52.786 Inspection and maintenance program.

* * * * *

(h) [Reserved]

[FR Doc. 90–16151 Filed 07–30–90; 8:45 am]
BILLING CODE 6560–50–M

DEPARTMENT OF ENERGY

Office of the Secretary

48 CFR Part 970

Acquisition Regulation; Payments and Advances

AGENCY: Department of Energy (DOE).

ACTION: Final rule.

SUMMARY: This rule amends 48 CFR part 970, Management and Operating (M&O) Contracts, of the Department of Energy Acquisition Regulation (DEAR). This rulemaking is issued to revise the period of time in which a contractor must notify the contracting officer of third party claims, from "six (6) years after contract final settlement date", to "one (1) year after the contractor's right of action first accrues." This action is necessary to establish a more appropriate timeframe consistent with the nature of management and operating contractor third party claims.

EFFECTIVE DATE: August 30, 1990.

FOR FURTHER INFORMATION CONTACT:

Gwen Cowan, Business and Financial Policy Division (PR–13), Office of Procurement and Assistance Management, Washington, DC 20585, (202) 586–8159.

Lawrence R. Oliver or Laura Fullerton, Office of the Assistant General Counsel for Procurement and Finance (GC–34), Washington, DC 20585, (202) 586–1900.

SUPPLEMENTARY INFORMATION:

I. Background
II. Procedural Requirements
A. Review Under Executive Order 12291
B. Review Under the Regulatory Flexibility Act
C. Review Under the Paperwork Reduction Act
D. Review Under the National Environmental Policy Act
E. Review Under Executive Order 12612
F. Public Hearing
III. Public Comments

I. Background

Under section 644 of the DOE Organization Act, Pub. L. 95–91 (42 U.S.C. 7254), the Secretary of Energy is authorized to prescribe such procedural rules and regulations as may be deemed necessary or appropriate to accomplish the functions vested in that position. Accordingly, the DEAR was promulgated with an effective date of April 1, 1984 (49 FR 11992, March 28, 1984), 48 CFR chapter 9.

The purpose of this rulemaking is to amend DEAR subsection 970.5204–16(f)(vi)(B), Payments and Advances, to revise the period of time for the contractor to give notice of third party claims in writing to the contracting officer. The current provision requires notice "not more than six (6) years after the date of the release or the date of any notice to the contractor that the Government is prepared to make final payment, whichever is earlier." This provision will now require notice to the contracting officer "not more than one (1) year after the contractor's right of action first accrues."

II. Procedural Requirements

A. Review Under Executive Order 12291

This Executive Order 12291, entitled "Federal Regulations," requires that certain regulations be reviewed by the Office of Management and Budget (OMB) prior to their promulgation. OMB Bulletin 85–7 exempts all but certain types of procurement regulations from such review. This final rule does not involve any of the topics requiring prior review under the bulletin and is, accordingly, exempt from such review.

B. Review Under the Regulatory Flexibility Act

This final rule was reviewed under the Regulatory Flexibility Act of 1980, Pub. L. 96–354, which requires preparation of a regulatory flexibility analysis for any rule which is likely to have significant economic impact on a substantial number of small entities. This rule will have no impact on interest rates, tax policies or liabilities, the costs of goods or services or other direct economic factors. It will not have significant economic impact on a substantial number of small entities and, therefore, no regulatory flexibility analysis has been prepared.

C. Review Under the Paperwork Reduction Act

The Paperwork Reduction Act, Public Law 96–511, does not apply because this final rule does not impose additional reporting or recordkeeping requirements or collection of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501, *et seq.*

D. Review Under the National Environmental Policy Act

The DOE has concluded that promulgation of this rule would not represent a major Federal action having a significant impact on the human environment under the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. *et seq.*, 1976), or the Council of Environmental Quality regulations (40 CFR parts 1500–1506), and the DOE guidelines (10 CFR part 1021), and, therefore, does not require an environmental impact statement or an environmental assessment pursuant to NEPA.

E. Review Under Executive Order 12612

The DOE has concluded that this final rule does not involve issues which are expected to have a substantial direct

effect on traditional state functions or institutional interests and thus, the "federalism" assessment requirements of Executive Order 12612 (52 FR 41685, October 30, 1987) do not apply.

F. Public Hearing

The DOE has concluded that this rule does not involve a substantial issue of fact or law and that it should not have a substantial impact on the nation's economy or large numbers of individuals or businesses. Therefore, pursuant to Public Law 95–91, the DOE Organization Act, and the Administrative Procedure Act (5 U.S.C. 553), the DOE did not hold a public hearing on this rule.

III. Public Comments

This final rule is based on the Notice of Proposed Rulemaking (NOPR), which the DOE published in the **Federal Register** on August 14, 1989 (54 FR 33251), wherein public comments were invited. Two comments were received; one from a federal government agency and one from a private entity. These comments and the DOE actions taken in response thereto are summarized in the paragraphs that follow:

Comment: A federal government agency commented that removal of the original language imposing a six-year limitation on submission of claims after final payment could be misinterpreted to imply that contractor claims against the United States could be submitted in perpetuity.

Response: Review and analysis of current statutes, regulations and case law have resulted in a determination to provide contractors one year from the time a cause of action accrues to file a claim with the contracting officer.

Comment: The private entity's comments were directed to proposed language appearing in the NOPR in the **Federal Register** on August 14, 1989 (54 FR 33251). An objection was made that use of the "knew, or should have known" standard to start the originally proposed 90-day limitations period shifted a major risk to the contractor without a corresponding adjustment in fee considerations. An objection was also made that the requirement that the contractor protect the Government's interest during the 90-day period was impractical, since the contractor might not have current authority over those interests.

Response: After further review and analysis of current statutes, regulations and case law, the controversial language was deleted.

It is necessary to state a period of limitations for submittal of claims to the contracting officer to avoid a contractor's right under current case law to file such claims in perpetuity, subject only to laches and estoppel arguments. Current case law interpret the Contract Disputes Act of 1978 (CDA) (41 U.S.C. 601–613) as removing contract actions from coverage of the six-year statute of limitations set out in 28 U.S.C. 2501. See *Do-Well Machine Shop, Inc.* v. *U.S.*, 870 F.2d 637 (Fed. Cir. 1989); *Pathman Construction Co.* v. *U.S.* 817 F.2d 1573 (Fed. Cir. 1987); *LaCoste* v. *U.S.*, 9 Cl. Ct. 313 (1986). The CDA sets out filing deadlines for appealing contracting officer decisions, but does not specifically address the issue of a deadline for filing a claim with a contracting officer. This agency has concluded that one year from the time a cause of action accrues provides enough time for filing a claim with a contracting officer as well as a sufficiently definite time from which to begin to run a limitations period. Additional revisions in this section seek to encourage contractors to work with contracting officers to keep them appraised of potential claims, even though the claim may not yet have ripened or a definite claim amount may not yet be determinable.

List of Subjects in 48 CFR Part 970

Government procurement, Management and operating contracts.

For the reasons set out in the preamble, chapter 9 of title 48 of the Code of Federal Regulations is amended as set forth below.

G.L. Allen,

Acting Director, Office of Procurement and Assistance Management.

PART 970—DOE MANAGEMENT AND OPERATING CONTRACTS

1. The authority citation for part 970 continues to read as follows:

Authority: Sec. 161 of the Atomic Energy Act of 1954 (42 U.S.C. 2201), Sec. 644 of the Department of Energy Organization Act, Pub. L. 95–91 (42 U.S.C. 7254), sec. 201 of the Federal Civilian Employee and Contractor Travel Expenses Act of 1985 (41 U.S.C. 420) and sec. 1534 of the Department of Defense Authorization Act 1986, Pub. L. 99–145 (42 U.S.C. 7256a), as amended.

2. In the clause in § 970.5204–16, paragraph (f)(2)(iv)(B) is revised to read as follows:

970.5204–16 Payments and advances.

Payment and Advances (July 1990)

* * * * *

(f) * * *

(2) * * *

(iv) * * *

(B) Claims, together with reasonable expenses incidental thereto, based upon liabilities of the contractor to third parties arising out of the performance of this contract; provided that such claims are not known to the contractor on the date of the execution of the release; and provided further that the contractor gives notice of such claims in writing to the contracting officer promptly, but not more than one (1) year after the contractor's right of action first accrues. In addition, the contractor should provide prompt notice to the contracting officer of all potential claims under this clause, whether in litigation or not (see also Contract Clause———, DEAR 970.5204–31, "Litigation and Claims"); and

* * * * *

[FR Doc. 90–17491 Filed 7–30–90; 8:45 am]

BILLING CODE 6450–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 663

[Docket No. 91160–0003]

Pacific Coast Groundfish Fishery

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

ACTION: Notice of fishing restrictions, and request for comments.

SUMMARY: NOAA announces adjustments to restrictions on fishing in the ocean off Washington, Oregon, and California in 1990 for sablefish caught with nontrawl gear and for yellowtail rockfish (taken with any gear), and seeks public comment on this action. This action is authorized under regulations implementing the Pacific Coast Groundfish Fishery Management Plan and is necessary to prevent biological stress to these stocks, which could occur if landings are not restricted. These actions are intended to lower fishing rates, prevent biological stress, allow unavoidable incidental catches in other fisheries to be landed, and avoid or reduce the probability of a fishery closure before the end of the year.

EFFECTIVE DATE: 0001 hours (Pacific Daylight Time) July 25, 1990, until modified, superseded, or rescinded. Comments will be accepted through August 15, 1990.

ADDRESSES: Submit comments on these actions to Rolland A. Schmitten, Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way NE, BIN C15700, Seattle, Washington 98115; or E. Charles Fullerton, Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731.

FOR FURTHER INFORMATION CONTACT: William L. Robinson at 206–526–6140, Rodney R. McInnis at 213–514–6199, or the Pacific Fishery Management Council at 503–221–6352.

SUPPLEMENTARY INFORMATION: The Pacific Coast Groundfish Fishery Management Plan (FMP) and its implementing regulations at 50 CFR 663.22(a) authorize the Secretary of Commerce (Secretary) to reduce fishing levels, consistent with the objectives and priorities of the FMP, to prevent or reduce biological stress in any species or species complex. By slowing the fishery and avoiding premature closure, the discarding of incidental catches in excess of the desired harvest level is minimized and the likelihood of biological stress on the resource is lessened. Following a review of the 1990 fishery at its July 11–12, 1990 meeting, the Pacific Fishery Management Council (Council), recommended reduced fishing levels for two species of groundfish, yellowtail rockfish and sablefish.

Yellowtail Rockfish

The *Sebastes* complex of rockfish includes all rockfish species caught under the FMP except widow rockfish, shortbelly rockfish, Pacific ocean perch, and thornyheads. Yellowtail rockfish is a dominant and often unavoidable component of the *Sebastes* complex, and landings of the *Sebastes* complex have been restricted since 1983 in order to protect yellowtail rockfish. Because yellowtail rockfish is found mostly north of Coos Bay, Oregon (43°21'34" N. latitude), the management measures for yellowtail rockfish adjusted by this notice apply only to this area.

The *Sebastes* complex and yellowtail rockfish are managed with harvest guidelines. Thus, landings are not automatically prohibited when they reach the specified harvest guideline. Instead, fishing restrictions are implemented to prevent landings from greatly exceeding the harvest guideline. The 1990 harvest guideline for the *Sebastes* complex north of Coos Bay is 10,500 mt, the sum of the ABCs in the complex, including a separate harvest guideline of 3,900 mt of yellowtail rockfish. At the July Council meeting, the Council's Groundfish Management Team (GMT) projected that the harvest guideline for the *Sebastes* complex would not be reached in 1990, but that the 3,900 mt harvest guideline for yellowtail rockfish would be reached by August 27, 1990, if current trip limits are continued. Landings of yellowtail rockfish would need to be reduced by 47 percent to stay within the harvest guideline in 1990. Because yellowtail rockfish is the only component of the *Sebastes* complex needing additional protection, the Council recommended maintaining the current 25,000 pound trip limit for the *Sebastes* complex while reducing the trip landing limit for yellowtail rockfish from 7,500 pounds to 3,000 pounds or 20 percent of the legal *Sebastes* complex on board, whichever is greater. The restriction against making more than one landing of the *Sebastes* complex above 3,000 pounds in a week, and the biweekly and twice-weekly trip limit options for the *Sebastes* complex would remain in effect. However, the biweekly trip limit for yellowtail rockfish would not be doubled but would remain at 3,000 pounds, the same as the weekly limit, to discourage potential targeting.

It is likely that the 3,000 pound/20 percent trip limit will not keep landings within the 3,900 mt harvest guideline for yellowtail rockfish in 1990. Assuming the same rate of landings in 1990 as in 1989 under the same trip limit, landings would be reduced by about 900 mt, for a total of 4,400 mt in 1990. The Team testified that exceeding the harvest guideline by 500 mt (13 percent) would not cause biological harm to yellowtail rockfish, which currently is believed to be close to its MSY. A lower trip limit was not recommended because discards would increase with no net loss in fishing mortality, since yellowtail rockfish are often caught unavoidably while fishing for other species in the *Sebastes* complex. A prohibition against fishing for the entire *Sebastes* complex north of Coos Bay in order to protect yellowtail rockfish was rejected because: (1) yellowtail rockfish will not be harmed biologically by this action; and (2) preliminary findings in a current draft stock assessment for yellowtail rockfish suggest that the 1990 ABC was underestimated and likely will be revised to a higher level in 1991. Closure of the entire fishery for the *Sebastes* complex north of Coos Bay would result in the loss of harvest of approximately 4,500 mt of species other than yellowtail rockfish, worth approximately $2.5 million to fishermen.

Secretarial Action

The Secretary concurs with the Council's recommendation and herein modifies paragraphs (3) (a), (b), and (c) for the *Sebastes* complex at 55 FR 1036 (January 11, 1990) as follows:

1. In paragraph (3)(a) which announces the weekly trip limits for the *Sebastes* complex caught north of Coos Bay, change only the first sentence to read: "Except for the biweekly and twice-weekly trip limits provided in paragraphs (3)(b) and (3)(c), no more than 25,000 pounds of the *Sebastes* complex, (including no more yellowtail rockfish than 3,000 pounds, or 20 percent of the legal *Sebastes* complex on board, whichever is greater) may be taken and retained, possessed, or landed per vessel per fishing trip in a one-week period north of Coos Bay."

2. In paragraph (3)(b) which announces the biweekly trip limits for the *Sebastes* complex caught north of Coos Bay, change only the first sentence to read: "If the fishery management agency of the state where the fish will be landed is notified as required by state law (WAC 220–44–050; OAR 635–04–033; CF&GCA 7652), no more than 50,000 pounds of the *Sebastes* complex (including no more yellowtail rockfish than 3,000 pounds or 20 percent of the legal *Sebastes* complex on board, whichever is greater) may be taken and retained, possessed, or landed per vessel per fishing trip in a two-week period north of Coos Bay."

3. In paragraph (3)(c) which announces the twice-weekly trip limits for the *Sebastes* complex caught north of Coos Bay, change only the first sentence to read: "If the fishery management agency of the state where the fish will be landed is notified as required by state law (WAC 220–44–050; OAR 635–04–033; CF&GCA 7652), no more than 12,500 pounds of the *Sebastes* complex (including no more yellowtail rockfish than 1,500 pounds or 20 percent of the legal *Sebastes* complex on board, whichever is greater) may be taken and retained, possessed, or landed per vessel per fishing trip north of Coos Bay."

The rest of paragraphs (3) (a), (b), and (c) and the other provisions at 55 FR 1036 pertaining to yellowtail rockfish and the *Sebastes* complex remain in effect.

Sablefish Caught With Nontrawl Gear

On June 24, 1990, when 300 mt of the nontrawl sablefish quota was projected to remain, the nontrawl trip limit for sablefish smaller than 22 inches was replaced with a trip limit of 500 pounds that applied to sablefish of any size. The purpose of the 500 pound limit was to extend the nontrawl quota as long as possible by discouraging target fishing for sablefish with most nontrawl gear, while enabling small nontrawl fisheries that operate later in the year to continue landing small and often unavoidable catches of sablefish.

More recent data have revealed that landings were higher than initially projected and, as of June 30, only 48 mt of the nontrawl quota remained. In addition, the Council heard testimony

that some targeting was occurring under the 500 pound trip limit.

In order to accomplish the Council's objective of enabling small incidental landings until the end of the year and avoiding a premature fishery closure, the Council recommended lowering the nontrawl trip limit to 200 pounds as soon as possible. All other provisions for sablefish caught with nontrawl gear off the coasts of Washington, Oregon, and California announced at 55 FR 3747 (February 5, 1990) remain in effect. As in the past, all weights and percentages are based on round weights or round weight equivalents.

Secretarial Action

The Secretary concurs with the Council's recommendation and herein adjusts the management measures at 50 CFR 663.27(b)(3) and at 55 FR 25977 (June 26, 1990) for sablefish caught with nontrawl gear by replacing paragraph 4(b) as follows:

(b) *Nontrawl.* No more than 200 pounds of sablefish caught with nontrawl gear may be taken, retained, possessed or landed per vessel per fishing trip. This limit applies to sablefish of any size.

Inseason Adjustments

At subsequent meetings, the Council will continue to review the best data available and may recommend further modifications to these management measures.

Other Fisheries

U.S. vessels operating under an experimental fishing permit issued under 50 CFR 663.10 also are subject to these restrictions unless otherwise provided in the permit.

Landings of groundfish in the pink shrimp, spot and ridgeback prawn fisheries are governed by regulations at 50 CFR 663.28. If fishing for groundfish and pink shrimp, spot or ridgeback prawns in the same fishing trip, the groundfish regulations in this notice apply.

Classification

The determination to impose these fishing restrictions is based on the most recent data available. The aggregate data upon which the determinations are based are available for public inspection at the Office of the Director, Northwest Region (see **ADDRESSES**) during business hours until the end of the comment period.

An Environmental Impact Statement (EIS) was prepared for the FMP in 1982 in accordance with the National Environmental Policy Act (NEPA). The alternative and environmental impacts of this Notice of Fishing Restrictions are not significantly different than those considered in the EIS for the FMP. Therefore this action is categorically excluded from the NEPA requirements to prepare an Environmental Assessment in accordance with paragraph 5a(3) of the NOAA Directives Manual 02–10.

These actions are taken under the authority of 50 CFR 663.22 and 663.23, and are in compliance with Executive Order 12291. The actions are covered by the Regulatory Flexibility Analysis prepared for the authorizing regulations, and do not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612.

The biweekly and twice-weekly trip limit options are required by state law and do not represent an additional collection of information subject to the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

Section 663.23 of the groundfish regulations states that the Secretary will publish a notice of action reducing fishing levels in proposed form unless he determines that prior notice and public review are impracticable, unnecessary, or contrary to public interest. Section 663.23 also states that any notice issued under this section will not be effective until 30 days after publication in the **Federal Register**, unless the Secretary finds and publishes with the notice good cause for an earlier effective date. The Secretary has determined that, if left unrestricted, further catches in 1990 unquestionably will exceed the harvest guideline for yellowtail rockfish and the nontrawl quota for sablefish. Prompt action to limit these fishing rates is necessary to minimize harvest above the yellowtail rockfish harvest guideline and to alleviate the necessity for a fishery closure of the nontrawl sablefish fishery before the end of 1990. Consequently, further delay of these actions is impracticable and contrary to the public interest, and these actions are taken in final form effective July 25, 1990.

The public has had opportunity to comment on these management measures. The public participated in the Groundfish Select Group, GMT, Groundfish Advisory Subpanel, and Council meetings in June and July 1990 that generated the management actions endorsed by the Council and the Secretary. Further public comments will be accepted for 15 days after publication of this notice in the **Federal Register.**

List of Subjects in 50 CFR Part 663

Administrative practice and procedures, Fisheries, Fishing.

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

Dated: July 25, 1990.

Joe P. Clem,

Acting Director, Office of Fisheries, Conservation and Management.

[FR Doc. 90–17709 Filed 7–25–90; 3:34 pm]

BILLING CODE 3510–22–M

Proposed Rules

Federal Register
Vol. 55, No. 147
Tuesday, July 31, 1990

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 1033, 1036, and 1049

[Docket Nos. AO-166-A61; AO-179-A56; and AO-319-A39; DA-90-015]

Milk in the Ohio Valley, Eastern Ohio-Western Pennsylvania and Indiana Marketing Areas; Hearing on Proposed Amendments to Tentative Marketing Agreements and Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of public hearing on proposed rulemaking.

SUMMARY: This hearing is being held to consider proposals to amend the Ohio Valley, Eastern Ohio-Western Pennsylvania and Indiana Federal milk orders. One proposal to amend all three orders would establish a multiple component pricing plan using protein, as well as butterfat, to price milk used in Class II and Class III products and to determine returns to producers. Under the proposal, Class I prices paid by handlers would be adjusted only for location. Other proposals to amend all three orders would incorporate a fall production incentive payment program, increase the marketing service assessment to nonmember producers, and amend the orders' producer milk definitions. Proposals to change the pool plant performance standards of all three orders are also included.

Proposals to amend only the Indiana order would reduce the Class I price differential, modify location adjustments, change the classification of infant and dietary formulas from Class II to Class III, and require more timely payments to producers. Other proposals are intended to clarify certain provisions of the order.

A proposal affecting only the Eastern Ohio-Western Pennsylvania order would increase the maximum allowable administrative assessment charged to handlers to cover the expense of administering the order.

DATES: The hearing will convene at 9 a.m. on August 14, 1990.

ADDRESSES: The hearing will be held at the Columbus Marriott Inn North; 6500 Doubletree Avenue, Columbus, OH 43229; 614-885-1885.

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

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

Notice is hereby given of a public hearing to be held at the Columbus Marriott Inn North beginning at 9 a.m., on August 14, 1990, with respect to proposed amendments to the tentative marketing agreements and to the orders regulating the handling of milk in the Ohio Valley, Eastern Ohio-Western Pennsylvania and Indiana marketing areas.

The hearing is called pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR part 900).

The purpose of the hearing is to receive evidence with respect to the economic and marketing conditions which relate to the proposed amendments, hereinafter set forth, and any appropriate modifications thereof, to the tentative marketing agreements and to the orders.

Actions under the Federal milk order program are subject to the Regulatory Flexibility Act (Pub. L. 96-354). This Act seeks to ensure that, within the statutory authority of a program, the regulatory and information requirements are tailored to the size and nature of small businesses. For the purposes of the Act, a dairy farm is a "small business" if it has an annual gross revenue of less than $500,000, and a dairy products manufacturer is a "small business" if it has fewer than 500 employees. Most parties subject to a milk order are considered as a small business. Accordingly, interested parties are invited to present evidence on the probable regulatory and informational impact of the hearing proposals on small businesses. Also, parties may suggest modifications of these proposals for the purpose of tailoring their applicability to small businesses.

Interested parties who wish to introduce exhibits should provide the Presiding Officer at the hearing with 5 copies of such exhibits for the Official Record. Also, it would be helpful if additional copies are available for the use of other participants at the hearing.

List of Subjects in 7 CFR Parts 1033, 1036 and 1049

Milk marketing orders.

The authority citation for 7 CFR parts 1033, 1036 and 1049 continues to read as follows:

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

The proposed amendments, as set forth below, have not received the approval of the Secretary of Agriculture.

Proposals To Amend All Three Orders

Proposed by Milk Marketing Inc. and Hoosier Milk Marketing Agency Proposal No. 1

Amend the following provisions of the Ohio Valley, Eastern Ohio-Western Pennsylvania and Indiana orders to incorporate a multiple component pricing plan. Although the following proposed changes are written for the Eastern Ohio-Western Pennsylvania order, corresponding changes are intended by the proponents to be incorporated into the Ohio Valley and Indiana orders.

§ 1036.30 Reports of receipts and utilization.

On or before the 8th day after the end of each month, each handler shall report to the market administrator in the detail, and on forms approved by the market administrator, as follows:

(a) All persons defined in § 1036.9(a) shall report for each pool plant for which they are the handler the following information:

(1) The quantities, butterfat and protein content of producer milk received from:

(i) Each producer from whom milk was received directly, and the number

of days' production represented by such milk; and

(ii) Other handlers.

(2) The average somatic cell count of the producer milk received from each producer, and from each handler for whom reports were required pursuant to paragraph (a)(1) (i) and (ii) of this section.

(3) The quantities and pounds of butterfat and skim milk contained in or represented by:

(i) Transfers of fluid milk products and fluid cream products received from other pool plants and pool handlers;

(ii) Other source milk;

(iii) Fluid milk products and fluid cream products on hand in the plant at the end of the month in bulk form;

(iv) Fluid milk products and fluid cream products on hand in the plant at the end of the month in packaged form; and

(v) Inventories of bulk and packaged fluid milk and fluid cream products on hand at the beginning of the month in any pool plant that was not a pool plant during the immediately preceding month.

(b) Each person defined in § 1036.9 (b) and/or (c) shall report as follows:

(1) The quantity, butterfat, and protein content of producer milk for which the cooperative is the handler pursuant to § 1036.9 (b) or (c) that was received from each producer, including:

(i) The monthly average somatic cell count of milk for each such producer;

(ii) The number of days' production included for each producer; and

(iii) The identity of each plant to which such milk was disposed of during the month, the quantities, butterfat and protein content thereof delivered to each plant, and the somatic cell count of such milk.

(2) The classification claimed for milk reported under paragraph (a)(1) of this section.

(3) Such other information with respect to the receipt and utilization or disposition of milk and milk products containing butterfat and milk protein, as the market administrator may prescribe.

* * * * *

§ 1036.31 Payroll reports.

(a) * * *

(2) The pounds of milk for which partial and final payments were to be made, the monthly average butterfat and protein content of such milk, and the average monthly somatic cell count thereof;

(3) The minimum rates of payment required by the order and the rates at which payment was made if other than those required;

* * * * *

§ 1036.32 Other reports.

* * * * *

(c) * * *

(2) The total pounds of producer milk received from each producer, the butterfat and protein content, and the monthly average somatic cell count thereof;

(3) The amount and nature of any deductions as authorized by the producer, to be made from the final payment for such milk;

(4) The total pounds of milk received from each handler defined in § 1036.9(c) and the butterfat and protein content thereof; and

(5) The pounds of skim milk, butterfat, protein content, and weighted average somatic cell count in bulk fluid milk products received from a pool plant operated by a cooperative association.

Classification of Milk

Revise § 1036.40, Classes of utilization, to change the classification of packaged fluid milk products included in a handler's month-end inventory from Class III to Class I.

§ 1036.44 Classification of producer milk.

* * * * *

(d) For the purpose of computing each handler's value of milk to be used to compute the producer price differential, the pounds of skim milk and butterfat that were used to produce Class II products identified in § 1036.40(b)(3) and in Class III products identified in § 1036.40(c)(1) shall be identified.

Class and Component Prices

§ 1036.50 Class and component prices.

Subject to the provisions of § 1036.52, the class prices and component prices for the month shall be as follows:

* * * * *

(d) *Skim milk prices*— (1) *Class III skim milk price.* The Class III skim milk price per hundredweight shall be determined by subtracting from the Class III price the differential value of 3.5 pounds of butterfat, to be computed by multiplying the Chicago butter price by 4.025, and rounding to the nearest whole cent.

(2) *Class II skim milk price.* The Class II skim milk price per hundredweight shall be determined by subtracting from the Class II price the differential value of 3.5 pounds of butterfat, to be computed by multiplying the Chicago butter price by 4.025, and rounding to the nearest whole cent.

(e) *Butterfat prices*— (1) *Class III butterfat price.* The Class III butterfat price per pound shall be computed by multiplying the butter price by 1.15, and adding an amount determined by dividing the Class III skim milk price by 100.

(2) *Class II butterfat price.* The Class II butterfat price per pound shall be computed by multiplying the butter price by 1.15, and adding an amount determined by dividing the Class II skim milk price by 100.

(f) *Protein prices*— (1) *Class III protein price.* The Class III protein price per pound shall be computed by subtracting from the Class III price the Class III butterfat price multiplied by 3.5 and dividing the result by:

(i) The average protein content of the milk on which the Class III price is based, if such percentage is reported by the Department; otherwise

(ii) By the following figures (representing the historical average monthly protein content of milk received at the plants on which the Minnesota-Wisconsin milk price quotation is based) for each month as indicated:

January	3.20
February	3.20
March	3.19
April	3.17
May	3.14
June	3.12
July	3.08
August	3.11
September	3.21
October	3.26
November	3.24
December	3.22; or

(iii) By the average percentage of protein in all producer milk in the market for the month.

(2) *Class II protein price.* The Class II protein price per pound shall be computed by subtracting from the Class II price the Class II butterfat price multiplied by 3.5 and dividing the result by the method used in § 1036.50(e)(1).

§ 1036.53 Announcement of class and component prices.

The market administrator shall announce publicly on or before:

(a) The 5th day of each month:

(1) The Class I price for the following month;

(2) The Class III price for the preceding month;

(3) The Class III skim milk and butterfat prices for the preceding month;

(4) The Class II skim milk and butterfat prices for the preceding month;

(5) The Class II protein price for the preceding month; and

(6) The Class III protein price for the preceding month.

(b) The 15th day of each month the Class II price for the following month.

§ 1036.60 Computation of handlers' obligations to the producer pool.

Each month the market administrator shall compute, separately for each

handler defined in § 1036.9(a), (b) or (c), a value of milk to be used in computing the differential pool by combining the values computed as follows:

(a) Multiply the total hundredweight of butterfat and skim milk in producer milk in each class as determined pursuant to § 1036.44(d) by the applicable Class price differences (Class I—Class III), adjusted pursuant to § 1036.52;

(b–e) In each of these paragraphs, multiply the appropriate pounds by the applicable price differences; and

(f) Multiply the pounds of skim milk pursuant to § 1036.44(d) by the average protein content of producer skim milk received by the handler. Then add an amount obtained by multiplying the resulting pounds of protein by the applicable protein price adjusted pursuant to § 1036.73(a)(2)(ii).

§ 1036.61 Computation of the producer price differential.

For each month the market administrator shall compute a producer price differential as follows:

(a) Combine into one total the values computed pursuant to § 1036.60(a) through (f) for all handlers who made reports pursuant to § 1036.30 and payments pursuant to § 1036.71 for the preceding month;

(b) Add the amounts subtracted and subtract the amounts added for location adjustments pursuant to § 1036.75;

(c) Add an amount equal to not less than half the unobligated balance in the producer settlement fund;

(d) Divide the resulting amount by the sum of the following:

(1) The total hundredweight of producer milk;

(2) The total hundredweight of butterfat and skim milk for which a value was computed pursuant to § 1036.60(e) and

(e) Subtract not less than 4 cents, nor more than 5 cents per hundredweight. The result shall be known as the "producer price differential."

§ 1036.62 Computation of the producer protein price.

Each month the market administrator shall compute a basic price per pound to be paid for protein in producer milk as follows:

(a) Combine into one total for all handlers who made reports pursuant to § 1036.30 and payments pursuant to § 1036.71 for the preceding month the values represented by the following:

(1) The amounts computed pursuant to § 1036.60(f), and

(2) Subtract all amounts by which payments due producers are increased as a result of adjustments in protein prices made pursuant to § 1036.73(a)(2)(ii) and the comparable step of § 1036.73(b), and add all amounts by which payments due producers are decreased as a result of adjustments in protein prices made pursuant to those steps.

(b) Divide the sum of the values computed pursuant to paragraph (a) of this section by the total pounds of protein in all producer milk for the month. The resulting figure shall be known as the "producer protein price."

§ 1036.63 Computation of estimated prices.

For each month the market administration shall:

(a) Compute an estimated uniform price by adding to the basic formula price for such month, the producer price differential and the amount by which the value computed pursuant to § 1036.62(a)(2) increased the average return per hundredweight of producer milk, and rounding the result to the nearest whole cent. The result shall be the "estimated uniform price."

(b) Announce publicly on or before the 13th day of the month:

(1) The producer price differential for the preceding month;

(2) The producer protein price for the preceding month; and

(3) The estimated uniform price computed for the preceding month pursuant to paragraph (a) of this section for milk containing 3.5 percent butterfat, and the average protein content of producer milk for the month.

§ 1036.71 Payments to the market administrator.

(a) Subject to paragraph (d) of this section, each handler operating a pool plant shall pay to the market administrator on or before the day prior to the last day of each month an amount computed by multiplying the Class III price for the preceding month (adjusted by the butterfat value computed in § 1036.50(e)(1) if the handler so requests), by the hundredweight of receipts during the first 15 days of the month of the following:

(1) * * *

(3) Milk from a cooperative association in its capacity as a handler pursuant to § 1036.9(c).

(b) Subject to paragraph (d) of this section, each handler shall pay to the market administrator on or before the 17th day after the end of the month the value of producer milk received during the month by such handler, as computed pursuant to § 1036.60(a) through (f), less:

* * *

(c) * * * Payments pursuant to this paragraph shall reflect the value of the protein in such milk pursuant to its use at the transferee plant.

* * * * *

§ 1036.72 Payments from the producer settlement funds.

On or before the 18th day after the end of each month, the market administrator shall pay each handler who is not delinquent pursuant to § 1036.73(c), the amount, if any, by which such handler's use value of milk computed pursuant to § 1036.60(a) through (f) exceeds the value computed for all producer milk received by the handler during the month pursuant to § 1036.73(a)(2)(i), (ii) and (iii).

§ 1036.73 Payments to producers and to cooperative associations.

(a) * * *

(2) On or before the 18th day after the end of the month not less than an amount arrived at by combining the sums computed pursuant to (i) through (iii) of this paragraph with respect to the producer milk received during the month from such producer, and subtracting the amounts computed pursuant to (iv) through (vii) of this paragraph.

(i) The pounds of butterfat contained in such milk multiplied by the butterfat price;

(ii) The pounds of protein contained in such milk multiplied by a price per pound computed as follows:

(A) For protein in milk from producers having monthly average somatic cell counts of less than 200,000, the sum of the cheese price pursuant to § 1036.20(b) multiplied by .15 and the producer protein price;

(B) For protein in milk from producers having monthly average somatic cell counts of more than 200,000 but less than 300,000, the sum of the cheese price pursuant to § 1036.20(b) multiplied by .10 and the producer protein price;

(C) For protein in milk from producers having monthly average somatic cell counts of more than 300,000 but less than 400,000, the sum of the cheese price pursuant to § 1036.20(b) multiplied by .05 and the producer protein price;

(D) For protein in milk from producers having monthly average somatic cell counts of more than 400,000 but less than 500,000, the producer protein price;

(E) For protein in milk from producers having monthly average somatic cell counts of more than 500,000 but less than 600,000, the sum of the cheese price pursuant to § 1036.20(b) multiplied by −.05 and the producer protein price;

(F) For protein in milk from producers having monthly average somatic cell counts of more than 600,000 but less than 700,000, the sum of the cheese price

pursuant to § 1036.20(b) multiplied by −.10 and the producer protein price;

(G) For protein in milk from producers having monthly average somatic cell counts of more than 700,000 but less than 800,000, the sum of the cheese price pursuant to § 1036.20(b) multiplied by −.15 and the producer protein price;

(H) For protein in milk from producers having monthly average somatic cell counts of more than 800,000 but less than 900,000, the sum of the cheese price pursuant to § 1036.20(b) multiplied by −.20 and the producer protein price;

(I) For protein in milk from producers having monthly average somatic cell counts of more than 900,000 but less than 1,000,000, the sum of the cheese price pursuant to § 1036.20(b) multiplied by −.25 and the producer protein price;

(J) For protein in milk from producers having monthly average somatic cell counts of more than 1,000,000, the sum of the cheese price pursuant to § 1036.20(b) multiplied by −.30 and the producer protein price;

(K) For protein in milk from producers for whom a somatic cell count is not available, the producer protein price.

(iii) The hundredweight of such milk multiplied by the producer price differential as adjusted for such milk pursuant to § 1036.75;

(iv) Payments made to the producer pursuant to paragraph (a)(1) of this section for such month;

(v) Proper deductions authorized in writing by the producer;

(vi) Deductions for advertising and promotion made pursuant to § 1036.107;

(vii) Deduction for marketing services made pursuant to § 1036.86.

(b) * * *

(2) On or before the 18th day after the end of each month:

(i) The value of the producer milk for which the cooperative association is authorized to receive payment, in an amount computed in accordance with the provisions of paragraph (a)(2) (i) through (vi) of this section, plus

(ii) The sum of the amounts received by the market administrator for the cooperative association pursuant to § 1036.71(c).

* * * * *

(d) * * *

(2) The pounds of milk for which partial and final payments are made, and the total butterfat and protein content of such milk;

* * *

* * * * *

§ 1036.75 Plant location adjustments for producer and nonpool milk.

(a) The producer price differential computed pursuant to § 1036.61 shall be adjusted according to the location of the plant at which the producer's milk was first received and rates set forth in § 1036.52, except that the resulting producer price differential shall not be less than zero.

(b) The Class I price and producer price differential applicable to other source milk shall be subject to the same adjustments as those provided in paragraph (a) of this section, except that the Class I price shall be not less than the Class III price, and the producer price differential shall not be less than zero.

§ 1036.76 Payments by handler operating a partially regulated distributing plant.

Change the phrase "weighted average price" to "estimated uniform price" at each occurrence.

Proposal No. 2

Increase the maximum allowable marketing service deduction from payments to nonmember producers under all three orders to 7 cents.

Proposed by Brewster Dairy, Inc.

Proposal No. 3

Amend the Ohio Valley, Eastern Ohio-Western Pennsylvania and Indiana Milk Marketing Orders (7 CFR parts 1033, 1036, and 1049) to provide for a level production incentive plan, as follows:

1. Deduct from the uniform price the sum of 2¢–5¢ per cwt. (as the Secretary may determine) on all producer milk during the months of February–July (or during such other period between December–August, as the Secretary may determine is appropriate) to fund fall production incentive payments to qualifying producers.

2. During the months of September, October and November distribute one-third of the fall production incentive fund to eligible producers on a uniform per hundredweight basis to the extent that the daily average production of the producer for the month exceeds 90% (or such other qualifying level or formula as the Secretary may determine is appropriate) of the producer's weighted daily average production during the previous months of April, May and June. The production level at which producers may qualify for fall incentive payments may be adjusted by the Director of the Dairy Division in order to assure that the payment is not less than $2.00 nor more than $5.00 per hundredweight.

3. Eligible producers shall be as follows:

(a) All producers whose total milk production marketed to handlers was pooled under the order, or under another order having a comparable level production incentive program, during the prior months of April, May and June.

(b) Producers previously pooled on other Federal Order markets or marketing their milk to unregulated handlers, if the producer can demonstrate to the satisfaction of the market administrator his production base for the prior months of April, May and June.

(c) New producers, which shall be assigned a spring production base equal to the average daily production per cow of pool producers for the prior months of April, May and June, as determined by the market administrator.

(d) As a further condition of eligibility, each producer claiming eligibility for fall incentive payments must certify to the market administrator that all of the cows producing milk for which incentive payments are claimed are under his or her permanent ownership and control and have not been acquired, leased, borrowed, or purchased from any other dairy farmer for a temporary period for the purpose of receiving fall incentive payments.

Proposed by National Farmers Organization

Proposal No. 4

Amend the "Producer milk" definitions of the three orders to make their diversion provisions more uniform, as follows:

§ 1033.15 Producer milk.

* * * * *

(e) * * *

(2) In any month of September through February (excluding December), the operator of a pool plant may divert the milk of any producer that is not under the control of a cooperative association that diverts milk during the month pursuant to paragraph (e)(3) of this section. The operator of such plant may divert a total quantity of milk not exceeding 50 percent of the producer milk physically received at or diverted from such pool plant during the month;

(3) In any month of September through February (excluding December), a cooperative association may divert an aggregate quantity of milk not exceeding 50 percent of the producer milk that the cooperative association caused to be physically received at or diverted from pool plants during the month; and

* * * * *

§ 1036.13 Producer milk.

In § 1036.13(f) (1)(ii) and (2)(ii), change the words "40 percent" to "50 percent".

§ 1049.13 Producer milk.

* * * * *

(b) Received at a pool plant at least one day anytime during the months of September, October and November from such producer or from a handler pursuant to § 1049.9(c) or diverted by the operator of a pool plant or by a cooperative association to a nonpool plant that is not a producer-handler plant during the month under any of the following conditions:

(1) During March through August and in December the operator of a pool plant or a cooperative association may divert the milk production of a producer from a pool plant to a nonpool plant on any number of days during the month.

(2) During September through February (excluding December) the milk of a producer diverted by the operator of a pool plant or a cooperative association to a nonpool plant shall be limited to the amount specified in paragraphs (b)(2) (i) and (ii) of this section:

(i) The operator of a pool plant may divert the milk of producers (except producers for whom a cooperative association is diverting milk under the percentage limit of paragraph (b)(2)(ii) of this section) for not more days of production of producer milk than is physically received at the diverting pool plant or he may divert an aggregate quantity not exceeding 50 percent of the milk of all such producers.

(ii) A cooperative association may divert the milk of individual producers for not more days of production of producer milk than is physically received at a pool plant or it may divert an aggregate quantity of the milk of producers not exceeding 50 percent of all such milk either caused to be delivered to pool plants or diverted to nonpool plants by the cooperative association.

Proposals To Amend the Ohio Valley Order (F.O. No. 1033) Only

Proposed by Milk Marketing, Inc.

Proposal No. 5

Amend the pool distributing plant definition by:

a. Reducing the in-area route disposition standard for distributing plants from 15 percent to 10 percent; and

b. Increasing the total route disposition standard for distributing plants from 40 percent to 50 percent in the short milk production season when higher standards apply and from 35 percent to 40 percent in the months when supplies are adequate and lower standards apply. The months to which higher standards would apply are proposed to be changed by adding the month of August and deleting the month of December, as follows:

§ 1033.12 Pool plant.

* * * * *

(a) * * *

(1) Route disposition in the marketing area during each month of not less than 10 percent of its total route disposition; and

(2) Route disposition of not less than 50 percent during each of the months of August, September, October, November, January and February and 40 percent for all other months of its total receipts of fluid milk products (including milk diverted from such plant but excluding bulk fluid milk products received by transfer or diversion from other plants as Class II or Class III milk) that are approved by a duly constituted health authority for fluid consumption, subject to the following conditions:

* * *

Proposal No. 6

Amend the pool supply plant definition by:

a. Increasing the shipping standard for supply plants from 35 percent to 50 percent, and changing the months in which shipping percentages are required to include August and eliminate December; and

b. Providing a net shipment standard for qualifying supply plants, as follows:

§ 1033.12 Pool plant.

* * * * *

(b) A supply plant from which during the month 50 percent or more of the receipts at such plant from producers (including producer milk diverted from the plant but excluding milk diverted to such plant) and from handlers described in § 1033.16(c) is delivered by transfer or diversion as fluid milk products, except filled milk, to pool distributing plants qualified pursuant to paragraph (a) of this section, subject to the following conditions:

* * *

(2) Shipments to be used in determining qualifying percentage shall be milk transferred or diverted and physically received by a distributing pool plant(s), less any transfers or diversions of bulk fluid milk products from such distributing pool plant(s) in excess of 25 percent of pooled receipts of milk from dairy farmers and handlers defined in § 1033.16(c) on weekends and 50 percent of pooled receipts of producer milk and milk from handlers defined in § 1033.16(c) on New Year's Day, Memorial Day, July 4, Labor Day, Thanksgiving and Christmas.

(3) A supply plant that does not meet the minimum delivery requirement specified in paragraph (b) of this section to qualify for pool status in the current month because a distributing plant to which the supply plant delivered its fluid milk products during such month failed to qualify as a pool plant pursuant to paragraph (a) of this section shall continue to be a pool plant for the current month if such supply plant qualified as a pool plant in the three immediately preceding months; and

(4) A supply plant that qualified as a pool plant in each of the immediately preceding months of August through February on the basis of its deliveries to pool distributing plants shall be a pool plant for each of the following months of March through July unless the plant operator files a written request with the market administrator asking that such plant not be a pool plant. Such non-pool status shall be effective on the first day of the month following the receipt of such request and thereafter until the plant again qualifies as a pool plant on the basis of its deliveries to a pool distributing plant(s).

Proposal No. 7

Eliminate minus location adjustments on diverted milk for producers located in certain areas by amending the "Producer milk" definition, as follows:

§ 1033.15 Producer milk.

* * * * *

(f) Milk diverted pursuant to paragraph (d) or (e) of this section shall be priced at the location of the plant where it is received, except that no minus location adjustment shall be applied on milk of any producers located in the State of Ohio and the Michigan counties of Hillsdale, Lenawee, Monroe, Jackson and Washtenaw if such milk is diverted from a plant located within the marketing area to a plant located outside the marketing area.

Proposed by National Farmers Organization

Proposal No. 8

Reduce from 50 percent to 35 percent the percentage of a cooperative association's producer milk which must be delivered to pool distributing plants in order to qualify a plant operated by the cooperative as a pool plant, as follows:

§ 1033.12 Pool plant.

* * * * *

(c) A plant operated by a cooperative association if, during the month, 35 percent or more of the producer milk of members of the association is delivered to a pool distributing plant(s), either directly from the farm or by transfer from such association's plant, subject to the following conditions:

* * *

(2) The 35-percent delivery requirement may be met for the current month or it may be met on the basis of deliveries during the preceding 12-month period ending with the current month:

* * * * *

Proposals To Amend the Eastern Ohio—Western Pennsylvania Order (F.O. No. 1036) Only

Proposed by Milk Marketing, Inc.

Proposal No. 9

Amend the pool supply plant definition to require net shipments to distributing plants at increased percentages, as follows:

§ 1036.7 Pool plant.

* * * * *

(b) A supply plant from which the quantity of bulk fluid milk products transferred or diverted to plants described in paragraph (a) of this section as a percentage of the Grade A milk received from dairy farmers (including milk diverted from the plant as producer milk pursuant to § 1036.13, but excluding milk received as diverted milk) and from handlers defined in § 1036.9(c) meets the following conditions:

(1) Shipments to be used in determining qualifying percentages shall be milk transferred or diverted to, and physically received at, a plant(s) described in paragraph (a) of this section, less any transfers or diversions of bulk fluid milk products from such pool distributing plant(s) in excess of 25 percent of pooled receipts of milk from dairy farmers and handlers defined in § 1036.9(c) on weekends and 50 percent of pooled receipts of producer milk and milk from handlers defined in § 1036.9(c) on New Year's Day, Memorial Day, July 4, Labor Day, Thanksgiving, and Christmas Day;

(2) In order to qualify under this section, the percentage of receipts required to be shipped to pool distributing plants shall be at least 50 percent in the months of September, October and November and 40 percent in all other months, and;

(3) A supply plant qualified under this paragraph must ship at least one tank load of Grade A fluid milk products (not less than 45,000 pounds) to a pool distributing plant during the months of September, October and November.

Proposal No. 10

Establish a limit on diversions of the milk of producers who had less than one-third of their production pooled under the Eastern Ohio-Western Pennsylvania milk order during the preceding September, October and November, as follows:

§ 1036.13 Producer milk.

* * * * *

(e) During March through August and December, subject to the conditions of paragraph (g) of this section, the operator of a pool plant or a cooperative association may divert the milk of a producer without limit, except any producer who had Grade A production in the immediately prior months of September, October and November and whose milk was not producer milk on this market for at least one-third of such total production from that farm each of those three months. The milk of any such producer may be diverted for not more days of production than was physically received at a pool plant during the month.

* * * * *

Proposal No. 11

Increase the maximum allowable rate of assessment for order administration in § 1036.85 from 3 cents to 4 cents per hundredweight.

Proposed by National Farmers Organization

Proposal No. 12

Amend one of the conditions for diversion in the "Producer milk" definition, as follows:

§ 1036.13 Producer milk.

* * * * *

(g) * * *

(1) Milk of a producer shall not be eligible for diversion unless the milk of such producer was physically received at least once as producer milk at a pool plant and the dairy farmer has not been pooled on another federal order since that time.

* * * * *

Proposed by Brewster Dairy, Inc.

Proposal No. 13

Permit supply plants to qualify for pooling, in part, on shipments to nonpool distributing plants, as follows:

§ 1036.7 Pool plant.

* * * * *

(b) A supply plant from which not less than 40 percent during the months of September, October and November and not less than 30 percent in all other months, of the total quantity of milk approved by a duly constituted health authority for fluid consumption that is physically received at such plant from dairy farmers (including milk diverted from the plant as producer milk pursuant to § 1036.13 but excluding milk received as diverted milk) and handlers defined in § 1036.9(c) is transferred or diverted to and physically received in the form of fluid milk products, except filled milk, at plants described in (1) through (4) of this paragraph, and subject to the limitation of (5) and (6) of this paragraph:

(1) Pool plants described in paragraph (a) of this section;

(2) Plants of producer-handlers;

(3) Partially regulated and unregulated distributing plants, except that credit for such shipments shall be limited to the amount of such milk which receives a Class I classification at the receiving plant;

(4) Distributing plants fully or partially regulated under other Federal orders, except credits for shipments to other order plants shall not include any such shipments considered as producer milk under the other order, nor any shipments made on the basis of agreed-upon Class II or Class III utilization;

(5) Credit for shipments to plants described in (2), (3) and (4) of this paragraph shall be limited in the aggregate to the quantity shipped to pool distributing plants during the month; and

(6) Whenever the authority provided in paragraph (f) of this section is applied to increase the shipping requirements specified in this section, only shipments described in paragraph (b)(1) of this section shall count as qualifying shipments for the purpose of meeting the increased requirements.

Proposed by United Dairy, Inc.

Proposal No. 14

Increase the required percentage of manufacturing pool plant receipts of milk that must be shipped to fluid milk plants from 40 percent to 50 percent during the months of September, October and November, and from 30 percent to 40 percent for all other months, with the qualifying shipments to be "net" shipments.

Proposals To Amend the Indiana Milk Order (F.O. 1049) Only

Proposed by Hoosier Milk Marketing Agency

Proposal No. 15

Amend the "Route disposition" definition as follows:

§ 1049.3 Route disposition.

Route disposition means a delivery (including that packaged for another person, other distributing plant(s), disposition from a plant store or from a distribution point and distribution by a vendor or vending machine) of any packaged fluid milk product classified

as Class I milk other than a delivery in bulk form to any milk or filled milk processing plant.

Proposal No. 16

Amend the "Supply plant" definition as follows:

§ 1049.6 Supply plant.

Supply plan means a plant in which some milk approved by any duly constituted health authority for fluid consumption in the marketing area is assembled and shipped in bulk as milk or skim milk and is physically unloaded and received into a distributing plant during the month.

Proposal No. 17

Amend the pool distributing plant definition to:

a. Reduce the route disposition percentage requirement during some months;

b. Include diversions to other plants and to commercial food processors in the distributing plant's receipts for the purpose of determining pool qualification, and exclude receipts of milk transferred from other pool distributing plants; and

c. Remove the ability of any distributing plant to qualify for pooling on the basis of previous pool status, as follows:

§ 1049.7 Pool plant.

* * * * *

(1) Total route disposition, exclusive of packaged fluid milk products received from other plants and filled milk, in an amount not less than 50 percent (excepting that in the months of May, June and July, 40 percent) of Grade A milk physically received and unloaded into the plant and receipts diverted to another plant and/or a commercial food establishment during the month (excluding receipts of milk diverted from another plant pursuant to § 1049.13 and/or milk transferred from other pool distributing plants, and milk of producers who are members of a cooperative association that is diverting the milk pursuant to § 1049.13).

(2) Route disposition within the marketing area during the month of at least 10 percent of such receipts, such route disposition to be exclusive of packaged fluid milk products received from other plants and filled milk.

Proposal No. 18

Change the performance standards for pool supply plants to:

a. Reduce the required shipping percentage from 50 percent to 35 percent for the months of March through July and December, and require shipments on a net basis;

b. Allow the market administrator to temporarily increase or reduce the supply plant shipping percentages;

c. Add August, March and April to the months during which shipping percentages must be met, shortening the present "free ride" period to the months of May through July; and

d. Allow shipments of condensed skim milk to be included as qualifying shipments, as follows:

§ 1049.7 Pool plant.

* * * * *

(b) A supply plant from which fluid milk products are transferred to pool distributing plants. Such transfers must equal not less than 50 percent in the months of August through November, January and February, and 35 percent in the remaining months, of the total quantity of Grade A milk that is received during the month from dairy farmers (including producer milk diverted from the plant pursuant to § 1049.13 but excluding milk diverted to such plant) and handlers described in § 1049.9(c).

(1) A plant qualified pursuant to this paragraph in each of the immediately preceding months of August through April shall remain so qualified for the months of May through July unless written application is filed with the market administrator on or before the first day of any such month to designate such plant as a nonpool plant for such month and for each subsequent month through July during which it would otherwise not qualify under this paragraph.

(2) The quantity of condensed skim milk and fluid milk products moved from supply plants to each pool plant described in paragraph (a) or (c) of this section that shall count towards meeting the shipping requirements of this paragraph shall be a net quantity assignable at each such pool plant pro-rata to supply plants in accordance with total receipts from such plants. The net quantity shall be computed by subtracting from the quantity of fluid milk products and condensed skim milk received from supply plants the following:

(i) The quantity of condensed skim milk not disposed of in a fluid milk product and the quantity of fluid milk products in the form of bulk milk and skim milk moved from the pool distributing plant to pool supply plants plus any such bulk shipments to nonpool plants as Class II or Class III milk other than:

(A) Transfers classified pursuant to § 1049.40(b)(3); and

(B) Transfers or diversions on New Year's Day, Memorial Day, July 4, Labor Day, Thanksgiving, Christmas, and on any Saturday if no milk is received at the pool distributing plant from a supply plant, in an amount not in excess of 120 percent of the average daily receipts of producer milk pursuant to § 1049.13(a) at the plant during the prior month, less the quantity of producer milk diverted by the distributing plant pursuant to § 1049.13(b) on such day. If no producer milk was received in the distributing plant during the prior month, the average daily receipts during the current month shall be used for this purpose; and

(ii) If milk is diverted by the pool distributing plant on the date of the receipts from the supply plant, the quantity so diverted, except any diversion of milk (not to exceed 3 days' production of any individual producer) made because of any emergency situation such as a breakdown of trucking equipment or hazardous road conditions if such emergency is reported to the market administrator.

(3) The pool plant performance standards in paragraph (b) of this section may be temporarily reduced or increased by five percentage points by the market administrator for a period of not more than three consecutive months if that person finds such revision is necessary to assure orderly marketing and efficient handling of milk in the marketing area. Before making such a finding, the market administrator shall investigate the need for revision either at the market administrator's own initiative or at the request of interested persons. If the investigation shows that a revision might be appropriate, the market administrator shall issue a notice stating that the revision is being considered and invite data, views, and arguments.

Proposal No. 19

Add a new paragraph to the "Pool plant" definition that would allow pool distributing and pool supply plants that do not meet pooling requirements for reasons beyond their handlers' control to retain their status as pool plants, as follows:

§ 1049.7 Pool plant.

* * * * *

(c) Any plant that qualifies as a pool plant in each of the immediately preceding three months pursuant to paragraph (a) of this section or the shipping percentages in paragraph (b) of this section that is unable to meet such performance standards for the current month because of unavoidable

circumstances determined by the market administrator to be beyond the control of the handler operating the plant, such as a natural disaster (ice storm, wind storm, flood) fire, breakdown of equipment, or work stoppage, shall be considered to have met the minimum performance standards during the period of such unavoidable circumstances, but such relief shall not be granted for more than two consecutive months.

(d) The present language, unchanged, of § 1049.7(c) would become § 1049.7(d).

Proposal No. 20

Amend the "Producer" definition to exclude dairy farmers who have been paid under another order's Louisville plan during the "payback" months of the previous year by adding paragraph (b)(4), as follows: § 1049.12 Producer.

* * * * *

(b) * * *

(4) A dairy farmer with respect to milk produced by him that is received at a handler's pool plant during the months of January through July if more than five days of milk production per month from the same farm operated by such dairy farmer was pooled as producer milk in any "full incentive" month during the preceding year under another order.

Proposal No. 21

Amend the "Producer milk" definition by:

a. Allowing producer milk to be diverted to commercial food processors as well as to nonpool plants;

b. Allowing milk to be diverted to nonpool plants and commercial food processors before being received at a pool plant for the month;

c. Eliminating the months of April and August from the period during which unlimited diversions of a producer's milk are allowed; and

d. Designating the pool plant at which diverted producer milk shall be deemed to be received, as follows:

§ 1049.13 Producer milk.

"Producer milk" means all skim milk and butterfat contained in milk of any producer which is:

(a) Received during the month at one or more pool plants or by a handler pursuant to § 1049.9(c) (milk may be diverted during the month by a handler from a pool distributing plant to another pool plant(s) for not more days of production of producer milk than is physically received at the diverting pool plant. Any remaining milk received at another pool plant will be producer receipts at the receiving plant).

(b) Received at a pool plant at least one day any time during the month from such producer or from a handler Pursuant to § 1049.9(c) and diverted by the operator of a pool plant or by a cooperative association to a nonpool plant and/or a commercial food establishment that is not a producer-handler plant during the month under any of the following conditions:

(1) During May through July the operator of a pool plant or a cooperative association may divert the milk production of a producer from a pool plant to a nonpool plant and/or a commercial food establishment on any number of days during the month.

(2) During August through April the milk of a producer diverted by the operator of a pool plant or a cooperative association to a nonpool plant and/or a commercial food establishment shall be limited to the amounts specified in paragraphs (b)(2) (i) and (ii) of this section:

(i) The operator of a pool plant may divert the milk of producers (except producers for whom a cooperative association is diverting milk under the percentage limit of paragraph (b)(2)(ii) of this section) for not more days of production of producer milk than is physically received at the diverting pool plant, or the pool plant operator may divert an aggregate quantity not exceeding 40 percent of the milk of all such producers.

(ii) A cooperative association may divert the milk of individual producers for not more days of production of producer milk than is physically received at a pool plant or it may divert an aggregate quantity of the milk of producers not exceeding 40 percent of all such milk either caused to be delivered to pool plants or diverted to nonpool plants and/or a commercial food establishment by the cooperative association.

(3) When milk is diverted in excess of the limit by a handler who elects to divert on the basis of days-of-production, only that milk of the individual producer which was received at a pool plant or which was diverted to a nonpool plant and/or a commercial food establishment for not more days of production than is physically received at a pool plant shall be considered producer milk.

(4) When milk is diverted in excess of the percentage limit by a handler who elects to divert on a percentage basis, eligibility as producer milk shall be forfeited on a quantity of milk equal to such excess. In such instances the diverting handler shall specify the dairy farmers whose milk is ineligible as producer milk. If the handler fails to designate such dairy farmers whose milk is ineligible, producer milk status shall be forfeited with respect to all milk diverted to nonpool plants and/or a commercial food establishment by such handler.

(c) Diverted milk shall be deemed to be received by the handler at the pool plant or nonpool plant and/or a commercial food establishment to which the milk is diverted, unless diverted to a plant located in any part of the marketing area or to a plant at which no location adjustment would apply pursuant to § 1049.52, in which case such diverted milk shall be deemed to be received at the last pool plant from which diverted. (Except in the case of a dairy farmer who was not pooled in the prior month, in which case such diverted milk shall be deemed to be received at the first pool plant where milk is physically received and unloaded).

Proposal No. 22

Amend the "Other source milk" definition to conform with Proposal No. 20 by adding a paragraph:

§ 1049.14 Other source milk.

* * * * *

(e) Receipts of milk from a dairy farmer described in § 1049.12(b)(4).

Proposal No. 23

Eliminate the requirement that handlers notify the market administrator in advance of their intent to divert milk by amending § 1049.32 as follows:

§ 1049.32 Other reports.

In addition to the reports required pursuant to §§ 1049.30 and 1049.31, each handler shall report such other information as the market administrator deems necessary to verify or establish such handler's obligation under the order.

Proposal No. 24

Add a new paragraph (a)(7)(vii) to § 1049.44 to conform with Proposal No. 20, as follows:

§ 1049.44 Classification of producer milk.

* * * * *

(a) * * *

(7) * * *

(vii) Receipts of fluid milk products from persons described in § 1049.12(b)(4).

* * * * *

Proposal No. 25

Remove the State of Ohio and locations south of the marketing area from the zero location adjustment zone and determine location adjustments at such locations on the basis of mileage from their distance to the basing points

in Indianapolis, Fort Wayne, South Bend or Valparaiso, Indiana, as follows:

§ 1049.52 Plant location adjustments for handlers.

* * * * *

	Rate of adj. per cwt (cents)
(1) At any plant located within:	
(i) Any Indiana county not specifically named in paragraph (a)(1)(ii) through (a)(1)(iv) of this section	0

* * * * *

Proposal No. 26

Amend § 1049.60 to make milk pooled by a handler pursuant to § 1049.9(c) part of the cooperative association's pool obligation rather than the receiving handler's, as follows:

§ 1049.60 Handler's value of milk for computing uniform price.

For the purpose of computing the uniform price, the market administrator shall determine for each month the value of milk for each pool plant of each handler and for each handler pursuant to § 1049.9(b) and (c) as follows:

(a) Multiply by the applicable class prices the pounds of producer milk in each class as determined pursuant to § 1049.44 and add the resulting amounts;

* * * * *

Proposed by National Farmers Organization

Proposal No. 27

Amend the pool distributing plant definition by reducing the percentage of Grade A milk receipts that must be distributed as route disposition from 50 percent to 35 percent, and excluding receipts by diversion from an other order plant from those receipts which are used in the qualifying calculation, as follows:

§ 1049.7 Pool plant.

* * * * *

(a) * * *

(1) Total route disposition, exclusive of packaged fluid milk products received from other plants and filled milk, in an amount not less than 35 percent of Grade A milk received at such plant (excluding receipts of milk diverted from another plant pursuant to § 1049.13 or an other order plant pursuant to the terms of such order) during the month from dairy farmers, supply plants, and handlers pursuant to § 1049.9(c), except that a plant meeting such percentage requirement for the preceding month may remain qualified under this paragraph in the current month; * * *

* * * * *

Proposal No. 28

Establish a definition for a pool plant operated by a cooperative association, as follows:

§ 1049.7 Pool plant.

* * * * *

(c) A plant operated by a cooperative association if, during the month, 35 percent or more of the producer milk of members of the association is delivered to a pool distributing plant(s) either directly from the farm or by transfer from such association's plant, subject to the following conditions:

(1) The cooperative requests pool status for such plant;

(2) The 35 percent delivery requirement may be met for the current month or it may be met on the basis of deliveries during the preceding 12-month period ending with the current month;

(3) The plant is approved by a duly constituted health authority to handle milk for fluid consumption; and

(4) The plant does not qualify as a pool plant under paragraph (a) or (b) of this section or under the similar provisions of another federal order applicable to a distributing plant or a supply plant.

(d) The present language, unchanged, of present § 1049.7(c) would become § 1049.7(d).

Proposal No. 29

Amend Order 1049 to assure that all payments required to be paid to producers, the producer settlement fund, or cooperatives under the terms of the Indiana order shall not be considered paid unless the funds are physically received (check in hand or wire transfer made) by the payee not later than the day specified in the order. A late payment charge of one percent (1%) per month shall be immediately applied to any late payment.

Proposed by Allen Dairy

Proposal No. 30

Reduce the price differences between Zone 1 and the higher-numbered zones by amending § 1049.52, as follows:

§ 1049.52 Plant location adjustments for handlers.

* * * * *

	Rate of adj. per cwt (cents)
(1) At any plant located within:	
(i) The State of Ohio or any Indiana county not specifically named in paragraph (a)(1)(ii) through (a)(1)(iv) of this section or at any location south of the marketing area as specified in § 1049.2	0
(ii) Any of the Indiana counties of: Adams, Allen, Benton, Blackford, Carroll, Cass, Fulton, Huntington, Jay, Miami, Wabash, Wells, and White	10
(iii) Any of the Indiana counties of: DeKalb, Elkhart, Jasper, Kosciusko, Lagrange La Porte, Marshall, Newton, Noble, Pulaski, Starke Steuben, St. Joseph, and Whitley and any of the Michigan counties of Berrien, Branch, Cass, and St. Joseph	20
(iv) Any of the Indiana counties of: Lake and Porter	30

* * * * *

Proposed by New Paris Creamery Company

Proposal No. 31

Change the classification of skim milk and butterfat used to produce formulas especially prepared for infant feeding and dietary use from Class II to Class III for the purpose of uniformity with surrounding milk marketing areas.

Proposed by the Milk Foundation of Indiana

Proposal No. 32

Amend the pool distributing plant definition to reduce the percent of Grade A receipts that must be disposed of on routes by a pool distributing plant from 50 percent to 40 percent, as follows:

§ 1049.7 Pool plant.

* * * * *

(a) * * *

(1) Total route disposition, exclusive of packaged fluid milk products received from other plants and filled milk, in an amount not less than 40 percent in the months of September through February and 35 percent in the months of March through August of Grade A milk received at such plant (excluding receipts of milk diverted from another plant pursuant to § 1049.13) during the month from dairy farmers, supply plants, and handlers pursuant to § 1049.9(c), except that a plant meeting such percentage requirement for the preceding month may remain qualified

under this paragraph in the current month; and * * *

Proposal No. 33

Allow diversions, as well as transfers, from supply plants in determining whether a supply plant has met the pool shipping requirements to distributing plants, as follows:

§ 1049.7 Pool plant.

* * * * *

(b) A supply plant from which not less than 50 percent of the Grade A milk received from dairy farmers and handlers pursuant to § 1049.9(c) at such plant or diverted from such plant to a distributing pool plant during the month is shipped or diverted to plants qualifying for the month pursuant to paragraph (a) of this section. * * *

* * * * *

Proposal No. 34

Amend the "Producer milk" definition to allow unlimited diversions of producer milk from supply plants to distributing plants, as follows:

§ 1049.13 Producer milk.

* * * * *

(a) Received during the month at one or more pool plants or by a handler pursuant to § 1049.9(c) (milk may be diverted during the month by a handler from a pool distributing plant to another pool plant(s) for not more days of production of producer milk than is physically received at the diverting pool plant and may be diverted without limit from a supply plant to a distributing plant).

* * * * *

Proposal No. 35

Price all diverted milk at the location of the plant to which the milk is diverted, as follows:

§ 1049.13 Producer milk.

* * * * *

(c) Diverted milk shall be deemed to be received by the handler at the pool plant or nonpool plant to which the milk is diverted.

Proposal No. 36

Reduce the Class I price differential from $2.00 to $1.82, as follows:

§ 1049.50 Class prices.

* * * * *

(a) *Class I price.* The Class I price shall be the basic formula price for the second preceding month plus $1.82.

* * * * *

Proposal No. 37

Reduce the location adjustment rate in each pricing zone by § .10, as follows:

§ 1049.52 Plant location adjustments for handlers.

* * * * *

	Rate of adj. per cwt (cents)
(1) At any plant located within:	
(i) The State of Ohio or any Indiana county not specifically named in paragraph (a)(1)(ii) through (a)(1)(iv) of this section or at any location south of the marketing area as specified in § 1049.2	0
(ii) Any of the Indiana counties of: Adams, Allen, Benton, Blackford, Carroll, Cass, Fulton, Huntington, Jay, Miami, Wabash, Wells, and White	10
(iii) Any of the Indiana counties of: DeKalb, Elkhart, Jasper, Kosciusko, Lagrange La Porte, Marshall, Newton, Noble, Pulaski, Starke Steuben, St. Joseph, and Whitley and any of the Michigan counties of Berrien, Branch, Cass, and St. Joseph	20
(iv) Any of the Indiana counties of: Lake and Porter	30

* * * * *

Proposed by the Dairy Division, Agricultural Marketing Service

Proposal No. 38

Make such changes as may be necessary to make the entire marketing agreement and the order conform with any amendments thereto that may result from this hearing.

Copies of this notice of hearing and the order may be procured from the Market Administrators, C. Mack Endsley, P.O. Box 29226, Columbus, Ohio 43229; or Myron R. McKinley, Building A, suite 200, 800 Roosevelt Road, Glen Ellyn, Illinois 60137; or the Hearing Clerk, room 1081, South Building, United States Department of Agriculture, Washington, DC 20250 or may be there inspected.

Copies of the transcript of testimony taken at the hearing will not be available for distribution through the Hearing Clerk's Office. If you wish to purchase a copy, arrangements may be made with the reporter at the hearing.

From the time that a hearing notice is issued and until the issuance of a final decision in a proceeding, Department employees involved in the decisional Process are prohibited from discussing the merits of the hearing issues on an ex parte basis with any person having an interest in the proceeding. For this particular proceeding, the prohibition applies to employees in the following organizational units:

Office of the Secretary of Agriculture
Office of the Administrator, Agricultural Marketing Service
Office of the General Counsel
Dairy Division, Agricultural Marketing Service (Washington office only) Offices of the Market Administrators, Ohio Valley, Eastern Ohio-Western Pennsylvania and Indiana Marketing Areas

Procedural matters are not subject to the above prohibition and may be discussed at any time.

Signed at Washington, DC, on July 25, 1990.

Daniel Haley,

Administrator.

[FR Doc. 90-17726 Filed 07-30-90; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 90-ASO-14]

Proposed Revision of Control Zone, Charlotte, NC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to revise the Charlotte, NC, control zone. A new standard instrument approach procedure (SIAP) has been developed to serve Runway 23 based on the Charlotte VHF Omnidirectional Range/Distance Measuring Equipment (VOR/DME). Additional controlled airspace is required for protection of instrument flight rules (IFR) aircraft executing this SIAP. Ordinarily, an arrival area extension would be added to the existing control zone. However, there are existing extensions north, northeast, and southwest of the control zone. Rather than add another arrival area extension, this action proposes to encompass the numerous extensions by enlarging the basic control zone from within a 5-mile radius to within a 7-mile radius of the Charlotte/Douglas International Airport. This would provide the necessary controlled airspace for protection of all existing and proposed IFR aeronautical operations. Additionally, a minor correction would be made in the latitude/longtitude coordinates of the airport.

DATES: Comments must be received on or before: September 14, 1990.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, ASO–530, Manager, System Management Branch, Docket No. 90–ASO–14, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Assistant Chief Counsel for Southern Region, room 652, 3400 Norman Berry Drive, East Point, Georgia, 30344, telephone: (404) 736–7646.

FOR FURTHER INFORMATION CONTACT: James G. Walters, Airspace Section, System Management Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320: telephone: (404) 736–7646.

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. 90–ASO–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 Office of the Assistant Chief Counsel for Southern Region, room 652, 3400 Norman Berry Drive, East Point, Georgia 30344, 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, Manager, System Management Branch (ASO–530), Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.171 of part 71 of the Federal Aviation Regulations (14 CFR part 71) to revise the Charlotte, NC, control zone. This action would increase the radius of the control zone from within 5 to within 7 miles of the Charlotte/Douglas International Airport. This proposed increase in the size of the control zone would eliminate the need for an additional arrival area extension and would encompass the existing extensions. Additionally, a minor correction would be made to the latitude/longitude coordinates of the Charlotte/Douglas International Airport.

Section 71.171 of part 71 of the Federal Aviation Regulations was republished in FAA Order 7400.6F dated January 2, 1990.

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, Control zones.

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 Public Law 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.171 [AMENDED]

2. Section 71.171 is amended as follows:

Charlotte, NC [Revised]

Within a 7-mile radius of Charlotte/Douglas International Airport (lat 35°12'52" N., long. 80°56'37"' W.)

Issued in East Point, Georgia, on July 17, 1990.

Don Cass,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 90–17796 Filed 7–30–90; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Parts 71 and 73

[Airspace Docket No. 90–AWP–2]

Proposed Establishment of Restricted Areas R–2535A and R–2535B San Nicolas Island, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish Restricted Areas R–2535A and R–2535B San Nicolas Island, CA. Currently, Warning Area W–289 overlies San Nicolas Island. However, because the area within 12 miles of San Nicolas Island is within U.S. domestic airspace, a restricted area is the appropriate airspace designation. Also, the Continental Control Area would be amended to include both areas.

DATES: Comments must be received on or before September 14, 1990.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Air Traffic Division, AWP–500, Docket No. 90–AWP–2, Federal Aviation Administration, P.O. Box 92007, Worldway Postal Center, Los Angeles, CA 90009.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5 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: Linda Ullom, Military Operations Program Office (ATM–420), Office of Air Traffic System Management, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267–7683.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposals. Comments are specifically invited on the overall regulatory, aeronautical, economic and energy aspects of the proposals. Send comments on environmental and land use aspects to: Mr. Ronald J. Dow, Code 6230–2, NAS Point Mugu, CA 93042, Phone: (805) 989–7412. 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. 90–AWP–2." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

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 Proposals

The FAA is considering amendments to parts 71 and 73 of the Federal Aviation Regulations (14 CFR parts 71 and 73) to establish Restricted Areas R–2535A and R–2535B San Nicolas Island, CA. Currently, Warning Area W–289 overlies San Nicolas Island. However, because the area within 12 miles of San Nicolas Island is within U.S. domestic airspace, a restricted area is the appropriate airspace designation. San Nicolas Island is owned by the U.S. Government and the U.S. Navy controls the land thereon. Activities to be conducted in the restricted areas include simulated weapons deliveries, bombing profiles, ground based missile intercept missions, special meteorological sampling rocket launches, and ground and airborne based laser weapons tests. The Continental Control Area would be amended to include both restricted areas. In addition, W–289 would be amended to exclude that airspace which would coincide with R–2535A and R–2535B. Sections 71.151 and 73.25 of parts 71 and 73 of the Federal Aviation Regulations were republished in Handbook 7400.6F dated January 2, 1990.

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

List of Subjects in 14 CFR Parts 71 and 73

Aviation safety, Restricted areas, Continental control area.

The Proposed Amendments

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

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; EO 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.151 [Amended]

2. § 71.151 is amended as follows:

R–2535A San Nicolas Island, CA [New]

R–2535B San Nicolas Island, CA [New]

PART 73—SPECIAL USE AIRSPACE

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

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

§ 73.25 [Amended]

4. § 73.25 is amended as follows:

R–2535A San Nicolas Island, CA [New]

Boundaries. Beginning at lat. 33°20'10" N., long. 119°31'10"W.; to lat. 33°18'18" N., long. 119°26'29"W.; to lat. 33°10'10" N., long. 119°31'10"W.; to lat. 33°12'00" N., long. 119°35'30"W.; to lat. 33°14'20" N., long. 119°37'40"W.; to lat. 33°16'40" N., long. 119°38'10"W.; to lat. 33°19'10" N., long. 119°37'10"W.; to the point of beginning.

Designated altitudes. Surface to 100,000 feet MSL.

Time of designation. 0600–2200 local time Monday–Friday; other times by NOTAM at least 24 hours in advance.

Controlling agency, FAA, Los Angeles ARTCC

Using agency. U.S. Navy, Commander, Pacific Missile Test Center, Point Mugu, CA

R–2535B San Nicolas Island, CA [New]

Boundaries. Beginning at lat. 33°18'18" N., long. 119°26'29"W.; to lat. 33°17'40" N., long. 119°24'50"W.; to lat. 33°13'50" N., long. 119°21'50"W.; to lat. 33°10'10" N., long. 119°24'20"W.; to lat. 33°10'10" N., long. 119°29'40"W.; to lat. 33°10'10" N., long. 119°31'10"W.; to the point of beginning.

Designated altitudes. Surface to 100,000 feet MSL.

Time of designation. 0600–2200 local time Monday–Friday; other times by NOTAM at least 24 hours in advance.

Controlling agency, FAA, Los Angeles ARTCC

Using agency. U.S. Navy, Commander, Pacific Missile Test Center, Point Mugu, CA.

Issued in Washington, DC, on July 23, 1990.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 90-17797 Filed 7-30-90; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 75

[Airspace Docket No. 90-AGL-9]

Proposed Alteration of Jet Route J-213 and Establishment of Jet Route J-526

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice or proposed rulemaking.

SUMMARY: This notice proposes to amend the description of J-213 by deleting that portion of J-213 between the Louisville, KY, VORTAC and the Beckley, WV, VORTAC, and establish J-526 between the Louisville, KY, VORTAC and the Beckley, WV, VORTAC. This action would eliminate computer processing problems and air traffic control ambiguity associated with flight plans which contain the route J-213/J-8 or J-8/J-213

DATES: Comments must be received on or before September 14, 1990.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Air Traffic Division, AGL-500, Docket No. 90-AGL-9, Federal Aviation Administrtion, 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 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 and Obstruction Evaluation Branch (ATP-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures 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. Commissions 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. 90-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 examinatin in the Rules Docket hoth 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 75 of the Federal Aviation Regulations (14 CFR part 75) to renumber a segment of J-213 between the Louisville, KY, VORTAC and the Beckley, WV, VORTAC. That section of J-213 between Louisville, KY, and Beckley, WV, would be deleted and then reestablished and numbered as J-526. The problem is that J-8 and J-213 merge at two points, Finks intersection and the Louisville VORTAC. When air traffic controllers at Indianapolis, IN, Air Route Traffic Control Center encounter flight plans which contain the route J-8/J-213 or J-213/J-8, they are unable to ascertain as to which point an aircraft on the flight plan will join with J-213 or J-8. Also, flight plans containing J-8/J-213 or J-213/J-8 are difficult to process in the air traffic computer processing system because the airways intersect at two points. This proposed action would eliminate the problem of the airways intersecting at two points and the problems associated with it. Section 75.100 of part 75 of the Federal Aviation Regulations was republished in Handbook 7400.6F dated January 2, 1990.

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 75

Aviation safety, Jet routes.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend part 75 of the Federal Aviation Regulations (14 CFR part 75) as follows:

PART 75—ESTABLISHMENT OF JET ROUTES AND AREA HIGH ROUTES

1. The authority citation for part 75 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.

§ 75.100 [Amended]

2. § 75.100 is amended as follows:

J-213 [Revised]

From Armel, Va; via INT Armel 251°T(259°M) and Beckley, WV, 066°T(072°M) radials; to Beckley.

J-526 [New]

From Beckley, WV; via INT Beckley 264°T(270°M) and Louisville, KY, 101°T(100°M) radials; to Louisville.

Issued in Washington, DC, on July 20, 1990.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 90-17798 Filed 7-30-90; 8:45 am]

BILLING CODE 4910-13-M

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Parts 1500 and 1507

Reloadable Tube Aerial Shell Fireworks Devices; Request for Comments and Information

AGENCY: Consumer Product Safety Commission.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: Based on information currently available, the Commission has reason to believe that an unreasonable risk of injury may be associated with reloadable tube aerial shell fireworks devices with shells larger than 1.75 inches in diameter. This notice also addresses smaller shells with explosive power exceeding that of a 1.75 inch shell. Requirements currently enforced by the Commission may not adequately address the risk of serious injury posed by these fireworks devices.

This advance notice of proposed rulemaking ("ANPR") initiates a rulemaking proceeding under the authority of the Federal Hazardous Substances Act. The ANPR addresses only the narrow issue of how to reduce the risk of injury associated with reloadable tube aerial shell devices. One outcome of the proceeding could be the amendment of existing requirements for fireworks devices to ban reloadable tube aerial shell fireworks devices with shells more than 1.75 inches in diameter or smaller shells with equivalent explosive power. Alternatively, the Commission is also considering the possibility of amending the fireworks regulations to reduce the risk of injury by (1) Requiring additional labeling on these particular devices, or (2) setting design or performance criteria for these devices (by banning devices not in compliance). A final alternative is for the Commission to refrain from issuing any mandatory requirement, and encourage the development of a voluntary standard.

The Commission solicits written comments from interested persons concerning the risks of injury and the regulatory alternatives discussed in this notice, as well as other possible methods to reduce or eliminate these risks.

DATES: Written comments and submissions in response to this notice must be received by the Commission no later than August 30, 1990.

ADDRESSES: Comments should be mailed, preferably in five (5) copies, to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207, or delivered to the Office of the Secretary, Consumer Product Safety Commission, Room 528, 5401 Westbard Avenue, Bethesda, Maryland; telephone (301) 492-6800.

FOR FURTHER INFORMATION CONTACT: John Rogers, Directorate for Compliance and Administrative Litigation, Consumer Product Safety Commission, Washington, DC 20207: telephone (301) 492-6400.

SUPPLEMENTARY INFORMATION:

A. Background

Reloadable tube aerial shell fireworks devices (also referred to in this notice as "reloadable shell devices" are Department of Transportation ("DOT") Class C common fireworks devices. Typically, these devices consist of a cardboard tube approximately 11 inches tall and separate shells that are placed inside of the tube. Four nominal sizes of shells are available for consumer use: 1.5, 1.75, 2, and 2.25 inches in diameter. Although soliciting information concerning all sizes of reloadable shells, this ANPR considers additional regulation of only those reloadable tube aerial shell fireworks devices with shells greater than 1.75 inches in diameter or smaller shells with explosive power that exceeds that of a shell 1.75 inches in diameter. With all of these devices, regardless of shell size, a long fuse is attached to the shell and when the shell is placed inside of the launcher tube, the fuse extends slightly above the top of the tube. After the user has placed the shell within the tube he or she must stand very close to, or directly over, the device to light the fuse. Upon ignition, the shell is projected approximately 100 to 150 feet in the air and bursts with another powder charge, releasing a colorful starburst. These devices have become increasingly popular in the past three to four years.

Fireworks devices are regulated under the Federal Hazardous Substances Act ("FHSA"), 15 U.S.C. 1261 *et seq.* Under current regulations the Commission has declared certain specified fireworks devices to be "banned hazardous substances." 16 CFR 1500.17(a) (3), (8), and (9). Additional regulations prescribe the requirements that fireworks devices not specifically listed as banned must meet to avoid being classified as banned hazardous substances. 16 CFR part 1507. These regulations specify certain prohibited chemicals which fireworks devices must not contain, as well as prescribing design and performance characteristics for the fuses, bases, pyrotechnic chambers, handles, and spikes of fireworks devices. 16 CFR 1507.1–1507.7. The regulations at part 1507 also designate requirements for specific fireworks devices. 16 CFR 1507.8–1507.11. Finally, additional Commission regulations prescribe specific warnings required on various legal fireworks devices, 16 CFR 1500.14(b)(7), and designate the location of theses warnings. 16 CFR 1500.121. Regulations developing out of this ANPR could amend existing fireworks regulations to address risks posed by reloadable tube aerial shell fireworks devices with shells larger than 1.75 inches in diameter and smaller shells with equivalent explosive power.

Under the Commission's existing regulations, reloadable tube aerial shell fireworks devices are not banned hazardous substances. The Commission staff has information indicating that devices with shells greater than 1.75 inches may pose an unreasonable risk of injury. Devices like the reloadable shell devices were not widely distributed when the Commission developed its current fireworks regulations. Thus, the existing regulations do not specifically address hazards posed by these devices. No other changes to the existing fireworks regulations are within the scope of this ANPR.

The Commission's most recent study of fireworks-related injuries, completed in December of 1989, found that these devices were the only Class C fireworks which caused injuries requiring hospitalization. (*See* Reference No. 4.) Information from an insurance carrier showed that many of the injuries have been to the facial area, particularly to eyes. Injuries have resulted in serious burns and impairment of sight.

In February of 1990 the Commission staff sent a letter to all known fireworks importers expressing the staff's concern about the increasing number of injuries associated with reloadable tube aerial shell fireworks devices. The letter requested importers to provide the staff with data regarding known injuries from these products and statistics relating the number of products distributed within the past three years. The Commission received responses from 81 importers, the industry trade association (American Pyrotechnics Association), and the insurance carrier for most fireworks importers.

Information received in response to this request, in addition to information

already in the Commission's files, indicates that since 1985, twenty serious injuries have occurred from the reloadable shell devices with shells above 1.75 inches (1 incident involving a shell of unknown size and 1 incident involving a 1.75 inch shell were also reported). (*See* Reference Nos. 1 and 5.) These injuries are discussed in greater detail in the section of this notice titled "Risk of Injury." Information received in response to the Commission's letter also indicated that approximately 5.3 million such devices have been imported since 1987. Only 1 serious injury was reported from a 1.75 inch or smaller shell since 1985 (42.2 million of these smaller shell devices have been imported since 1987).

B. Statutory Authority

This proceeding is conducted under provisions of the FHSA, 15 U.S.C. 1261 *et seq.* Section 2(f)(1)(A) of the FHSA defines the term "hazardous substance" to include "[a]ny substance or mixture of substances which * * * (v) is flammable or combustible * * * if such substance or mixture of substances may cause substantial personal injury or substantial illness during or as a proximate result of any customary or reasonably foreseeable handling or use * * *." 15 U.S.C. 1261(f)(1)(A).

Section 2(q)(1)(B) of the FHSA provides that a "banned hazardous substance" is any hazardous substance intended for household use which the Commission by regulation classifies as a banned hazardous substance on the basis that, notwithstanding the precautionary labeling required by the FHSA, the substance presents such a hazard that keeping the substance out of interstate commerce is the only adequate means of protecting the public. 15 U.S.C. 1261(q)(1)(B). A proceeding to promulgate a regulation classifying a substance as a banned hazardous substance under section 2(q)(1) of the FHSA is governed by the requirements set forth in section 3(f) of the FHSA, and by the provisions of section 701(e) of the Federal Food, Drug and Cosmetics Act ("FDCA") (21 U.S.C. 371(e)) made applicable by section 2(q)(2) of the FHSA (15 U.S.C. 1261(q)(2)).

The first step in a proceeding to declare a substance a banned hazardous substance under section 2(q)(1) of the FHSA is to issue an advance notice of proposed rulemaking ("ANPR") as provided in section 3(f). 15 U.S.C. 1262(f). The Commission must consider any comments submitted in response to the ANPR including any voluntary standards submitted in response to its invitation. If the Commission decides to continue the rulemaking proceeding the Commission must publish the text of the proposed rule along with a preliminary regulatory analysis that includes a preliminary description of potential costs and benefits of the proposal and reasonable alternatives to the proposed regulation. 15 U.S.C. 1262(h). If the Commission determines to issue a final rule it must publish the text of the final rule and a final regulatory analysis that includes a description of potential costs and benefits, a description of alternatives considered, and a summary of significant issues raised by comments submitted in response to the proposal. 15 U.S.C. 1262(i)(1). In order to issue the final regulation the Commission must make findings concerning voluntary standards, the relationship of the costs and benefits of the rule and the burden imposed by the regulation. 15 U.S.C. 1262(i)(2).

If the Commission decides to finalize the rule, procedures established under section 701(e) of the FDCA would govern. 15 U.S.C. 1261(q)(2). These procedures provide that once the Commission issues a final rule (called a final order), interested persons have a period of 30 days in which to file objections stating reasonable grounds therefor, and to request a public hearing on those objections. If no objections are filed, the order becomes effective on the last day for objections. The filing of objections stays the implementation of those provisions to which objections are directed. After the hearing, the presiding officer would issue an order, based upon substantial evidence. 21 U.S.C. 371(e).

C. The Product

Reloadable tube aerial shell devices consist of an assembled cardboard launcher tube and base unit typically measuring just under one foot in height, packaged together with a number of individually fused shells. The device is designed to fire shells that produce various visual and audible effects, from the re-usable tube into the air. These devices are characterized by their reloadability; the fact that the explosive shells are separate from the launcher tube and must be placed within the tube. Approximately 7 different models with four sizes of shells are believed to be available in the market for consumer use: shells which are 1.5, 1.75, 2, and 2.25 inches in diameter. The models with 1.5 and 1.75 inch shells typically include twelve shells, while models with the larger size shells typically include six shells. Retail prices for either type of kit range from approximately $10 to $20. All known models of the devices are imported from China. (See Reference No. 2.)

This notice considers regulation of only those reloadable shell devices with shells that are larger than 1.75 inches in size, or smaller shells that have explosive power exceeding that of shells 1.75 inches in size. Explosive power for reloadable shells is defined as (a) the amount of explosive force generated by the lift charge which propels the shell into the air, (b) the amount of explosive force generated by the burst charge which breaks the shell and scatters the effects (stars, reports, whistles, etc.), and (c) the amount of explosive force generated by the functioning of the effects (stars, reports, whistles, etc.). All three aspects must be considered in determining the explosive power of a reloadable shell. The Commission seeks comments on this definition of explosive power, and on the technical aspects of determining the explosive power equivalent to a 1.75 inch reloadable shell. Because the Commission is concerned that smaller shells could be developed that would have the explosive power (and possibly the injury potential) of shells larger than 1.75 inches, this ANPR attempts to address the possible development of such small shells. The Commission invites comment upon this approach.

Operation of these devices, both the large and small shell devices, is more complicated than setting off the usual fireworks devices. The user must unwind the fuse from around the shells, insert the shell into the launcher tube in the proper orientation, leaving a very short length of fuse projecting from the top of the tube, and then light the fuse. Because the fuse must be lit from the top of the tube, the likelihood that some part of the user's body will remain over the firing path of the device when it is launched is increased. Additionally, the length of the fuse (10 to 16 inches rather than 2 to 3 inches typical of most fireworks devices) may create a false impression that the fuse will burn for a significantly longer time. The fuse consists of two different types of fuse joined together. The end of the fuse that the user lights contains a one to two inch length of relatively slow burning fuse, known as "safety fuse," that ignites a very fast burning fuse, known as "quickmatch," which in turn ignites the lift propellant inside the shell.

Other products exist which retailers and consumers could substitute for the large shell devices if these were banned. In addition to reloadable shell devices using shells 1.75 inches and smaller, there are non-reloadable devices, some of which provide multiple shots—sometimes up to 100. These non-reloadable devices are sold already assembled so that the user does not have to place the shell inside of the

launcher tube. The fuse extends from the bottom of the tube rather than from the top. In addition, some types of fireworks devices, known as missiles, are also available for home use. A missile is a rocket-type projectile with fins that is fired into the air. Its fuse also lights from the bottom. The price of these substitute products varies from under $5 to over $40. Commission staff believes that most consumers could switch to substitute products with minimal, if any, loss of enjoyment if the reloadable shell devices that use shells larger than 1.75 inches were banned. (See Reference No. 2.)

D. Risk of Injury

The injury data the Commission possesses indicate a distinction between reloadable shell devices with shells greater than 1.75 inches and those with shells 1.75 inches or smaller. Thus, regulation considered by the Commission at this time addresses the risk of injury from devices with shells larger than 1.75 inches, or smaller shells with equivalent explosive power. As discussed above, earlier this year the Commission requested that fireworks importers supply the Commission with information concerning injuries from these reloadable shell devices. The largest insurance carrier for the industry provided information, which, together with information in the Commission's files, indicates that since 1985, twenty serious injuries have occurred from the reloadable shell devices with shells above 1.75 inches. (See Reference Nos. 1 and 5). All of these incidents reportedly involved injuries to the facial area. Several of these injuries were to eyes. The number of injuries from these devices appears to be on the rise. Of the eighteen injuries referred to by the insurance carrier, one occurred in 1986, five in 1987, five in 1988, six in 1989, and one as of March 1990.

Information currently available to the Commission indicates that injuries occur when the shell is discharged from the tube and either hits the user in the face or explodes in the face. In some instances the shell prematurely explodes as it is discharging from the tube. Some incidents have involved delayed discharges when the user has gone back to check on the device only to have the shell explode as he or she is attempting to check the device. Other incidents have involved a broken fuse, and lighting of the fuse before placement in the launching tube. The nature of the injuries include loss of vision or damage to vision, severe facial lacerations, loss of teeth, and burns to the face and neck. (*See* Reference Nos. 1, 3, and 5.)

In an incident investigated by the Commission staff, the user placed the shell in the tube and lit the fuse. After waiting approximately one minute, he believed that the shell was not working. As he started to bend and pick up the tube, the shell launched and struck him in the face. The globe of the user's left eye was ruptured requiring removal of the left eye and treatment for surrounding powder burns. Vision in his right eye was also impaired.

Data regarding reloadable shell devices with shells 1.75 inches or smaller indicate far fewer serious injuries. Injury data provided by the industry's insurance carrier indicated that only one injury has been reported as occurring from reloadable shell devices using shells 1.75 inches or smaller since 1986. (*See* Reference No. 5.) This also represents a much smaller proportion of injuries since the industry has reported to the CPSC that approximately 42.2 million of the smaller shell devices have been imported from 1987 through 1989, while only 5.3 million of the larger shell (shells larger than 1.75 inches) devices have been imported during the same time period. (*See* Reference No. 6.)

Testing results reported to the Commission by the industry trade association, the American Pyrotechnics Association ("APA"), also supports this distinction. The 2.25 inch shells were able to penetrate a ⅝ inch plywood panel placed approximately 12 inches above the top of the mortar tube. However, 1.5 inch shells did not penetrate the plywood panel. (*See* Reference No. 6.)

The Commission's study of fireworks-related injuries completed in December of 1989 estimated that 370 injuries from reloadable shell devices were treated in hospital emergency rooms during the 1989 Fourth of July season. This estimate was based on extrapolations from data reported by hospitals that participate in the National Electronic Injury Information Surveillance System ("NEISS"). (*See* Reference No. 4.)

E. Voluntary Standard

No voluntary standard specifically covering these reloadable shell devices currently exists. However, the American Fireworks Standards Laboratory is in the process of developing a voluntary standard applicable to reloadable aerial shells. A representative from the Commission is participating in the development of the voluntary standard. The voluntary standard may include provisions for: (1) A one-piece safety fuse; (2) stability at an 18 degree tilt from horizontal; (3) a maximum of six shells per firing tube; (4) prohibition against production of sharp fragments when the device functions; (5) maximum shell diameter of 1.75 inches; and (6) maximum gross weight of 60 grams per shell. The Commission staff will continue to monitor development of this voluntary standard.

F. Regulatory Alternatives Under Consideration

The Commission is considering several alternatives to reduce the number and severity of injuries caused by reloadable tube aerial shell devices. Alternatives currently under consideration to address shells larger than 1.75 inches in size, or smaller shells with equivalent explosive power, include the following: (1) Ban reloadable tube aerial shell devices that use shells larger than 1.75 inches in diameter or shells with equivalent explosive power; (2) require additional labeling on devices that use shells larger than 1.75 inches or shells with equivalent explosive power; (3) establish performance or design criteria to modify the devices using shells larger than 1.75 inches or smaller shells with equivalent explosive power (devices that do not meet criteria would be banned); and (4) take no mandatory action, but encourage the development of a voluntary standard. Some combination of these alternatives is also possible.

Ban of Large Shell Devices

Based on the injury data currently available to the Commission, a ban of reloadable shell devices that use shells larger than 1.75 inches (or smaller shells with equivalent explosive power) is likely to reduce the number of serious injuries significantly. Current information suggests that a large proportion of serious injuries are caused by devices that use shells larger than 1.75 inches. The fact that far fewer serious injuries have been reported from shells 1.75 inches and smaller, even though substantially more of the smaller shell devices are imported, is one of the reasons why the Commission is considering a ban of only larger shell devices at this time. As discussed above, the concern that more powerful small shells will be developed in the future leads the Commission to include small shells (1.75 inches and under) that have the explosive force of shells above 1.75 inches within the scope of a possible ban.

Banning only devices that use shells larger than 1.75 inches (or have equivalent explosive power) would likely reduce injuries but would still leave on the market safer alternative devices, such as reloadable shell

devices with smaller shells, non-reloadable devices, and missiles. Because of the availability of substitute products, the staff currently believes that, if the reloadable devices using shells larger than 1.75 inches (or smaller shells with equivalent explosive power) were banned, the effect on consumers, importers and retailers would be slight. The staff is soliciting further information concerning the effect of such a ban. (*See* Reference No. 2.)

Additional Labeling

The current product has extensive labeling. These labels read:

WARNING

Shoots flaming balls. Use only under close adult supervision. For outdoor use only. Place cardboard launcher upright on level ground. Unwrap long fuse on ball. Insert ball into tube with flat end down and with fuse extending out of tube.

Do not put face over tube. (present on some models) Light fuse and get away.

One possibility is to add further warning or instructional labeling to devices using shells larger than 1.75 inches (or smaller shells with equivalent explosive power), or to modify the existing warning. The Commission staff will study what form any additional or altered labeling might take, and the expected effectiveness of additional or modified labels. Current information suggests that the problem with the devices may be product-related, indicating that altering the labeling may not be effective in reducing injuries. This view is based partly upon the fact that several injury incidents occurred after the user had successfully set off a similar device. This may indicate that the device did not function in the same manner that it had previously, and that following a warning label might not have averted the incident. (*See* Reference No. 3.) The staff seeks additional data concerning current labeling and any possible alterations.

Design or Performance Criteria

Design or performance criteria directed specifically at devices using reloadable shells larger than 1.75 inches (or smaller equivalent shells) is another possible alternative. For example, it may be possible to require use of a one-piece fuse with a uniform burn rate that would allow the user sufficient time to get away from the device after lighting the fuse, while ensuring that the device begins to function within a reasonable time so that the user does not attempt to re-light the fuse. However, such a change would have to meet the Commission's requirement that all fireworks devices have fuses that burn within 3 to 6 seconds. 16 CFR 1507.3(a)(2). Another possible modification might be to require that reloadable shell devices using shells larger than 1.75 inches (or smaller shells with equivalent explosive power) be able to meet more stringent stability requirements to reduce the likelihood of injuries from tip-over. Another possible modification might be to prohibit plastic covers for shells larger than 1.75 inches or smaller shells with explosive power exceeding that of a 1.75 inch shell. This restriction might reduce the severity of injuries in the event of accidental contact with the exploding shell. Sharp shards of plastic from the exploding shell were embedded in the face of the victim in at least one reported incident. Some combination of these requirements may be possible.

Voluntary Standard

A final possibility is for the Commission to take no mandatory action, but to encourage the development of a voluntary standard that would address the risk of injury from these devices. Currently, the American Fireworks Standards Laboratory is devising a standard applicable to reloadable aerial shells. However, compliance with the standard will only be required for manufacturers who pay to participate in the AFSL certification program. The level of participation among manufacturers and the extent of conformance among nonparticipants is uncertain.

G. Solicitation of Information and Comments

This ANPR is the first step of a proceeding which could result in amendment of existing regulations prescribing requirements for certain fireworks devices to address reloadable tube aerial shell devices. This notice contemplates regulation of reloadable shell devices using shells larger than 1.75 inches or smaller shells with explosive power that exceeds that of a 1.75 inch shell. Although the Commission is not presently considering additional regulations applicable to reloadable shells that are 1.75 inches or smaller and do not have explosive power exceeding that of shells 1.75 inches, the Commission is seeking injury data or other relevant information regarding the risk of injury concerning these smaller shell devices. All interested persons are invited to submit to the Commission their comments on any aspect of the various alternatives discussed above. The Commission solicits:

(1) Written comments with respect to the risk of injury identified by the Commission, the regulatory alternatives being considered, and other possible alternatives for addressing the risk.

(2) Any existing standard or portion of a standard which could be issued as a proposed amendment to the fireworks regulations.

(3) A statement of intention to modify or develop a voluntary standard to address the risk of injury discussed in this notice, along with a description of a plan to do so.

More specifically, the Commission is interested in receiving comments and data concerning: (1) Further information about possible substitute fireworks devices; (2) the economic impact of a possible ban on reloadable tube aerial shell devices that use shells larger than 1.75 inches or that have equivalent explosive power; (3) possible alternatives to a ban (e.g. labeling or a design or performance criterion); and (4) further data concerning the risk of injury for shells 1.75 inches or smaller.

All comments and submissions should be addressed to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207, and received no later than August 30, 1990.

Dated: July 23, 1990.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

Reference Documents

The following documents contain information relevant to this rulemaking proceeding and are available for inspection at the Office of the Secretary, Consumer Product Safety Commission, Room 528, 5401 Westbard Avenue, Bethesda, Maryland:

1. Memorandum from James Eisele, EPHA, to David Schmeltzer, AED, CA, dated May 24, 1990, entitled Shell and Mortar Fireworks Injuries.

2. Memorandum from Dale R. Ray, ECPA, to John D. Rogers, CARM and Patricia M. Pollitzer, OGC, dated June 6, 1990, entitled Reloadable Tube Fireworks Amendment.

3. Memorandum from Warren Mathers, EPHF, to John D. Rogers, CARM, dated May 29, 1990, entitled Labeling of Reloadable Tube Aerial Shell Fireworks.

4. Report, dated December 15, 1989, entitled "Fireworks Injuries, 1989," Jo-Annette David and Beatrice Harwood, CPSC, Directorate for Epidemiology.

5. Letters dated February 22, 1990, and March 21, 1990, from the Drayton Insurance Brokers, Inc.

6. Letter dated March 10, 1990, from the American Pyrotechnics Association.

[FR Doc. 90-17557 Filed 7-30-90; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 35 and 382

[Docket No. RM90-8-000]

Amendments to FERC Form Nos. 1 and 1-F, Annual Charges and Fuel Cost and Purchased Economic Power Adjustment Clauses

Issued July 23, 1990.

AGENCY: Federal Energy Regulatory Commission (Commission), DOE.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Energy Regulatory Commission is proposing to amend FERC Form No. 1, Annual Report of Major Electric Utilities, Licenses and Others and FERC Form No. 1-F, Annual Report of Nonmajor Public Utilities and Licensees. The proposed changes will modify how a company reports bulk power transactions on the following Form No. 1 schedules: "Sales for Resale" (Account 447), pages 310-11, "Purchased Power" (Account 555), pages 326-27, "Summary of Interchange According to Companies and Points of Delivery" (Account 555), pages 328-29, "Transmission of Electricity For Or By Others" (Accounts 446 and 565), page 332 and the "Electric Energy Account" and "Monthly Peaks and Output," page 401; and the following Form No. 1-F schedules: "Sales of Electricity For Resale," page 17, and "Purchased Power," page 18. The changes involved elimination and addition of certain reporting requirements, revised instructions and modified schedule formats; and minor conforming changes to the Commission's annual charges and fuel cost and purchased economic power adjustment clauses regulations. The purpose of the proposed changes is to improve consistent reporting of bulk power tranactions to better support current regulatory responsibilities of the Commission.

DATES: An original and 14 copies of the written comments on this proposed rule must be filed with the Commission by August 30, 1990.

ADDRESSES: Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capital Street NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT:

William Booth, Office of Electric Power Regulation, Federal Regulatory Commission, 825 North Capital Street NE., Washington, DC 20426, (202) 208-0849

Joseph Harkins, Office of Chief Accountant, Federal Energy Regulatory Commission, 810 First Street NE., Washington, DC 20426, (202) 357-0617

Betty N. Toepfer, Office of the General Counsel, Federal Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, (202) 208-0464.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in room 3308, at the Commission's Headquarters, 941 North Capitol Street NE., Washington, DC 20426. The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 208-1397. To access CIPS, set your communications software to use 300, 1200 or 2400 baud, full duplex, no parity, 8 data bits, and 1 stop bit. The full text of this notice of proposed rulemaking will be available on CIPS for 10 days from the date of issuance. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in room 3308, 941 North Capital Street NE., Washington, DC 20426.

NOTICE OF PROPOSED RULEMAKING

I. Introduction

The Federal Energy Regulatory Commission (Commission) is proposing to amend FERC Form No. 1, Annual Report of Major Electric Utilities, Licensees and Others (Form 1) [1] and FERC Form No. 1-F, Annual Report of Nonmajor Public Utilities and Licensees (Form 1-F).[2] The proposed changes will modify how a company currently reports bulk power transactions on the following Form 1 schedules: "Sales for Resale" (Account 447), pages 310-11; "Purchased Power" (Account 555), pages 326-27; "Summary of Interchange According to Companies and Points of Delivery" (Account 555), pages 328-29; "Transmission of Electricity For or By Others" (Accounts 456 and 565), page 332; and the "Electric Energy Account" and "Monthly Peaks and Output," page 401. The Commission also proposes modifications to the "Sales of Electricity For Resale" (page 17) and "Purchased Power" (page 18) Form 1-F schedules and the comparable Form 1 substitute schedules: "Sales for Resale," "Purchased Power" and "Summary of Interchange According to Companies and Points of Interchange" for those filing a Form 1-F. The changes involve elimination and addition of some reporting requirements, revised instructions and modified schedule formats. Minor conforming changes are proposed to the Commission's annual charges regulations in 18 CFR part 382 and the Commission's fuel cost and purchased economic power adjustment clauses regulations in 18 CFR part 35. The purpose of the proposed changes is to improve consistent reporting of bulk power transactions to better support current regulatory responsibilities of the Commission. The proposed changes are an outgrowth of a joint effort by the Commission and the Energy Information Administration to evaluate the consistency of our bulk power trade information.[3]

II. Reporting burden

The annual public reporting burden for collection of information, as revised herein, is estimated to be 220,000 hours for the Form 1 and 630 hours for the Form 1-F for all electric utilities filing these forms. The industry burden is based on an estimate of 1,215 average

[1] This form consists of approximately 124 non-consecutively numbered pages and a 5-page index. It is mandatory under sections 304 and 309 of the Federal Power Act and codified at § 141.1 of the Commission's regulations. The current version bears the OMB approval No. 1902-0021, expiring September 30, 1990. The Commission considered renumbering the Form 1 and Form 1-F schedules to make them consecutive, but decided not to renumber them for two reasons. First, it is useful to have continuity with previous years, and continuing the same numbering system is an aid to the filer as well as to the Commission. Second, this system provides for logical expansion of the forms when such expansion is necessary to carry out the tasks of the Commission.

[2] This form consists of approximately 20 consecutively numbered pages, 1-20, and 30 non-consecutively numbered substitute pages from the Form 1 that may be used in lieu of the comparable pages in the first section. It is mandatory under sections 304 and 309 of the Federal Power Act and codified at § 141.2 of the Commission's regulations. The current version bears the OMB approval No. 1902-0029, expiring September 30, 1990.

[3] Appendix A consists of facsimiles of the revised forms, incorporating the proposed changes. A comparison of these forms with the current Form 1 schedules may help the reader to comprehend these changes. Appendix A is not being published in the **Federal Register**, but is available appended to copies of the Notice of Proposed Rulemaking from the Commission's Public Reference Room.

hours for the 161 utilities which complete a Form 1 filing and 30 average hours for the 21 utilities which complete a Form 1–F, both on an annual basis. These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Based on the great diversity of respondents, the Commission anticipates that the burden will increase for certain respondents, particularly those who engage in a substantial number of transmission transactions for others, but that the burden will decrease for other respondents. The changes proposed by the Commission are relatively few, and are discrete. The information being requested is for the most part not new data; it is already collected by the industry in other contexts.

On balance, therefore, the Commission believes the overall burden on the industry, will be lessened by the proposed changes.

Send comments regarding these burden estimates or any other aspect of this collection of information, including suggestions for reducing this burden, to the Federal Energy Regulatory Commission, 941 North Capitol Street NE., Washington, DC 20426 [Attention: Michael Miller, Information Policy and Standards Branch, [202) 208–1415); and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 [Attention: Desk Officer for the Federal Energy Regulatory Commission).

III. Background

In an effort to improve consistent reporting on Form 1, the Chief Accountant has provided additional guidelines and examples of properly completed schedules in the transmittal letters included with the 1988 and 1989 mailings of Form 1. However, many respondents still are not reporting the information in a consistent manner as prescribed by the instructions on the schedules and the Chief Accountant's guidelines.

These reporting deficiencies trace to the fact that the format and requirements of these schedules have not kept up with the significant changes that have occurred in bulk power markets. At the time these schedules were created, high voltage transmission interconnections between utilities were limited.[4]

Long-term firm sales to distribution utilities within a utility's service area, which have come to be known as "requirements" sales, made up the majority of power transactions between utilities. Transactions between major integrated utilities were relatively insignificant and tended to be for emergency support purposes or exchange of economy energy.

With the growth of extensive high voltage transmission networks and the increased number of interconnections, the number of bulk power transactions has risen dramatically. It has been a challenge for utilities to report the wider variety of transactions, which have come to be known as "coordination" transactions, on the current schedules which were designed when these transactions were comparatively insignificant.

A major source of confusion relates to what should be reported on the "Summary of Interchange" schedule (pages 328–29). The text of Account 555, Purchased Power, in the Commission's Uniform System of Accounts Prescribed for Public Utilities and Licensees, the instructions on the Form 1 schedules and the Chief Accountant's additional guidelines have not resulted in uniform reporting of "coordination" transactions.[5] Many utilities report all "coordination" transactions on the "Summary of Interchange" schedule, reserving the "Sales of Resale" and "Purchased Power" schedules for "requirements" sales or purchases. Many other utilities reserve this schedule for power exchange transactions and report all distinct sales and purchases, whether "requirements" or "coordination," on the "Sales for Resale" and "Purchased Power" schedules, respectively.

The latter interpretation is consistent with the requirements of the Uniform System of Accounts and the Chief Accountant's guidelines. The proposed changes in the Form 1 schedules are intended to ensure that "coordination" transactions are reported consistently on the "Sales for Resale" or "Purchased Power" schedules, as appropriate.

IV. Discussion

A. Purpose and Objectives

In order to reduce the reporting burden, to improve consistency in the reporting of this information, and to clarify how bulk power transactions are to be reported, the Commission proposes to modify or eliminate five Form 1 schedules, and five comparable Form 1–F schedules. The Commission also proposes minor changes in its regulations for annual charges and for fuel cost and purchased economic power adjustment clauses.[6]

The following Form 1 schedules are proposed to be modified: "Sale for Resale" (Account 447); "Purchased Power" (Account 555); and "Electric Energy Account" and "Monthly Peaks and Output." [7] The Commission proposes to incorporate the reporting requirements of the "Summary of Interchange According to Companies and Point of Delivery" (Account 555) schedule into the modified "Purchased Power" (Account 555) schedule.[8] The term "interchange power" is proposed to be replaced with the synonym "exchange power," for consistency with the term used in the text of Account 555, in the Uniform System of Accounts.

The "Transmission of Electricity For or By Others" schedule, page 332, is proposed to be eliminated and replaced by *two* new schedules: "Transmission of Electricity For Others" (Account 456), pages 328–30, and "Transmission of Electricity By Others" (Account 565), page 332. Separate schedules would allow for more detailed reporting of transmission service provided for others, increasing the accuracy of reporting, and less detailed reporting of transmission service provided by others, lessening the reporting burden.

Three reporting requirements are proposed to be eliminated from the Form 1–F schedules for "Sales For Resale," and "Purchased Power." The instructions have been rewritten and expanded and the remaining columns have been reordered. The substitute Form 1 schedules for "Sales for Resale," and "Purchased Power," and "Summary of Interchange According to Companies and Point of Delivery" in the Form 1–F will incorporate changes parallel to the changes in the comparable schedules in the Form 1.

Specific proposed changes are discussed below and the proposed modified and new schedules are attached in the Appendix. The proposed changes to the Form 1 schedules are described in IV. B. For each schedule, proposed changes in schedule formats

[4] The "Sales for Resale," "Purchased Power," "Summary of Interchange," "Electric Energy Account," and "Monthly Peaks and Output" schedules have not been substantially revised since the Form 1 was first instituted in 1937. The "Transmission of Electricity For or By Others" schedule was added in 1961 and has not been substantially revised since then.

[5] *See* 18 CFR part 101 (1989).

[6] Annual Charges, 18 CFR part 381 (1989); Fuel Cost and Purchased Economic Power Adjustment Clauses, 18 CFR 35.14 (1989).

[7] These schedules are on pages 310–11, 326–27 and 401 of Form 1, respectively.

[8] These schedules are currently on pages 326–29. The proposal would eliminate pages 328 and 329.

are discussed first. The proposed new instructions are described in the order the instructions are listed on the proposed modified and new schedules. The proposed changes to the FERC Form No. 1–F schedules are described in IV. C, in the same way as the proposed changes to the Form 1 schedules. The proposed changes to the Commission's annual charges regulation are described in IV. D. The proposed changes to the Commission's fuel cost and purchased economic power adjustment clauses regulation are described in IV. E.

B. Proposed changes to FERC Form No. 1 Schedules

1. *Sales For Resale (Account #447) Schedule.*[9]

a. *Proposed schedule format.* The Commission proposes to eliminate five columns, currently designated as (c), (e), (f), (j) and (k). These columns request information on: export across state lines, point of delivery, substation ownership, type of demand reading, and voltage at which delivered, respectively. The information which is requested in these columns is either available from other sources or is no longer useful to the Commission.

The elimination of these columns necessitates changes in the designation letters of the remaining columns. Thus, columns (d), (g), (h), (i), (l), (m), (n), (o), and (p) would be redesignated as columns (c), (d), (e), (f), (g), (h), (i), (j), and (k), respectively. Designations for five columns are proposed to be changed. One of the changes in designation which the Commission is proposing, "annual maximum demand" to "average monthly CP demand," does involve a substantive change.[10]

b. *Proposed instructions.* The Commission proposes to eliminate several of the ten current instructions to Account 447, and to reword or establish additional requests in the remaining instructions. Those instructions currently numbered 3, 4, 5, 7 and 8 would be deleted. The instruction currently numbered 6 would be renumbered as 7. The only substantive change to instruction 1 is a clarification that exchange transactions must be reported on the "Purchased Power" (Account 555) schedule pages 326–27. Current instruction 2 would be divided into proposed instructions 2 and 3. The substantive change embodied in proposed instruction 2 would be a requirement that ownership interest or affiliation between the responding entity and the purchaser be disclosed. The substantive change embodied in proposed instruction 3 would increase the number of classifications and explain in more detail the coding definitions used to classify the type of sale. There would be eight classification codes rather than the current five codes. The eight codes will consist of the following: RQ, for requirements service; [11] LF, for long-term firm service; [12] IF, for intermediate-term firm service; [13] SF, for short-term firm service; [14] LU, for long-term service from a designated generating unit; [15] IU, for intermediate-term service from a designated generating unit; [16] OS, for other service, which must be described in a footnote; [17] and AD, for out-of-period adjustment, which must be described in a footnote.[18] The reporting of statistical classification codes and contract termination dates in footnotes for long-term firm service is necessary to distinguish types of transactions for regulatory purposes.

Reporting of these codes must be based on the contractual terms and conditions of the service. These sales categories would be intended for descriptive and statistical purposes only. They would not prescribe either acceptable types of sales or how transactions should be described in contracts, rates or tariffs filed with FERC.

Current instructions 3, 4 and 5 would be deleted. Proposed instruction 4 would require that sales be grouped either as RQ, *i.e.*, requirements service, or non-RQ sales, and that the respondent provide appropriate subtotals and totals for proposed columns (g) through (k), *i.e.*, megawatt hours sold, total revenue and revenue components. Proposed instruction 5 clarifies and organizes the requirement of proposed column (d) (previously column (c)).

New instruction (6) would require the reporting of average monthly billing demand in column (d), average monthly noncoincident peak (NCP) demand in column (e), and average monthly coincident peak (CP) demand in column (f). Demand in columns (e) and (f) should be reported in megawatts. This applies only to requirements service and any type of service involving demand charges imposed on a monthly (or longer) basis. Definitions would be provided. If respondents are unable to express demand on a megawatt basis they would have to explain that inability in a footnote. Proposed instruction 8 would clarify and organize the requirements of columns (h) to (k), which are revenue items currently classified as (m) through (p). Proposed instruction 9 would require that the subtotal for RQ, requirements sales for resale, in proposed column (g) be reported on page 401, line 22 of Form 1, and that the subtotal for non-RQ sales for resale in column (g) be reported on page 401, line 23. Proposed instruction 10 would require footnotes and explanations of all entries that are unclear.

[9] This schedule comprises pages 310 and 311 of Form 1, 1989 edition.

[10] The proposed changes would include:

(1) column (a) "Sales to" would become "name of company or public authority;"

(2) column (b) "Contract demand" would become (d) "average monthly billing demand;"

(3) column (h) "Average monthly maximum demand" would become (e) "average monthly NCP demand;" change);

(4) column (i) "Annual maximum demand" would become (f) "Average monthly CP demand" (substantive change); and

(5) column (l) "Megawatt hours" would become (g) "megawatt hours sold."

Finally, the title currently over columns (g), (h) and (i) would be placed over new columns (e) and (f), and changed from "MW or MVa of Demand (specify which)' to "Actual Demand in MW's."

[11] Requirements service is service which the supplier plans to provide on an ongoing basis (*i.e.*, the supplier includes projected load for this service in its system resource planning). In addition, the reliability of requirements service must be the same as, or second only to, the supplier's service to its own ultimate consumers.

[12] "Long-term" means five years or longer and "firm" means that service cannot be interrupted for economic reasons and is intended to remain reliable even under adverse conditions (e.g., the supplier must attempt to buy emergency energy from third parties to maintain deliveries of LF service). This category should not be used for long-term firm service which meets the definition of RQ service. For all transactions identified as LF, the respondent also should provide in a footnote the termination date of the contract defined as the earliest date that either buyer or seller can unilaterally get out of the contract.

[13] IF is the same as LF service except that "intermediate-term" means longer than one year but less than five years.

[14] This category should be used for all firm services where the duration of each period of commitment for service is one year or less.

[15] *Long-term* means five years or longer. The availability and reliability of service, aside from transmission constraints, must match the availability and reliability of the designated unit.

[16] The same as LU service except that "intermediate-term" would mean longer than one year but less than five years.

[17] This category should be used only for those services which cannot be placed in the above-defined categories, such as all nonfirm service regardless of the length of the contract and service from a designated unit of less than one year. The respondent also should describe the nature of the service in a footnote.

[18] This code should be used for any accounting adjustments or "true-ups" for service provided in prior reporting years. The respondent also should provide an explanation in a footnote for each adjustment.

2. Purchased Power (Account 555) Schedule [19]

(a) *Proposed schedule format.* The Commission proposes to make a number of format changes to the reporting schedules which appear on pages 326–27 [20] and 328–29 [21] of Form 1. The Commission proposes to eliminate the latter schedule, except for two columns of information on power exchanges, which will be added to the "Purchased Power" schedule. The Commission is not proposing to increase the amount of substantive information required. Five columns would be eliminated from the "Purchased Power" schedule, currently designated as columns (c), (e), (f), (j), and (k).[22] The elimination of these columns would necessitate change in the designation letters of the remaining columns. The two columns which would be added to the schedule from the "Summary of Interchange According to Company and Point of Delivery." schedule are columns (f) and (g), megawatt hours received and delivered, respectively; they will be designated (h) and (i). The Commission also proposes to change the designations for five columns, to parallel the changes in the "Sale for Resale" schedule. One of the changes in designation which the Commission is proposing, "annual maximum demand" to "average monthly CP demand," does not involve a substantive change.[23]

The Commission proposes to eliminate several of the ten current instructions, and to reword or establish additional requests in the remaining instructions. Those instructions currently numbered 3, 4, 5, and 7 would be deleted. Instruction 1 would be rephrased to clarify that exchange transactions and any settlements for imbalanced exchanges would be reported here. Current instruction 2 would be divided into proposed instructions 2 and 3. The substantive change embodied in proposed instruction 2 is a requirement that ownership interest or affiliation between the responding entity and the purchaser be disclosed. The substantive change embodied in proposed instruction 3 increases the number of classifications and explains in more detail the coding definitions used to classify the type of sale. There would be nine classification codes rather than the current five codes. The nine codes will consist of the following: RQ, for requirements service; [24] LF, for long-term firm service; [25] IF, for intermediate-term firm service; [26] SF, for short-term firm service; [27] LU, for long-term service from a designated generating unit; [28] IU, for intermediate-term service from a designated generating unit; [29] EX, for exchanges of electricity; [30] OS, for out-of-period adjustment, which must be described in a footnote.[31] The reporting of statistical classification codes and contract termination dates in footnotes for long-term firm service is necessary to distinguish types of transactions for regulatory purposes.[32]

Reporting of these codes must be based on the contractual terms and conditions of the service. These sales categories are intended for descriptive and statistical purposes only. They would not prescribe either acceptable types of sales or how transactions should be described in contracts, rates or tariffs filed with FERC. Proposed instruction 4 explains the designation system for entering the FERC rate schedule or tariff number required for column (c).

As with the "Sales for Resale" schedule, the proposed instruction 5 would require, for requirements service and any type of service involving demand charges imposed on a monthly (or longer) basis, the reporting of average monthly billing demand in column (d), average monthly non-coincident peak (NCP) demand in column (e), and average monthly coincident peak (CP) demand in column (f). Demand in columns (e) and (f) would be reported in megawatts. The inability to express any demand on a megawatt basis would have to be explained in a footnote. Proposed instruction 6 would cover power exchanges received and delivered, as well as megawatt hours purchased. Proposed instruction 7 will clarify the reporting of revenues by including instructions on how settlements under exchange agreements should be reported in column (1). Proposed instruction 8 would require that the total amounts in columns (g), (h) and (i) be reported on page 401, lines 10, 12 and 13. Proposed instruction 9 would require footnotes and explanations of all entries that are unclear.

3. Transmission of Electricity for or by Others (Accounts 456 and 565) Schedule.[33]

The Commission proposes to eliminate this schedule and to replace it with two new schedules: one for the reporting of "Transmission of Electricity For Others," Account 456, and the other for the reporting of "Transmission of Electricity By Others" Account 565.

4. Transmission of Electricity for Others (Account 456) Schedule.[34]

a. *Proposed schedule format.* The Commission proposes to provide a column format for easy and consistent reporting. The following 14 columns, which the Commission proposes be included in the new "Transmission of Electricity For Others" (Account 456) schedule, are similar to the column headings for the schedules discussed previously. Here they would include: "Payment By (Company or Public Authority);" "Energy Received From (Company or Public Authority);" "Energy Delivered To (Company or Public Authority);" "Statistical Classification;" "FERC Rate Schedule or Tariff Number;" "Point of Receipt;" "Point of Delivery;" "Billing Demand (MW);" "Megawatthours Received;" "Megawatthours Delivered;" "Demand Charges;" "Energy Charges;" "Other Charges;" and "Total Revenues."

b. *Proposed instructions.* Proposed instruction 1 would require reporting of transmission service that the respondent provides to others. Proposed instruction 2 would require a line of data for each distinct type of transmission service provided. Proposed instruction 3 would require reporting the identities of the three other potential parties to a

[19] This schedule comprises pages 326–27 of Form 1.

[20] "Purchased Power" (Account 555).

[21] "Summary of Interchange According to Company and Point of Delivery."

[22] These columns request information on the comparable items that are being deleted from the "Sales for Resale" schedule, *i.e.*, import across state lines, point of delivery, substation ownership, type of demand reading and voltage at which received.

[23] The proposed changes would include:

(1) column (a) "Sales to" would become "name of company or public authority;"

(2) column (b) "Contract demand" would become (d) "average monthly billing demand;"

(3) column (h) "Average monthly maximum demand" would become (e) "average monthly NCP demand;"

(4) column (i) "Annual maximum demand" would become (f) "Average monthly CP demand" (substantive change); and

(5) column (1) "Megawatt hours" would become (g) "megawatt hours sold."

Finally, the title currently over columns (g), (h), and (i) would be placed over new columns (e) and (f), and changed from "MW or MVa of Demand (specify which)" to "Actual Demand in MW's."

[24] *See supra* note 11.

[25] *See supra* note 12.

[26] *See supra* note 13.

[27] *See supra* note 14.

[28] *See supra* note 15.

[29] *See supra* note 16.

[30] This category should be used for transactions involving a balancing of debits and credits for energy, capacity, etc. and any settlements for imbalanced exchanges.

[31] *See supra* note 17.

[32] *See supra* note 18.

[33] This schedule is currently on page 332 of Form 1, 1989 edition.

[34] This schedule is currently on page 332 of Form 1, 1989 edition.

transmission transaction: the entity that made payment to the respondent for providing the transmission service; the entity from which the power was received, and the entity to which the power was delivered. The instruction would also clarify how the names of entities are to be reported and would require that a footnote be provided to explain any ownership interest or affiliation the respondent has with the identified or reported entities. Proposed instruction 4 would require the reporting of statistical classification codes based on the contractual terms and conditions of the service. The transactions would be coded within one of four categories: LF,[35] for long-term firm transmission service; SF,[36] for short-term firm transmission service; OS,[37] for other transmission service; and AD,[38] for out-of-period adjustment. Proposed instruction 5 would require the reporting of the applicable FERC rate schedule or tariff number under which the transmission service was provided to the companies or public authorities identified in columns (a), (b), or (c). Proposed instruction 6 would require the reporting of substation or other designation of points of receipt and delivery. Proposed instruction 7 would require that billing demand under the transmission agreement be reported in megawatts in column (h). Proposed instruction 8 would require the reporting of megawatthours received and delivered. Proposed instruction 9 would require the reporting of the components and total of both monetary and nonmonetary settlements received for transmission service provided for others. Proposed instruction 10 would require that the total amounts in columns (i) and (j) be reported as Transmission Received and Delivered on page 401, lines 16 and 17, respectively. Proposed instruction 11 would require footnotes and explanations of all entries that are unclear.

5. Transmission of Electricity by Others (Account 565) Schedule [39]

a. *Proposed schedule format.* The Commission proposes to provide a column format to improve the ease and consistency of reporting. The following seven columns would be included in the new "Transmission of Electricity By Others" (Account 565) schedule: "Name of Company or Public Authority;" "Megawatthours Received;" "Megawatthours Delivered;" "Demand Charges;" "Energy Charges;" "Other Charges;" and "Total Cost of Transmission."

b. *Proposed instructions.* Proposed instruction 1 would require the reporting of all transmission service provided to the respondent by other electric utilities, cooperatives, municipals and other public authorities during the year. Proposed instruction 2 would require the name of the transmission provider and an explanation of any ownership interest or affiliation the respondent has with the transmission provider. Proposed instruction 3 would require that respondents group transmission service purchased from other utilities as either "Delivered Power to Wheeler" or "Received Power from Wheeler." Proposed instruction 4 would require the reporting of "MWh received" and "MWh delivered" by the provider of the transmission service. Proposed instruction 5 would require the reporting of the components and total of both monetary and nonmonetary settlements received for transmission service provided by others. Proposed instruction 6 would require that a total be provided as the last line, and proposed instruction 7 would require footnotes and explanations of all entries that are unclear.

6. Electric Energy Account Schdule [40]

The Commission proposes that seven item names be changed, and six lines be deleted from the "Electric Energy Account" schedule. The Commission will require one additional item of information (proposed line 23).

a. *Proposed schedule format.* The Commission proposes to rename lines 11, 12, 13, 14, 18, 22 and 23, as follows: "Interchanges" would be renamed "Power Exchanges;" "In Gross," would be renamed "Received;" "Out Gross" would be renamed "Delivered;" "Net Interchanges" would be renamed "Net Exchanges;" "Net Transmission" would be renamed "Net Transmission for Others;" and "Sales for Resale" would be renamed "Requirements Sales for Resale." The Commission also proposes eliminating the words "or by" in line 15 (because transmission service provided to the respondent by others should not be reported on this schedule), and to eliminate the details on energy losses currently collected in lines 26–29 and 31. The Commission proposes adding a new line, "Non-requirements Sales for Resale," to conform with the proposed "Sales for Resale" schedule.

7. Monthly Peaks and Output Schedule [41]

The Commission proposes to delete two columns from the "Monthly Peaks and Output" schedule because the information is no longer needed. The Commission also proposes to add a column entitled Monthly Non-Requirements Sales for Resale & Associated Losses.

a. *Proposed schedule format.* The Commission proposes eliminating columns (c) and (f) and proposes renaming current column (g), "Monthly Output (MWh)," as "Total Monthly Energy." The Commission also proposes adding a new column, to be titled "Monthly Non-Requirements Sales for Resale & Associated Losses" for reporting monthly nonrequirements sales for resale and associated losses. Finally, the Commission proposes defining the system's monthly maximum megawatt load, reported in the column to be titled "Megawatts (see instruction 4)," as "that load associated with the net energy for the system defined as the difference between columns (b) and (c)." Column letter designations would be changed accordingly.

b. *Proposed instructions.* The Commission proposes replacing all the current instructions with new instructions as follows: Instruction 1 would require the separate reporting of the required information for the respondent's non-integrated power systems; Instruction 2 would require the reporting of system energy output by month; Instruction 3 would require the reporting of nonrequirements sales for resale adjusted for losses; Instruction 4 would require the reporting of the system's monthly maximum magawatt load as that load associated with the net energy for the system defined as the

[35] "Long-term" means one year or longer and "firm" means that service cannot be interrupted for economic reasons and is intended to remain reliable even under adverse conditions (e.g., the supplier must provide emergency energy to maintain deliveries of LF service). For all transactions identified as LF, the respondent must provide in a footnote the termination date of the contract, defined as the earliest date that either buyer or seller can unilaterally get out of the contract.

[36] *Short-term* is to be used for all firm services where the duration of each period of commitment for service is one year or less.

[37] *Other transmission service* is to be used only for those services which cannot be placed in the above-defined categories, such as all nonfirm transmission service, regardless of the length of the contract. Respondent must describe the nature of the service in a footnote.

[38] *Out-of-period adjustment* is to be used for any accounting adjustments or "true-ups" for service provided in prior reporting years. Respondent must provide an explanation in a footnote for each adjustment.

[39] This schedule is currently on page 332 of Form 1, 1989 edition.

[40] This schedule is currently on page 410 of Form 1, 1989 edition. There is no account number for this schedule.

[41] This schedule is currently on page 401 of Form 1, 1989 edition. There is no account number for this schedule.

difference between columns (b) and (c); and Instruction 5 would require the reporting of day of the month and hour of the monthly peak.

C. Proposed Changes to FERC Form No. 1–F Schedules

1. Part XV: Sales of Electricity for Resale Schedule [42]

The Commission proposes to change several titles and to delete three columns from the "Sales of Electricity for Resale" schedule in order to parallel the proposed changes on the Form 1 "Sales for Resale" schedule, pages 310–11, discussed above.

a. *Proposed schedule format.* The Commission proposes eliminating three columns, currently designated as (c), (d), and (h). The information which is requested in those columns is either available from other sources or is no longer useful to the Commission. The elimination of these columns will necessitate changes in the designation letters of the remaining columns. The Commission proposes retitling the following items: the schedule title of Part XV "Sales of Electricity for Resale" as "Sales for Resale;" current column (a), "Sales To," and "Name of Company or Public Authority;" and current column (e), "Kilowatthours," as "Megawatthours Sold (MWh)."

b. *Proposed instructions.* The Commission proposes to reword instruction 1 of Form 1–F, Part XV consistent with the proposed changes to the "Sales For Resale" (Account 447) schedule instructions in the Form 1. Proposed instruction 2 would require reporting the name of the purchaser and providing a footnote to explain any ownership interest or affiliation the resondent has with the purchaser. Proposed instruction 3 would require reporting the FERC rate schedule or tariff number. Proposed instruction 4 would require reporting the annual maximum demand in megawatts and providing an explanatory footnote if demand is reported on a different basis. Proposed instruction 6 would require reporting the total sales for resale charges on bills rendered to each purchaser, and proposed instruction 7 would require footnotes and explanations of all entries that may be unclear.

2. Part XVI: Purchased Power Schedule [43]

The Commission proposes to change several titles and to delete three columns be deleted from the "Purchased Power"schedule to parallel proposed changes on the Form 1 "Purchased Power" (pages 326–27) schedule.

a. *Proposed schedule format.* The Commission proposes eliminating three columns currently designated as (c), (d), and (h). The information which is requested in those columns is either available from other sources or is no longer useful to the Commission. The elimination of these columns will necessitate changes in the designation letters of the remaining columns. The Commission proposes retitling the following items: current column (a), "Sales To," as "Name of Company or Public Authority" and current column (e), "Kilowatthours," as "Megawatthours Purchased (MWh)."

b. *Proposed instructions.* The Commission proposed to reword instruction 1 of Form 1–F, Part XVI consistent with the proposed changes to the "Purchased Power" (Account 555) schedule instructions in Form 1, and to incorporate current instruction 3. Proposed intruction 2 would require reporting the name of the seller and providing a footnote to explain any ownership interest or affiliation the respondent may have with the seller. Proposed instruction 3 would require reporting the FERC rate schedule or tariff number or, for non-jurisdictional sellers, an appropriate and precise designation for the contract. Proposed instruction 4 would require reporting the annual maximum demand in megawatts and providing an explanatory footnote if demand is reported on a different basis. Proposed instruction 6 would require reporting the total purchased power charges on bills rendered by each seller to the respondent, and proposed instruction 7 would require footnotes and explanations of all entries that may be unclear.

D. Requirements Related to Annual Charges. [44]

The Commission proposes making several changes to the Commission's annual charges regulations to conform to proposed changes on the Form 1 "Purchased Power" schedule. Only proposed changes to the Form 1 "Purchased Power" schedule need to be reflected in the Annual Charges regulations.

The Commission, does not propose to change the definitions or reporting requirements in the annual charges regulation; however, the Commission proposed to replace the term "interchange out" in § 382.102, paragraphs (k) and (n)(2), with "exchange delivered" to conform to the proposed renaming of this term in the bulk power schedules of the FERC Form No. 1.[45] These paragraphs are proposed to read as follows:

(k) *Adjusted exchange delivered* are jurisdictional energy transactions not included in either the above *adjusted sales for resale* category or the above "Adjusted transmission delivered" category.

(n) "Adjusted coordination sales kilowatt-hours" means the number of kilowatt-hours of electrical energy that are:

(1) Not adjusted sales for resale kilowatt-hours,

(2) reported as adjusted exchange delivered or adjusted transmisson delivered under § 382.201(b)(4) of this part, and

(3) the rates, charges, terms and conditions of which are regulated by the Commission.

In addition, the Commission proposes to replace the term "interchange out" with "exchange delivered" in: the heading for column 3, the title for row (B) and footnote 2 of the worksheet referred to in § 382.201(b)(4)(B)(ii). The Commission also proposes to change, in the worksheet referred to in § 382.201(b)(4)(B)(ii), the page number references in footnote 2 from 328 to 326–27 and in footnote 3 from 332 to 328–30 to conform to the proposed page renumbering of the bulk power schedules of the Form 1. It is proposed that the worksheet appear as follows:

Annual Charges Worksheet

The Annual Charges Worksheet is attached as Appendix B.[46]

E. Requirements Related to Fuel Cost and Purchased Economic Power Adjustment Clauses

To conform to proposed changes on the Form 1 "Purchased Power" schedule, and on the Form 1 and Form 1–F bulk power schedules, the Commission proposes making a consistent change in the fuel cost and purchased power adjustment clauses regulations. The term "interchange-in" will be replaced with "exchange received" in section 35.14(a)(3).[46A] This paragraph is proposed to read as follows:

[42] This schedule is currently on page 17 of FERC Form 1–F, 1989 edition. There are no account numbers for any Form 1–F schedules proper (although when Form 1 schedules are used in lieu of Form 1–F schedules there are account numbers).

[43] This schedule comprises page 18 of FERC Form 1–F, 1989 edition.

[44] The Commission established annual charges in Order No. 472, 52 FR 21,263 (1987), III FERC Stats. & Regs. ¶ 30,746 (1987).

[45] 18 CFR part 382 (1989).

[46] Appendix B is not being published in the **Federal Register** but is available appended to copies of the Notice of Proposed Rulemaking from the Commission's Public Reference Room.

[46A] 18 CFR 35.14 (1989).

(3) Sales (S) shall be all kWh's sold, excluding inter-system sales. Where for any reason, billed system sales cannot be coordinated with fuel costs for the billing period, sales may be equated to the sum of:

(i) generation,

(ii) purchases,

(iii) exchange received, less

(iv) energy associated with pumped storage operations, less

(v) inter-system sales referred to in paragraph (a)(2)(iv) of this section, less

(vi) total system losses.

V. Regulatory Flexibility Act Certification

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612 (1988), generally requires a description and analysis of proposed rules that will have a significant economic impact on a substantial number of small entities. The Commission is not required to make such analyses if a rule would not have such an effect. The Commission does not believe that this rule will have such an impact on small entities. Most electric utilities do not fall within the RFA's definition of small entities.[47] Therefore, the Commission certifies that issuance of this proposed rule, if adopted, will not have a "significant economic impact on a substantial number of small entities."

VI. Environmental Statement

The Commission concludes that issuance of this rule would not represent a major federal action having a significant adverse effect on the human environment under the Commission regulations implementing the National Environmental Policy Act.[48] This rule would be procedural in nature and therefore falls within the categorical exemptions provided in the Commission's regulations. Consequently, neither an environmental impact statement nor an environmental assessment are required.[49]

VII. Information Collection Statement

The Office of Management and Budget's (OMB) regulations at 5 CFR 1320.12, and the Paperwork Reduction Act (PRA), 44 U.S.C. 3501–20 (1988), require that OMB approve certain information and record keeping requirements imposed by an agency. The Sales for Resale (Account 447), Purchased Power (Account 555), Transmission of Electricity For Others (Account 456), Transmission of Electricity by Others (Account 565), Electric Energy Account and Monthly Peaks and Output schedules in the Form 1; Sales For Resale and Purchased Power Schedules in the Form 1–F; and conforming changes to the Annual Charges regulation and Fuel Cost and Purchased Economic Power Ajdustment Clauses regulation are being submitted to OMB for its review. Interested persons may obtain information on the requirements of the proposed regulation by contacting the Federal Energy Regulatory Commission, 941 North Capitol Street NE., Washington, DC 20426 (Attention: Michael Miller (202) 208–2200). Comments on the requirements of the proposed regulation can be sent to the Office of Information and Regulatory Affairs of OMB (Attention: Desk Officer for the Federal Energy Regulatory Commission).

VIII. Public Comment Procedures

The Commission invites all interested persons to submit written comments on this Notice of Proposed Rulemaking to the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426. Comments should refer to Docket No. RM90–8–000 on the outside of the envelope and on all documents submitted to the Commission. Fourteen copies should be submitted with the original. Comments must be filed on or before August 30, 1990. Copies of the written comments may be obtained from the Commission's Division of Public Information, room 3308, 941 North Capitol Street NE., Washington, DC 20426.

Comments are available for public inspection at the Commission's Division of Public Information, Room 3308, 941 North Capitol Street NE., Washington DC 20426, during regular business hours.

List of Subjects

18 CFR Part 35

Electric power rates, Electric utilities, Reporting and recordkeeping requirements.

18 CFR Part 382

Administration practice and procedures, Annual charges, Electric utilities, Pipelines, Reporting and recordkeeping requirements.

In consideration of the foregoing, the Commission proposes to amend parts 35, and 382 in chapter I, title 18 of the Code of Federal Regulations, as set forth below.

By direction of the Commission.

Lois D. Cashell,

Secretary.

PART 35—FILING OF RATE SCHEDULES

1. The authority citation for part 35 is revised to read as follows:

Authority: Department of Energy Organization Act, 42 U.S.C. 7101–7352; E.O. No. 12009, 3 CFR 1978 Comp., p. 142; Independent Offices Appropriations Act, 31 U.S.C. 9701; Federal Power Act, 16 U.S.C. 791a–825r; Public Utility Regulatory Policies Act, 16 U.S.C. 2601–2645.

2. In § 35.14, paragraph (a)(3) is revised to read as follows:

§ 35.14 Fuel cost and purchased economic power adjustment clauses.

(a) * * *

(3) Sales (S) must be all kWh's sold, excluding inter-system sales. Where for any reason, billed system sales cannot be coordinated with fuel costs for the billing period, sales may be equated to the sum of:

(i) Generation,

(ii) Purchases,

(iii) Exchange received, less

(iv) Energy associated with pumped storage operations, less

(v) Inter-system sales referred to in paragraph (a)(2)(iv) of this section, less

(vi) Total system losses.

* * * * *

PART 382—ANNUAL CHARGES

3. The authority citation for part 382 is revised to read as follows:

Authority: Omnibus Budget Reconciliation Act of 1986, Pub. L. 99–509, Title III, Subtitle E, sec. 3401 (Oct. 21, 1986); Department of Energy Organization Act, 42 U.S.C. 7101–7352; E.O. 12009, 3 CFR 1978 Comp., p. 142; Administrative Procedure Act, 5 U.S.C. 551–557; Natural Gas Act, 15 U.S.C. 717–727w; Federal Power Act, 16 U.S.C. 791a-828c; Natural Gas Policy Act, 15 U.S.C. 3301–3432; Public Utility Regulatory Policies Act, 16 U.S.C. 2601–2645; Interstate Commerce Act, 49 U.S.C. 1–27.

4. In § 382.108, paragraphs (k) and (n) are revised to read as follows:

§ 382.102 Definitions.

* * * * *

(k) *Adjusted exchange delivered* are jurisdictional energy transactions not included in either the above "Adjusted sales for resale" category or the above "Adjusted transmission delivered" catetory.

* * * * *

(n) *Adjusted coordination sales kilowatt-hours* means the number of

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[47] 5 U.S.C. 601(3) (1988) (citing to section 3 of the Small Business Act, 15 U.S.C. 632 (1988); section 3 of the Small Business Act defines a "small-business concern" as a business which is independently owned and operated and which is not dominant in its field of operation).

[48] 52 FR 47,897 (Dec. 17, 1987), III FERC Stats. & Regs ¶30,783 (Dec. 10, 1987) (*codified at* CFR part 380).

[49] *See* 18 CFR 380.4(a)(1) (1989).

kilowatt-hours of electrical energy that are:

(1) Not adjusted sales for resale kilowatt-hours;

(2) Reported as adjusted exchange delivered or adjusted transmission delivered under § 382.201(b)(4); and

(3) The rates, charges, terms and conditions of which are regulated by the Commission.

* * * * *

[FR Doc. 90–17615 Filed 7–30–90; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 10

[Docket No. 90N–0149]

Administrative Practices and Procedures; Promulgation of Regulations for Efficient Enforcement of Law

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend its regulation governing notice-and-comment (informal) rulemaking to conform the regulation's requirements to those of the Administrative Procedure Act. Current 21 CFR 10.40(d) provides that the agency will follow informal rulemaking procedures when issuing interpretative rules and rules of agency practice and procedure unless the Commissioner of Food and Drugs determines that such procedures are impracticable, unnecessary, or contrary to the public interest. In view of recent broad judicial interpretation of the Administrative Procedure Act rulemaking requirements, FDA has concluded that the scope of § 10.40(d) exceeds that which was intended. Accordingly, FDA is proposing to amend § 10.40 to remove the requirement that the agency issue interpretative rules and rules of agency practice and procedure by informal rulemaking.

DATES: Comments by October 1, 1990.

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

FOR FURTHER INFORMATION CONTACT: Robert L. Spencer, Division of Regulations Policy (HFC–220), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3480.

SUPPLEMENTARY INFORMATION:

I. Background

In 1977, when FDA promulgated § 10.40(d), requiring the agency to follow informal rulemaking procedures when issuing interpretative rules and rules of agency practice and procedure, it did not foresee the wide scope of agency pronouncements that might be considered subject to the requirements imposed by that provision. The agency intended to codify FDA's then existing procedure of publishing regulations for notice and comment prior to their incorporation in the Code of Federal Regulations. Although § 10.40(d) has served the laudable purpose of allowing for public comment prior to publishing final regulations, it could now leave the agency no choice but to use these same procedures for a great number of other agency pronouncements that FDA does not consider rules but that reviewing courts may consider rules within the meaning of the Administrative Procedure Act (APA) (5 U.S.C. 551(4)). FDA never intended this result. Thus, FDA is proposing to amend § 10.40(d) to conform its requirements to those of the APA and the agency's original intent.

A. APA Requirements

The APA defines "rule" as "the whole or a part of an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy or describing the organization, procedure, or practice requirements of an agency * * *" (5 U.S.C. 551(4)). With exceptions not relevant here, the APA requires that notice-and-comment rulemaking procedures be followed for all rules other than interpretative rules, general statements of policy, and rules of agency organization, procedure, or practice.

B. FDA's Regulations

When FDA promulgated § 10.40(d), it sought to provide greater public participation in the promulgation of regulations than that provided by the APA. The agency stated that, except in unusual circumstances (§ 10.40(e)), it would follow informal rulemaking procedures before issuing a rule regardless of whether the rule might be categorized as an interpretative rule or a rule of agency practice or procedure (40 FR 40682 at 40689; September 3, 1975).

C. Judicial Decisions

Since the promulgation of § 10.40, courts have expanded the concept of "rule." Compare *Pacific Gas & Electric Co.* v. *FPC*, 506 F.2d 33 (D.C. Cir. 1974) (force of law test) with *Community Nutrition Institute* v. *Young*, 818 F.2d 943 (D.C. Cir. 1987) (present, binding effect test). For example, in *Caribbean Produce Exchange, Inc.* v. *Secretary of Health and Human Services, et al.*, No. 89–1257 (1st Cir. December 28, 1989), the U.S. Court of Appeals for the First Circuit remanded the action to the district court to decide whether an unwritten criterion regarding the percentage of sampled imported garlic bulbs that would ordinarily trigger detention required notice-and-comment rulemaking. The Government argued that the unwritten criterion was exempt from rulemaking under the APA as an agency practice and procedure, interpretative rule, or general statement of policy. Such an argument, as the court noted, arguably ran afoul of the agency's own regulation, § 10.40(d), requiring informal rulemaking for interpretative rules and rules of agency practice and procedure.

Earlier, in *Bellarno International Ltd.* v. *FDA*, 678 F. Supp. 410 (E.D. N.Y. 1988), the court found a specific import alert to be a rule requiring notice-and-comment rulemaking. The Government did not argue that the alert in question was not a "rule" within the meaning of the APA definition but argued instead that the alert was exempt from the APA's notice and comment procedures as an interpretative rule or general statement of policy. This case left open the question whether a court might deem other import alerts to be "interpretative rules," which would require notice and comment procedures under § 10.40(d) although they are exempt from such procedures under the APA.

D. Proposed Changes

Under the circumstances, FDA has concluded that it is not feasible for the agency to follow informal rulemaking procedures for all agency pronouncements that a court might find to be interpretative rules or rules of agency practice and procedure. FDA therefore proposes to amend § 10.40 to conform its regulations to the APA and to FDA's original intent. Proposed § 10.40(d), as amended, would provide that the informal rulemaking procedures of § 10.40 (b) and (c) be followed to the extent required by the APA.

II. Effect of the Proposed Amendment

The effect of the proposed amendment to § 10.40(d) would be to clarify that FDA will follow the notice-and-comment rulemaking procedures set forth in § 10.40 (b) and (c) only in those situations where the APA so requires. (The agency could, of course, voluntarily follow such procedures for any FDA pronouncement, including any such

pronouncement that might be characterized as an interpretative rule, a rule of agency practice or procedure, or a general statement of policy.)

List of Subjects in 21 CFR Part 10

Administrative practice and procedure, News media.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 10 be amended as follows:

PART 10—ADMINISTRATIVE PRACTICES AND PROCEDURES

1. The authority citation for 21 CFR part 10 continues to read as follows:

Authority: Secs. 201–903 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321–393); 21 U.S.C. 41–50, 141–149, 467f, 679, 821, 1034; secs. 2, 351, 354–360F, 361 of the Public Health Service Act (42 U.S.C. 201, 262, 263b–263n, 264); secs. 2–12 of the Fair Packaging and Labeling Act (15 U.S.C. 1451–1461); 5 U.S.C. 551–558, 701–706; 28 U.S.C. 2112.

2. Section 10.40 is amended by revising paragraph (b) introductory text, and paragraph (d) to read as follows:

§ 10.40 Promulgation of regulations for the efficient enforcement of the law.

* * * * *

(b) Except as provided in paragraph (e) of this section, each regulation must be the subject of a notice of proposed rulemaking published in the **Federal Register**.

* * * * *

(d) The provisions for notice and comment in paragraphs (b) and (c) of this section apply only to the extent required by the Administrative Procedure Act (5 U.S.C. 551, 552, and 553).

* * * * *

Dated: June 18, 1990.

James S. Benson,

Acting Commissioner of Food and Drugs.

[FR Doc. 90–17749 Filed 7–30–90; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[CO–5–90]

RIN 1545–AO46

Returns Relating to Certain Changes in Corporate Control or Capital Structure

AGENCY: Internal Revenue Service, Treasury.

ACTION: Correction to notice of proposed rulemaking.

SUMMARY: This document contains corrections to proposed regulations under section 6043(c) concerning reporting requirements as published in the **Federal Register** for Thursday, July 5, 1990 (55 FR 27648).

FOR FURTHER INFORMATION CONTACT: Keith E. Stanley at 202–566–3367 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

The proposed regulations that are the subject of this correction were proposed to be issued under the authority of section 6043(c) of the Code, which was added to the Code by the Omnibus Budget Reconciliation Act of 1989.

Need for Correction

As published, the preamble to the notice of proposed rulemaking contains an error which may prove to be misleading and is in need of clarification.

Correction of Publication

Accordingly, the publication of the notice of proposed rulemaking which was the subject of FR Doc. 90–15452, is corrected as follows:

Paragraph 1. In the preamble, on page 27649, column 3, line 16, which reads "percent of the value of the corporation's" should be corrected to read "percent of the sum of the corporation's".

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 90–17707 Filed 7–30–90; 8:45 am]

BILLING CODE 4830–01–M

DEPARTMENT OF TRANSPORTATION

Saint Lawrence Seaway Development Corporation

33 CFR Part 402

Tariff of Tolls: Proposed Revision

AGENCY: Saint Lawrence Seaway Development Corporation, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Saint Lawrence Seaway Development Corporation and the St. Lawrence Seaway Authority of Canada have jointly established and presently administer the St. Lawrence Seaway Tariff of Tolls. This Tariff sets forth the level of tolls assessed on all commodities and vessels transiting the facilities operated by the Corporation and the Authority. The Authority is proposing to the Corporation that, under a three month pilot, an incentive tolls program be adopted for the purpose of attracting new business to the Seaway. The incentive tolls will apply to downbound cargoes the types of which have not moved downbound through any Seaway lock in the past three navigation seasons (1987, 1988, and 1989) or have so moved, but in quantities representing less than 5% of the average Seaway traffic to a destination over those same three seasons. Under this program, shippers qualify for a 50% reduction of the cargo toll if the cargo moves downbound in quantities of 1,000 metric tons or more per ship between July 1, 1990, and September 30, 1990. It will apply to both the Montreal-Lake Ontario and Welland Canal sections of the Seaway.

Please note that this program will not result in actual reduction of tolls for eligible cargoes until it has been formally approved by both the Canadian and the United States government through an exchange of diplomatic notes, which process is currently underway. Once that occurs, refunds will be made to those entitled to receive them.

DATES: The Corporation invites comments on the proposed revision to the Tariff of Tolls from any interested person(s) or organization(s). Any party wishing to present views or data on the proposed revision may file written comments with the Corporation on or before August 31, 1990.

ADDRESSES: Comments may be mailed to the Saint Lawrence Seaway Development Corporation, 400 Seventh Street SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Marc C. Owen, Chief Counsel, Saint Lawrence Seaway Development Corporation, 400 Seventh Street SW., Washington, DC 20590, (202) 366–0091.

SUPPLEMENTARY INFORMATION: It is proposed to amend, subject to the formal agreement of both the government of Canada and of the United States, the St. Lawrence Seaway Tariff of Tolls by adding a § 402.9 to title 33 CFR, to provide that the portion of the composite toll related to charges per metric ton of cargo charged on new downbound business will be reduced by a fifty percent refund for the period beginning July 1, 1990, and ending September 30, 1990. It will further provide that, to be eligible, a vessel must have: paid the full toll before a refund is made; have entered Seaway lock after leaving the port of origin in a downbound direction after 00:01 hour

July 1, 1990, and leaves the Seaway before arriving at the port of destination by 23:59 hours September 30, 1990; carried, for each consignee, 1,000 metric tons or more of new downbound business; and submitted an application for refund to the Authority or Corporation for audit by either. The proposal further provides that "new downbound business" means downbound cargo that has not moved through the Seaway during the 1987, 1988, and 1989 navigation seasons or has moved through a Seaway lock in quantities representing less than five percent of the average of Seaway traffic to the particular destination during all those three seasons.

Regulatory Flexibility Act Determination

The Saint Lawrence Seaway Development Corporation certifies that this proposed regulation, if adopted, would not have a significant economic impact on a substantial number of small entities. The St. Lawrence Seaway Tariff of Tolls relates to the activities of commercial users of the Seaway, the vast majority of whom are foreign vessel operators. Therefore, any resulting costs will be borne by foreign vessels.

Environmental Impact

This proposed regulation does not require an environmental impact statement under the National Environmental Policy Act (49 U.S.C. 4321, *et seq.*) because it is not a major federal action significantly affecting the quality of human environment.

List of Subjects in 33 CFR Part 402

Vessels, Waterways.

PART 402—[AMENDED]

Accordingly, the Saint Lawrence Seaway Development Corporation proposes to amend part 402—Tariff of Tolls (33 CFR part 402) as follows:

1. The authority citation for 33 CFR part 402 would be revised to read as follows:

Authority: 68 Stat. 93, 33 U.S.C. 981–990.

2. A new § 402.9 would be added to read as follows:

§ 402.9 Incentive tolls.

(a) Notwithstanding anything contained in this Tariff, the portion of the composite toll related to charges per metric ton of cargo charged on new downbound business shall be reduced by a fifty percent refund for the period beginning July 1, 1990 and ending September 30, 1990.

(b) The refund mentioned in paragraph (a) of this section shall be granted after payment of the full toll specified in the Schedule under the tariff if:

(1) A vessel enters a Seaway lock after leaving the port of origin in a downbound direction after 00:01 hour July 1, 1990 and leaves the Seaway prior to arriving at the port of destination by 23:59 hours September 30, 1990;

(2) A vessel described in paragraph (b)(1) of this section carries, for each consignee, 1,000 metric tons or more of new downbound business; and

(3) An application for a new downbound business refund is submitted to the Authority or the Corporation for audit by the Authority or the Corporation.

(c) For the purposes of this section, "new downbound business" means:

(1) Downbound cargo that has not moved through a Seaway lock during the navigation seasons of 1987, 1988 and 1989; or

(2) Downbound cargo that has moved through a Seaway lock in quantities representing less than five percent of the average of Seaway traffic to the particular destination during the navigation seasons of 1987, 1988 and 1989.

(d) Information concerning the navigation seasons of 1987, 1988 and 1989 can be obtained by contacting the Chief of Tolls and Statistics, The St. Lawrence Seaway Authority, 202 Pitt Street, Cornwell, Ontario, K6J 3P7, telephone: (613) 932–5170.

Issued at Washington, DC on July 24, 1990.

Saint Lawrence Seaway Development Corporation.

Marc C. Owen,

Chief Counsel.

[FR Doc. 90–17710 Filed 7–30–90; 8:45 am]

BILLING CODE 4910–61–M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 17

RIN 2900–AD46

Increasing the Domiciliary Income Limitation

AGENCY: Department of Veterans Affairs.

ACTION: Proposed regulations.

SUMMARY: The Department of Veterans Affairs (VA) is proposing to amend the regulations that govern the provision of domiciliary care to veterans, to implement recently enacted legislation. Title 38 U.S.C. 610(b) was amended to provide eligibility for domiciliary care to any veteran whose annual income does not exceed the maximum annual rate of pension payable to a veteran in need of aid and attendance or to any veteran whom the Secretary determines has no adequate means of support.

DATES: Comments must be received on or before August 30, 1990. Comments will be available for public inspection until September 10, 1990. These regulatory amendments are proposed to be made effective August 30, 1990.

ADDRESSES: Interested persons are invited to submit written comments, suggestions, or objections to the Secretary of Veterans Affairs (271A), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420. All written comments received will be available for public inspection only in the Veterans Services Unit, Room 132 at the above address, between the hours of 8 a.m. and 4:30 p.m. Monday through Friday (except holidays) until September 10, 1990.

FOR FURTHER INFORMATION CONTACT: Paul C. Tryhus, Chief, Policies and Procedures Division, Medical Administration Service (136F), Office of Administration, Veterans Health Services and Research Administration, Department of Veterans Affairs (202) 233–2504.

SUPPLEMENTARY INFORMATION: The Veteran's Benefits and Services Act of 1988, Pub. L. 100–322, amended, 38 U.S.C. 610(b), to change the criteria governing eligibility for domiciliary care. The new law authorizes VA to furnish needed domiciliary care to: (1) Any veteran whose annual income does not exceed the maximum annual rate of pension payable to a veteran in need of aid and attendance, or (2) any veteran whom the Secretary determines has no adequate means of support. The new law also provided that veterans who were patients or residents in a State home facility or VA domiciliary during the period of January 1, 1987, through April 1, 1988, would not be affected by the changes. To implement the new law, VA is proposing to amend the regulation governing domiciliary care eligibility (38 CFR 17.47(e)) to bring it into conformity with the new statutory eligibility criteria. VA is also proposing to amend the regulation defining the phrase "no adequate means of support" (38 CFR 17.48(b)(2) to refer to an applicant for domiciliary care whose annual income exceeds the annual rate of pension for a veteran in receipt of regular aid and attendance as defined in 38 U.S.C. 503. The veteran must also be able to demonstrate to the satisfaction of the VA Chief of Staff, on the basis of objective evidence, that deficits in health and/or functional status render

the veteran incapable of pursuing substantially gainful employment, and who otherwise is without the means to provide adequately for self, or to be provided for in the community.

VA has determined that these regulations are not major as defined by Executive Order 12291, Federal Regulation. They will not have an effect on the economy of $100 million; and will not result in major increases in costs for consumers, individual industries, Federal, State or local government agencies, or geographic regions, nor will it have 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.

The Secretary hereby certifies that these proposed regulations will not, when promulgated, have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. These proposed regulatory amendments concern eligibility for domiciliary care. Any economic impact on small entitles would be small because of the minimal part of their overall operation and income which this activity represents.

The Catalog of Federal Domestic Assistance number is 64.008.

List of Subjects in 38 CFR Part 17

Alcoholism, Claims, Dental health, Drug abuse, Foreign relations, Government contracts, Grant programs—health, Health care, Health facilities, Health professions, Medical devices, Medical research, Mental health programs, Nursing home care, Philippines, Veterans.

Approved: June 13, 1990.

Edward J. Derwinski,

Secretary of Veterans Affairs.

38 CFR part 17, Medical, is proposed to be amended as follows:

PART 17 [AMENDED]

1. In § 17.47 paragraph (e) is proposed to be revised and the authority line revised to read as follows:

* * * * *

§ 17.47 Eligibility for hospital, domiciliary or nursing home care of persons discharged or released from active military, naval, or air service.

* * * * *

(e) Domiciliary care may be furnished when needed to:

(1) Any veteran whose annual income does not exceed the maximum annual rate of pension payable to a veteran in need of regular aid and attendance, or

(2) Any veteran who the Secretary determines had no adequate means of support. An additional requirement for eligibility for domiciliary care is the ability of the veteran to perform the following:

(i) Perform without assistance daily ablutions, such as brushing teeth; bathing; combing hair; body eliminations.

(ii) Dress self, with a minimum of assistance.

(iii) Proceed to and return from the dining hall without aid.

(iv) Feed self.

(v) Secure medical attention on an ambulatory basis or by use of personally propelled wheelchair.

(vi) Have voluntary control over body eliminations or control by use of an appropriate prosthesis.

(vii) Share in some measure, however slight, in the maintenance and operation of the facility.

(viii) Make rational and competent decisions as to his or her desire to remain or leave the facility.

Authority: 38 U.S.C. 610(b), sec. 102, Pub. L. 100–322)

* * * * *

§ 17.48 [Amended]

2. In § 17.48 paragraph (b)(2) is proposed to be revised as follows:

* * * * *

(b) * * *

(2) For purposes of eligibility for domiciliary care, the phrase "no adequate means of support" refers to an applicant for domiciliary care whose annual income exceeds the annual rate of pension for a veteran in receipt of regular aid and attendance, as defined in 38 U.S.C. 503, but who is able to demonstrate to competent VA medical authority, on the basis of objective evidence, that deficits in health and/or functional status render the applicant incapable of pursuing substantially gainful employment, as determined by the Chief of Staff, and who is otherwise without the means to provide adequately for self, or be provided for in the community.

* * * * *

[FR Doc. 90–17736 Filed 7–30–90; 8:45 am]

BILLING CODE 8320–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL–3786–3]

Approval and Promulgation of Implementation Plans; Indiana

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Notice of proposed rulemaking; withdrawal.

SUMMARY: On February 3, 1983, (48 FR 5106), August 3, 1983, (48 FR 35316), January 21, 1986, (51 FR 2732), and March 13, 1989, (54 FR 10381), USEPA proposed restrictions on Federal funding and stationary source construction for Indiana's failure to submit and/or implement a vehicle inspection and maintenance (I/M) program as part of its 1979 and 1982 Ozone and Carbon Monoxide State Implementation Plan. Elsewhere in today's **Federal Register**, USEPA is giving final approval to the Indiana I/M program, which is part of both the ozone and CO plans. USEPA's decision to give final approval to the Indiana I/M program eliminates the basis for the previous Federal funding and stationary source construction restriction notices. USEPA, therefore, is withdrawing the August 3, 1983, and January 21, 1986, notices and those portions of the February 3, 1983, and March 13, 1989, notices which proposed restrictions on Federal funding and stationary source construction.

EFFECTIVE DATE: October 1, 1990.

ADDRESSES: Copies of all materials related to USEPA's actions are available at the following address for review: (It is recommended that you telephone Cheryl Newton at (312) 886–6081 before visiting the Region V Office.) U.S. Environmental Protection Agency, Region V, Air and Radiation Branch, 230 South Dearborn Street, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Cheryl Newton, U.S. Environmental Protection Agency, Region V, Air and Radiation Branch (5AR–26), 230 South Dearborn Street, Chicago, Illinois 60604, (312) 886 6081.

List of Subjects in 40 CFR Part 52

Air pollution control. Carbon monoxide, Environmental protection, Hydrocarbons, Intergovernmental relations, Ozone.

Authority: 42 U.S.C. 7401–7642.

Dated: June 1, 1990.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 90–16152 Filed 7–30–90; 8:45 am]

BILLING CODE 6560–50–M

Notices

Federal Register
Vol. 55, No. 147
Tuesday, July 31, 1990

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

Forest Service

Draft Supplement to the Final Environmental Impact Statement for the Ozark-St. Francis National Forests Land and Resource Management Plan; AR

AGENCY: Forest Service. USDA.

ACTION: Notice; intent to prepare a supplement to an environmental impact statement.

SUMMARY: The Forest Service will prepare a draft and final supplement to the Final Environmental Impact Statement (FEIS) for the Ozark-St. Francis National Forests Land and Resource Management Plan (LRMP) filed in July 1986. The supplement is for a proposed action to consider amending the Forest Land and Resources Management Plan. Changes being considered pertain to: roads, water quality, special areas, and timber management practices. The determination as to whether the proposed amendment is significant or not significant will be made as a result of the analysis.

The Agency invites written comments and suggestions that are within the scope of the proposed action and analysis for the supplement. In addition, the agency gives notice of the full environmental analysis and decisionmaking process that will occur on the proposal so that interested and affected people are aware of how they may participate in the process and contribute to the final decision.

DATES: Comments related to the scope of the analysis should be received by August 17, 1990, to ensure timely consideration

ADDRESSES: Send written comments and suggestions to Lynn C. Neff, Forest Supervisor, Ozark-St. Francis National Forests, P.O. Box 1008, Russellville, AR 72801.

FOR FURTHER INFORMATION CONTACT: John B. Fortin, Jr., Planning Staff Officer, (501) 968–2354.

SUPPLEMENTARY INFORMATION: The Ozark-St. Francis National Forests' Land and Resource Management Plan (LRMP) was approved on July 29, 1986. There were four administrative appeals of the decision to select Alternative D as the LRMP to be implemented. One appeal was dismissed; one appeal was resolved by Amendment #2 to the LRMP. In April 1987, the Regional Forester entered into a period of negotiation with the other appellants in an effort to reach a Settlement Agreement with them. An agreement was reached on all issues but one in Appeal 1748. Appeal 2037 remains unresolved. An amendment to the LRMP is needed to address issues that were identified in the agreement with appellants. The Ozark-St. Francis National Forests will prepare a draft supplement to the Final Environmental Impact Statement (FEIS) for the Ozark-St. Francis National Forests' LRMP which addresses this amendment. In preparing the draft supplement to the FEIS, the Forest Service will develop information pertaining to the following: (1) Road inventory, changes in road management, and some reduction in road construction; (2) increased water quality and riparian area protection measures; (3) deferring of harvest and examination of potential special areas: (4) changing of the mix of timber harvesting practices, including some reduction of clearcutting, and a slight increase in uneven-aged timber management practices; (5) and adoption of mixed species management. The 1986 Ozark-St. Francis National Forests' LRMP will remain in effect and continue to be implemented during preparation of the supplement to the FEIS.

No formal scoping meetings are planned at this time. General notice to the public concerning the scope of analysis will be handled by a newsletter and/or news releases.

The range of alternatives to be considered includes, as a minimum, a modification of the 1986 selected alternative and the alternatives already analyzed in the 1986 FEIS.

The draft supplement to the FEIS is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review by late August 1990. At that time, EPA will publish a notice of availability of the draft supplement in the **Federal Register.**

The comment period on the draft supplement to the FEIS will be 45 days from the date the EPA's notice of availability appears in the **Federal Register.** It is very important that those interested in the management of the Ozark-St. Francis National Forests participate at this time. To be most helpful, comments on the draft supplement should be as specific as possible and may address the adequacy of the supplement (See the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3). In addition, Federal court decisions have established that reviewers of draft environmental impact statements must structure their participation in the environmental reviews of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions, *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553 (1978). Environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the final environmental impact statement. *City of Angoon* v. *Hodel.,* 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp 1334, 1338 (E.D. Wis. 1980). The reason for this is to ensure that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider and respond to them in the final.

After the comment period ends on the draft supplement, the comments will be analyzed, considered, and responded to by the Forest Service in preparing the final supplement. The final supplement is scheduled to be completed by November 1991. The responsible official will consider the comments, responses, environmental consequences discussed in the final supplement, and applicable laws, regulations, and policies in making a decision regarding this proposal. The responsible official will document the decision and reasons for the decision in a Record of Decision. That decision will be subject to appeal under 36 CFR part 217.

The responsible official is Lynn C. Neff, Forest Supervisor, Ozark-St.

Francis National Forests, P.O. Box 1008, Russellville, AR 72801.

Dated: July 25, 1990.

Marvin C. Meier,

Deputy Regional Forester.

[FR Doc. 90–17739 Filed 7–30–90; 8:45 am]

BILLING CODE 3410–11–M

South Fork of the Merced and Merced Wild and Scenic Rivers, Mariposa and Madera Counties, CA and Sierra and Stanislaus National Forest; Intent To Prepare an Environmental Impact Statement and Implementation Plan

As required by the Wild and Scenic Rivers Act of 1968, as amended, the Department of Agriculture, Forest Service and the Department of Interior, Bureau of Land Management will prepare an Environmental Impact Statement to determine future management practices for the South Fork of the Merced and the Merced Wild and Scenic Rivers (W&SR), totaling 33 miles. An additional 3 miles, jointly administered by the Forest Service and National Park Service is included in this analysis. The management practices of the South Fork Merced and the Merced Wild and Scenic River portions that flows through the Yosemite National Park (totaling 78 miles) will be determined by the Department of the Interior, Park Service, at the time the Park's General Development Plan is updated.

In 1987, Congress designated the South Fork Merced and portions of the Merced as a W&SR. The legislation directs the agencies to develop a management plan for the wild and scenic rivers within three years after the enactment of the act. The plan will be tiered to the Sierra and Stanislaus National Forests and Bureau of Land Management's Wild and Scenic River Boundary and Classification Environmental Assessment (5/89) for these rivers.

A range of alternatives will be considered. These alternatives will analyze various management practices and policies and their effects on resources, recreation and other current uses, and the protection of the W&SR's "outstandingly remarkable values."

Federal, State, and local agencies, and individual or organizations who may be interested in or affected by the decisions are invited to participate in the planning process. This process includes:

1. Identification of potential issues.

2. Identification of issues to be analyzed in depth.

3. Elimination of insignificant issues or those which have been covered by a previous environmental review

4. Determination of potential coorperating agencies and assignment of responsibilities.

Public comments have been, and will continue to be, solicited in a variety of ways including requests for written comments, information mailings, and public meetings

Paul F. Barker, Regional Forester, Pacific Southwest Region, San Francisco, California, is the responsible official for the Forest Service.

The Draft Environmental Impact Statement (DEIS) is expected to be filed with the Environmental Protection Agency (EPA) and be available for a 90-day public review period by August 1990. At that time EPA will publish a notice of availability of the draft EIS in the **Federal Register**. It is important that those interested in the management of the South Fork of the Merced and the Merced Wild and Scenic Rivers participate at that time. To be most helpful comments on the DEIS should be specific as possible and may address adequacy of the statement or the merits of the alternatives discussed (see the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503. 3). In addition, Federal court decisions have established that reviewers of a DEIS must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions, *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 533 (1978), and that environmental objectives that could have been raised at the DEIS stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F. 2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 90-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement. To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the DEIS shall be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the DEIS or the merits of the alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503. 3 in addressing these points.)

After the comment period ends on the DEIS, comments will be analyzed and considered by the Forest Service in preparing the Final Environmental Impact Statement (FEIS). The FEIS is scheduled to be completed by November 1990. In the FEIS, the Forest Service is required to respond to comments received (40 CFR 1503. 4). The responsible official will consider the comments, responses, environmental consequences discussed in the FEIS and applicable laws, regulations, and policies in making a decision regarding this proposal. The responsible official will document the decision and reasons for the decision in a Record of Decision. That decision will be subject to appeal.

Written comments and suggestions concerning the analysis should be sent to Jim Boynton, Forest Supervisor, Sierra National Forest, 1600 Tollhouse Rd., Clovis, California 93612.

Questions about the proposed action and Environmental Impact Statement and Plan should be directed to Wallace McCray, Project Leader, at the above address, phone (209) 487–5155.

Dated: July 20, 1990.

Lawrence Bembry,

Acting Regional Forester.

[FR Doc. 90–17741 Filed 7–30–90; 8:45 am]

BILLING CODE 3410–11–M

Stansbury Holdings Corp.; Western Vermiculite Project; Bitterroot National Forest, Ravalli County, MT

AGENCY: Forest Service, USDA.

ACTION: Notice; Revision of notice of intent to prepare an Environmental Impact Statement.

SUMMARY: The Department of Agriculture, Forest Service, in conjunction with Montana Department of State Lands, will prepare an Environmental Impact Statement (EIS) or a proposal to permit the development of Stansbury Holdings Corporation's (previously known as Stansbury Mining Corporation) Western Vermiculite Project open pit vermiculite mine and concentrator, as stated in **Federal Register** (53 FR 15072) Notice of April 1988. This revision is to announce the

preparation of the EIS after a temporary cessation of the project, and the hiring under contract of a firm to prepare the EIS.

The Forest Service has jurisdiction for surface resources on National Forest System Lands and is responsible for approval of the proponent's Plan of Operations. The Montana Department of State Lands is responsible for permitting mining and reclamation operations on all lands within the State of Montana regardless of administrative jurisdiction. Because of this joint responsibility, one environmental analysis will be conducted.

Stansbury Mining Corporation's proposed Plan of Operations was submitted June 17, 1987 pursuant to Forest Service locatable mineral regulations 36 CFR part 228, subpart A, and State of Montana Metal Mine Reclamation Act title 82, chapter 4, part 3, MCA. A joint Forest Service and State of Montana Environmental Assessment was initiated at this time and the analysis continued until a finding of significance indicated that preparation of an EIS was appropriate. The project has been suspended since August 1987 due to lack of funding by Stansbury Mining Corporation for preparation of the EIS. The project resumed in December 1989, with an initial payment for the EIS preparation by Stansbury. A revised Plan of Operations was submitted by Stansbury Holdings Corporation on May 7, 1990. A completeness determination for the Plan of Operations was made by both agencies on June 6, 1990.

DATES: Public meetings in Hamilton, Montana, and three formal agency interdisciplinary scoping meetings have identified issues and concerns associated with the proposal. Government agencies and the public who are interested in or affected by the proposal are invited to participate during an additional scoping period. The Forest Service, in conjunction with the Montana Department of State Lands, will receive written comments for 30 days from the date of this notice. The Stansbury Mining Corporation permit application and a scoping document are available for public review.

ADDRESSES: Send written comments to District Ranger, Darby Ranger District, P.O. Box 388, Darby, Montana, 59829 and/or Department of State Lands, Hard Rock Bureau, Helena, Montana 59620.

FOR FURTHER INFORMATION: Questions about the proposed project should be directed to Winnie Schreiber, Project Coordinator, Darby Ranger District, Phone: (406) 821–3913.

SUPPLEMENTARY INFORMATION: The draft EIS has been contracted to be prepared by the consulting firm of Camp, Dresser, and McKee (CDM) of Denver, Colorado. Completion of the draft is anticipated to take 22 weeks from the contract award date of May 2, 1990 to CDM by the Department of State Lands. A 45-day comment period, as well as a public hearing, will follow the issuance of the draft EIS. The final EIS should be available no later than 12 months from the completeness determination by both agencies (June 6, 1990).

The EIS will consider a range of alternatives based on issues and concerns associated with the project. Two alternatives can be identified at the present time, the No Action alternative and the alternative to approve the project as proposed. Other alternatives may include modifications and/or changes in the various elements of the proposal. Included in the EIS will be a Health Risk Assessment (HRA). The HRA will analyze the human health impacts associated with the mine site, and the surrounding local community. CDM has subcontracted the University of Cincinnati to prepare the HRA.

The comment period on the draft EIS will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register.**

The Forest Service believes it is important to give reviewers notice at this early stage of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC, 435 U.S. 519, 553 (1978).* Also, environmental objections that could be raised at the draft EIS stage but that are not raised until after completion of the final EIS may be waived or dismissed by the courts. Wisconsin *Heritages, Inc.*, v. *Harris, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980).* Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final EIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft EIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft EIS or the merits of the alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 GFR 1503.3 in addressing these points.)

In a joint project as this, there are two responsible officials. The Bitterroot National Forest Supervisor and the Commissioner of State Lands will consider the comments and responses to the draft EIS, environmental consequences discussed in the FEIS, and applicable state and federal laws, regulations, and policies in making a decision regarding the Stansbury Mine Project. The joint decision will be subject to review under applicable state and federal regulations.

Dated: July 17, 1990.

Bertha C. Gillam,

Forest Supervisor, Bitterroot National Forest.

[FR Doc. 90–17744 Filed 7–30–90; 8:45 am]

BILLING CODE 3410–11–M

Packers and Stockyards Administration

Posted Stockyards; Bauer Horse & Tack Auction, et al.

Pursuant to the authority delegated under the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 181 *et seq.*), it was ascertained that the livestock markets named below were stockyards within the definition of that term contained in section 302 of the Act, as amended (7 U.S.C. 202), and notice as given to the owners and to the public by posting notices at the stockyards as required by said section 302, on respective dates specified below.

Facility No.	Name and location of stockyard	Date of posting
NY–169	Bauer Horse & Tack Auction, Lyons, New York.	October 24, 1989.
OK–206	Caddo Livestock Auction, Caddo, Oklahoma.	October 25, 1989.
OK–207	OKC West Livestock Market, Inc., El Reno, Oklahoma.	October 30, 1989.

Facility No.	Name and location of stockyard	Date of posting
OK-209	Pierce Commission Company, Welch, Oklahoma.	October 23, 1989.
OK-338	Houston County Livestock Auction, Inc. Crockett, Texas.	October 27, 1989.

Done at Washington, DC this 25th day of July 1990.

Harold W. Davis,

Director, Livestock Marketing Division, Packers and Stockyards Administration.

[FR Doc. 90-17771 Filed 7-30-90; 8:45 am]

BILLING CODE 3410-KD-M

Depositing of Stockyards; Cattleman's Commission Co. et al.

It has been ascertained, and notice is hereby given, that the livestock markets named herein, originally posted on the respective dates specified below as being subject to the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 181 *et seq.*), no longer come within the definition of a stockyard under said Act and are, therefore, no longer subject to the provisions of the Act.

Facility No.	Name and Location of Stockyard	Date of posting
AR-161	Cattleman's Commission Co., Batesville, Arkansas.	November 5, 1984.
GA-125	Coffee County Stockyards, Inc., Douglas, Georgia.	May 15, 1959.
KS-100	Abilene Livestock Sales Co., Abilene, Kansas.	March 30, 1950.
KS-132	Garden City Livestock Market, Inc., Garden City, Kansas.	October 4, 1939.
KS-149	Kingman Livestock and Sales Company, Kingman, Kansas.	July 7, 1959.
KS-160	McPherson Sales Barn, Inc., McPherson, Kansas.	June 2, 1959.

Notice or other public procedure has not preceded promulgation of the foregoing notice. There is no legal justification for not promptly depositing a stockyard which is no longer within the definition of that term contained in the Act.

The foregoing is in the nature of a change relieving a restriction and may be made effective in less than 30 days after publication in the **Federal Register**. This notice shall become effective upon publication in the **Federal Register**.

Authority: 42 Stat. 159, as amended and supplemented; 7 U.S.C. 181 *et seq.*

Done at Washington, DC, this 25th day of July, 1990.

Harold W. Davis,

Director, Livestock Marketing Division.

[FR Doc. 90-17772 Filed 7-30-90; 8:45 am]

BILLING CODE 3410-KD-M

DEPARTMENT OF COMMERCE

International Trade Administration

[A-122-506]

Oil Country Tubular Goods From Canada; Termination in Part of Antidumping Duty Administrative Reviews

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of termination in part of antidumping duty administrative reviews.

SUMMARY: On July 17, 1987, July 28, 1988, and July 25, 1989, the Department of Commerce initiated administrative reviews of the antidumping duty order on oil country tubular goods from Canada. The Department has now determined to terminate in part these reviews.

EFFECTIVE DATE: July 31, 1990.

FOR FURTHER INFORMATION CONTACT: Joe Kaesshaefer or Linda L. Pasden, Office of Agreements Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone (202) 377-3793.

SUPPLEMENTARY INFORMATION:

Background

On July 17, 1987, July 28, 1988, and July 25, 1989, the Department of Commerce published notices of initiation of three administrative reviews of the antidumping duty order on oil country tubular goods from Canada. These notices stated that we would review entries for exporters during these three consecutive periods from January 1, 1986 through May 31, 1989. The following exporters subsequently withdrew their requests for review for certain periods:

January 1, 1986 through May 31, 1987

Exporter

CAPPCO Tubular Products Company

June 1, 1987 through May 31, 1988

Exporter

CAPPCO Tubular Products Company.
Frank Pipe Company.
Sonco Steel Tube Division, Ferrum, Inc.
IPSCO, Inc.

June 1, 1988 through May 31, 1989

Exporter

CAPPCO Tubular Products Company.
Stelco, Inc.

Accordingly, the Department has determined to terminate in part these three reviews. This notice is in accordance with section 751(a)(1) of the Tariff Act of 1930 (19 U.S.C. ?675(a)) and § 353.22(a)(5) of the Department's regulations (19 CFR 353.22(a)(5)).

Dated: July 19, 1990.

Francis J. Sailer,

Acting Assistant Secretary for Import Administration.

[FR Doc. 90-17722 Filed 7-30-90; 8:45 am]

BILLING CODE 3510-DS-M

[A-570-804]

Initiation of Antidumping Duty Investigation; Sparklers From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the U.S. Department of Commerce (the Department), we are initiating an antidumping duty investigation to determine whether imports of sparklers from the People's Republic of China are being, or are likely to be, sold in the United States at less than fair value. We are notifying the U.S. International Trade Commission (ITC) of this action so that it may determine whether imports of sparklers from the People's Republic of China are materially injuring, or threaten material injury to, a U.S. industry. If this investigation proceeds normally, the ITC will make its preliminary determination on or before August 16, 1990. If that determination is affirmative, we will make a preliminary determination on or before December 10, 1990.

EFFECTIVE DATE: July 31, 1990.

FOR FURTHER INFORMATION CONTACT: Michael Ready or Louis Apple, Office of

Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377–2613 or (202) 377–1769.

SUPPLEMENTARY INFORMATION:

The Petition

On July 2, 1990, we received a petition filed in proper form by Elkton Sparkler Company of North East, Maryland, and Diamond Sparkler Company of Youngstown, Ohio. In compliance with the filing requirements of the Department's regulations (19 CFR 353.12 (1989)), petitioners allege that imports of sparklers from the People's Republic of China are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports are materially injuring, or threaten material injury to, a U.S. industry. Petitioners also allege that critical circumstances exist with respect to imports of sparklers from the PRC.

Petitioners have stated that they have standing to file the petition because they are interested parties, as defined under section 771(9)(C) of the Act, and because they have filed the petition on behalf of the U.S. industry producing the product that is subject to this investigation. Any interested party, as described under paragraphs (C), (D), (E), or (F) of section 771(9) of the Act, who wishes to register support for, or opposition to, this petition, should file written notification with the Assistant Secretary for Import Administration.

Under the Department's regulations, any producer or reseller seeking exclusion from a potential antidumping duty order must submit its request for exclusion within 30 days of the date of the publication of this notice. The procedures and requirements regarding the filing of such requests are contained in 19 CFR 353.14.

United States Price and Foreign Market Value

Petitioners based United States Price (USP) for sparklers on a 1989 price list, for No. 8 and No. 10 sparklers, from a Hong Kong-based wholesaler of PRC-made sparklers. The terms of the price were F.O.B. Hong Kong.

Petitioners based foreign market value (FMV) for sparklers on the factors of production of Diamond Sparkler Company. Where possible, petitioner valued factors in India, a sparkler-producing third country whose economy is market-driven and which petitioners contend is comparable to the PRC. When petitioner was unable to calculate a factor's value in India, the factor was valued in the United States. Petitioners' methodology resulted in margins of 90.5 percent and 63.3 percent.

The Department determined that petitioners had incorrectly calculated estimated factory overhead in the PRC. The Department therefore corrected the factory overhead component of petitioners' FMV calculation by substituting Indian labor rates for U.S. labor rates and by disallowing an unsupported increase in the overhead figure that petitioner had proposed. The corrected methodology results in estimated dumping margins of 78.73 percent for No. 8 type sparklers and 54.60 percent for No. 10 type sparklers.

Initiation of Investigation

Under section 732(c) of the Act, the Department must determine, within 20 days after a petition is filed, whether the petition sets forth the allegations necessary for the initiation of an antidumping duty investigation, and whether the petition contains information reasonably available to the petitioner supporting the allegations.

We have examined the petition on sparklers from the People's Republic of China and found that the petition meets the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating an antidumping duty investigation to determine whether imports of sparklers from the People's Republic of China are being, or are likely to be, sold in the United States at less than fair value. If our investigation proceeds normally, we will make our preliminary determination by December 10, 1990.

Scope of Investigation

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the U.S. tariff schedules were 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 this date will be classified solely according to the appropriate HTS subheadings. The HTS subheadings are provided for convenience and U.S. Customs Service purposes. The written description remains dispositive as to the scope of the product coverage.

The products covered by this investigation are sparklers from the People's Republic of China. Sparklers are fireworks, each comprising a cut-to-length wire, one end of which is coated with a chemical mix that emits bright sparks while burning. Sparklers are currently classifiable under HTS subheading 3604.10.00.

ITC Notification

Section 732(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonproprietary information. We will allow the ITC access to all privileged and business proprietary information in the Department's files, provided the ITC confirms in writing that it will not disclose such information either publicly or under administrative protective order without the written consent of the Deputy Assistant Secretary for Investigations, Import Administration.

Preliminary Determination by ITC

The ITC will determine by August 16, 1990 whether there is a reasonable indication that imports of sparklers from the People's Republic of China are materially injuring, or threaten material injury to, a U.S. industry. If its determination is negative, the investigation will be terminated; otherwise, the investigation will proceed according to statutory and regulatory time limits.

This notice is published pursuant to section 732(c)(2) of the Act.

Dated: July 23, 1990.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 90–17724 Filed 7–30–90; 8:45 am]

BILLING CODE 3510–DS–M

[A–580–008]

Color Television Receivers From the Republic of Korea; Termination in Part of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of termination in part of antidumping duty administrative review.

SUMMARY: On June 1, 1990, the Department of Commerce initiated an administrative review of the antidumping duty order on color television receivers from the Republic of Korea. The Department has now determined to terminate in part that review.

EFFECTIVE DATE: July 31, 1990.

FOR FURTHER INFORMATION CONTACT: David Mason Jr. or Maureen Flannery, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone (202) 377–2923.

BACKGROUND: On June 1, 1990, the Department of Commerce published a notice of initiation of administrative review of the antidumping duty order on color television receivers from Korea (55 FR 22366). That notice stated that we would review Quantronics Manufacturing Korea Ltd. for the period April 1, 1989 through March 31, 1990. Quantronics Manufacturing Korea Ltd. was made part of the administrative review pursuant to an April 25, 1990 request for review by Zenith Corporation (Zenith), an interested party in this proceeding. Zenith subsequently withdrew its request for review of Quantronics Manufacturing Korea Ltd. on June 29, 1990.

As a result of the request for withdrawal, the Department has determined to terminate in part that review.

SUPPLEMENTARY INFORMATION:

Authority: This notice is in accordance with section 751(a)(1) of the Tariff Act of 1930 (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22 (1990).

Dated: July 24, 1990.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 90–17723 Filed 7–30–90; 8:45 am]

BILLING CODE 3510–DS–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Man-Made Fiber Textile Products Produced or Manufactured in the People's Republic of China

July 25, 1990.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: July 26, 1990.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, 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.

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).

The current limit for Category 611 is being increased by application of swing and carryforward. The limit for Category 617 is being reduced to account for the swing being applied.

A description of the textile and apparel 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 54 FR 50797, published on December 11, 1989). Also see 54 FR 52047, published on December 20, 1989.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

July 25, 1990.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive of December 14, 1989, issued to you by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in China and exported during the period January 1, 1990 through December 31, 1990.

Effective on July 26, 1990 you are directed to adjust the limits for the following categories, as provided under the terms of the current bilateral agreement between the Governments of the United States and the People's Republic of China:

Category	Adjusted 12 mo. limit [1]
Levels not in a group:	
611	4,754,092 square meters.
617	13,966,563 square meters.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1989.

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,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 90–17753 Filed 7–30–90; 8:45 am]

BILLING CODE 3510–DR–M

Textile and Apparel Categories With the Harmonized Tariff Schedule of the United States; Changes to the 1990 Correlation

July 25, 1990.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Changes to the 1990 correlation.

EFFECTIVE DATE: July 1, 1990.

FOR FURTHER INFORMATION CONTACT: Lori E. Goldberg, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–3400.

The Correlation: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (1990) presents the Harmonized Tariff Schedule numbers under each of the cotton, wool, man-made fiber, silk blend and other vegetable fiber categories used by the United States in monitoring imports of these textile products and in the administration of the bilateral agreement program. The attached list includes some Harmonized Tariff Schedule numbers that have been published in the first supplement of the Harmonized Tariff Schedule of the United States (1990). The Correlation should be amended to reflect the changes indicated below:

Category	Changes in the 1990 Correlation
229	Delete 5608.11.0000.
	Delete 5608.90.2000.
	Add 5608.11.0090—Made up fishing nets of man-made textile materials other than hand cast string drawn nets.
	Add 5608.90.2090—Knotted netting of twine, cordage or rope; etc., other than fish netting, fish nets and hammocks, of cotton.
359	Delete 6211.32.0005.
	Add 6211.32.0007—Other men's or boys' cotton coveralls, jumpsuits and similar apparel insulated for cold weather protection.
	Delete 6211.42.0005.
	Add 6211.42.0007—Women's or girls' cotton coveralls, jumpsuits and similar apparel insulated for cold weather protection.

Category	Changes in the 1990 Correlation
362	Add 6302.21.1090—Other than cotton printed pillow covers and printed bolster cases, containing embroidery, lace, etc.
	Add 6302.21.2090—Other than cotton printed pillow covers and printed bolster cases, not containing embroidery, lace, etc.
	Add 6302.31.1090—Other than cotton printed pillow covers and printed bolster cases, containing embroidery, lace, etc.
	Add 6302.31.2090—Other than cotton printed pillow covers and printed bolster cases, not containing embroidery, lace, etc.
369	Add 6302.21.1055—Cotton printed pillow covers, containing any embroidery, lace, braid, edging, trimming, piping or applique work.
	Add 6302.21.2055—Cotton printed pillow covers, not containing any embroidery, lace, braid, edging, trimming, piping or applique work.
	Add 6302.21.1055—Cotton pillow covers, containing any embroidery, lace, braid, edging, trimming, piping or applique work.
	Add 6302.21.2055—Cotton printed pillow covers, not containing any embroidery, lace, braid, edging, trimming, piping or applique work.
	Add 6307.90.9545—Pillow shells of cotton.
442	Add 6104.59.1005—Women's or girls' skirts and divided skirts of artificial fibers containing 23% or more by weight of wool or fine animal hair.
448	Add 6104.69.2005—Women's or girls' trousers, breeches and shorts containing 23% or more by weight of wool or fine animal hair.
459	Add 6114.30.2030—Bodysuits and bodyshirts containing 23% or more weight of wool or fine animal hair.
	Delete 6117.10.2000.
	Add 6117.10.2010—Shawls, scarves, mufflers, mantillas, etc., containing 23% or more by weight of wool or fine animal hair.
	Add 6406.99.1505—Leg warmers of man-made fibers containing 23% or more by weight of wool or fine animal hair.
642	Change 6104.59.1010 to 6104.50.1030.
	Change 6104.59.1020 to 6104.50.1060.
648	Change 6104.59.2010 to 6104.50.2030.
	Change 6104.69.2020 to 6104.50.2060.
659	Delete 6114.30.2020.
	Add 6114.30.2060—Bodysuits and bodyshirts other than containing 23% or more by weight of wool or fine animal hair.
	Delete 6117.10.2000.
	Add 6117.10.2030—Shawls, scarves, mufflers, etc., other than containing 23% or more by weight of wool or fine animal hair.
	Delete 6211.33.0005.
	Add 6211.33.0007—Men's or boys' man-made fiber coveralls, jumpsuits and similar apparel insulated for cold weather protection.
	Delete 6211.43.0005.
	Add 6211.43.0007—Women's or girls' man-made fiber coveralls, jumpsuits and similar apparel insulated for cold weather protection.
	Add 6406.99.1510—Leg warmers of man-made fibers other than containing 23% or more by weight of wool or fine animal hair.
	Delete 6406.99.1520.
669	Delete 6306.22.9000.
	Add 6306.22.9030—Tents of synthetic fibers other than screen houses.
800	Delete 5006.00.0090.
	Add 5006.00.9000—Silk yarn and yarn spun from silk waste, put up for retail sale, other than containing 85% or more by weight silk or silk waste.
859	Delete 6212.90.0040.
	Add 6212.90.0090—Braces, suspenders, garters and similar articles and parts thereof, whether or not knitted or crocheted, containing other than 70% or more by weight of silk or silk waste.
899	Delete 9404.90.9030.
	Add 9404.90.9035—Silk comforters containing other than 85% or more by weight of silk or silk waste.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 90-17752 Filed 7-30-90; 8:45 am]

BILLING CODE 3510-DR-M

COMMODITY FUTURES TRADING COMMISSION

Chicago Mercantile Exchange Proposed Amendments Relating to the Nikkei Stock Average Futures and Option Contracts

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed contract market rule changes.

SUMMARY: The Chicago Mercantile Exchange (CME or Exchange) has submitted proposed amendments to the Nikkei Stock Average futures and option contracts. The primary purpose of the proposed amendments is to change the CME's Nikkei stock average contracts to make them U.S. dollar denominated, rather than Japanese yen denominated. Proposed changes also modify the final cash settlement provisions of the subject futures contract, so that it will be based on a special opening quote, rather than a closing value, of the Nikkei index. In accordance with section 5a(12) of the Commodity Exchange Act and acting pursuant to the authority delegated by Commission Regulation § 140.96, the Director of the Division of Economic Analysis (Division) of the Commodity Futures Trading Commission (Commission) has determined, on behalf of the Commission, that this proposal is of major economic significance. On behalf of the Commission, the Division is requesting comment on this proposal.

DATE: Comments must be received on or before August 30, 1990.

ADDRESS: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Reference should be made to the amendments to the CME Nikkei Stock Average futures and option contracts.

FOR FURTHER INFORMATION CONTACT: Stephen Sherrod, Division of Economic Analysis, 2033 K Street NW., Washington, DC 20581, telephone (202) 254-7303.

SUPPLEMENTARY INFORMATION: The unit of trading for the CME's Nikkei Stock Average contracts is 500 Japanese yen times the Nikkei index. The pricing basis of the contracts is in terms of Japanese yen. The minimum price fluctuation is 5 index points, which is equivalent to 2,500 Japanese yen per contract. Delivery on the futures contract is effected by cash settlement. The final cash-settlement price is based on the closing quotation on the Tokyo Stock Exchange of the Nikkei Stock Average, rounded to the nearest one-tenth of an Index point, on the third Wednesday of an expiring contract month. Trading ceases on the business day prior to the third Wednesday of the month.

The CME has proposed two major changes in its submission. One change would alter the cash settlement date and the computation procedure for the futures contract, to be the same as the

settlement date and cash-settlement value for Nikkei stock average futures contracts traded in Japan and Singapore. Specifically, under the proposal, the cash-settlement price "* * * shall be the special opening quotation of the Nikkei Stock Average which is used to settle the Nikkei Stock Average futures at the Osaka Securities Exchange." This usually is the value of the Nikkei index at the opening on the second Friday of the contract month. According to the Exchange:

> The Nikkei stock average futures contracts traded in Japan and Singapore settle * * * to a special opening quotation on the second Friday of the expiration month. Trading on the CME would halt at the regular time on the Thursday prior to the expiration Friday. Our final settlement price would likewise be based the next day on the same special opening quotation used in Japan and Singapore. This change will insure that the CME contract closely tracks the contracts trading in Asia, which will facilitate arbitrage and other cross-exchange risk management.

The second change would make the CME's Nikkei Stock Average futures and option contracts denominated in U.S. dollars, rather than Japanese yen. To accomplish this, the CME proposes to change the contract multiplier (which defines the trading unit) to $5, rather than 500 Japanese yen, times the Nikkei index. The minimum price increment would continue to be 5 Index points but the value per contract would be $25, rather than 2,500 Japanese yen, under the proposal.

The CME stated that the proposal to adopt dollar denomination was made as a business decision to allow the contracts to be "listed quickly and to appeal to a broad segment of potential users." The Exchange said that it decided to change its contract to a dollar denominated basis to use the CME's current clearing and delivery system.

Regarding the hedging utility of the revised, dollar-denominated contracts, the CME noted that:

> While the Exchange recognizes that these new rules change the hedges necessary to control foreign currency exposure, these changes do not eliminate the usefulness of this contract. The following example illustrates the mechanics of these hedges. The example looks at a dollar based investor who wishes to invest in Japanese equities. As we will see, no matter whether he uses a Yen based contract or a dollar based contract, he must hedge his currency exposure.
>
> We begin by assuming that the investor wants to invest $1,500,000. Under the assumptions of the example, the forward price for Yen is 149.63 Y/$. The investor converts his Dollars to Yen at the spot rate (150 Y/$) and invests the 225,000,000Y in a basket of Japanese stocks. The Nikkei index is at 30,000. At the same time, he makes arrangements to sell yen for dollars at the forward rate (149.63 Y/$). This will allow him to convert the proceeds of his stock portfolio into dollars and will allow him to make any variation payments on his hedge at a predictable rate.
>
> Now suppose the investor becomes worried about a possible decline in Japanese equities and seeks to protect the portfolio by putting on a hedge. If the futures contract [were] dollar denominated with a $5 multiplier, he must sell 10 futures contracts. This number is equal to the value of the portfolio, $1,500,000, divided by the value of a futures contract, $150,000 (equal to the index level, 30,000, times the contract multiplier, $5). If the futures contract is Yen denominated with a 500Y multiplier, he must sell 15 contracts. A greater number of yen contracts is needed because a Yen contract worth 15,000,000Y is only worth $100,000.
>
> Over the next 90 days, suppose the Nikkei index climbs to 31,125. The Japanese equity portfolio is worth 233,437,500Y. When converted to dollars at the agreed upon rate of 149.63Y/$, it is worth $1,560,070. If the yen had declined to trade at 151Y/$ in the interim and the investor had not hedged his currency risk, he would receive only $1,545,944 for his stocks. The stock index futures portion of the transaction has resulted in a loss for the investor, requiring him to pay variation margin. In the case of a Yen based futures contract, the investor needs to pay 8,437,500Y. If he had hedged his exchange rate, he would have to pay $56,388 for his yen. The net result is that if the investor hedges his currency exposure, he would have a $3,682 profit versus an unhedged loss of $9,934. If the investor used a dollar denominated contract, he would have to pay $56,250 in variation margin. This payment results in a net profit of $3,820 if he didn't hedge his risk. The difference in the profits for Yen versus dollar contracts ($3,682 vs. $3,820) arises because the investor has to pay his variation margin in more expensive Yen under a Yen denominated contract. This difference will change sign if the yen is cheaper in the spot than in the forward market.
>
> As this example demonstrates, the ability to hedge a cash market position with these contracts is not altered by these changes. The difference between the hedge effectiveness of a yen based Nikkei and a dollar based Nikkei comes entirely from currency risk on the variation payments. The example provided did not go into such detail, but it is entirely possible to dynamically hedge this element as well. The combination of Nikkei futures and exchange rate hedging tools will be an effective risk management tool.

The Commission is seeking comment on the proposed amendments noted above. In particular, the Commission is requesting comment on the extent to which the proposal to denominate the Nikkei Stock Average futures and option contracts in terms of U.S. dollars, rather than Japanese yen, will affect the hedging utility of the contracts, considering the exhange-rate risk associated with such hedges.

Copies of the proposed amendments will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Copies of the amended terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by telephone at (202) 254–6314.

The materials submitted by the Exchange in support of the proposed amendments may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR part 145 (1987)). Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Acts Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views or arguments on the proposed amendments should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC, by the specified date.

Issued in Washington, DC, on July 27, 1990.

Steven Manaster,

Director.

[FR Doc. 90–17954 Filed 7–30–90; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44. U.S.C. chapter 35). This request is for a new collection.

Title, Applicable Form, and Applicable OMB Control Number: DoD FAR Supplement, part 211, Acquisition and Distribution of Commercial Products; No Form; and No OMB Control Number.

Type of Request: New.

Average Burden Hours/Minutes Per Response: 1 Hour.

Frequency of Response: On occasion.

Number of Respondents: 1.

Anual Burden Hours: 1.

Annual Response: 1.

Needs and Uses: This coverage, when finalized, will provide a simplified uniform contract format for the

acquisition of commercial items by the Department of Defense (DoD). It will ultimately affect several existing OMB clearances and will require reestimation of the burden associated with those clearances. It is anticipated that this coverage will reduce the burden on the public associated with acquisition procedures for commercial items by DoD. The proposed coverage will affect all firms seeking to supply DoD with items which are intended for use by the general public. The new procedures will be substituted to the maximum extent practicable for current FAR/DFARS procedures for the acquisition of commercial products. No penalties or incentives are associated with use of the proposed coverage.

Affected Public: Businesses or other for-profit, Non-Profit Institutions and Small Businesses.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Ms. Eyvette R. Flynn. Written comments and recommendations on the proposed information collection should be sent to Ms. Eyvette R. Flynn at Office of Management and Budget, Desk Officer, room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. William P. Pearce. A copy of the information collection proposal may be obtained from, Mr. William Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington 22202–4302, telephone (202) 746–0933

Dated: July 26, 1990.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 90–17763 Filed 7–30–90; 8:45 am]

BILLING CODE 3810–01–M

Office of the Secretary

AGENCY: Defense Intelligence Agency Advisory Board.

ACTION: Notice of closed meeting.

SUMMARY: Pursuant to the provisions of subsection (d) of section 10 of Public Law 92–463, as amended by section 5 of Public Law 94–409, notice is hereby given that a closed meeting of a Panel of the DIA Advisory Board has been changed as follows: The July 25, 1990 meeting has been rescheduled to August 7, 1990, 8:30 a.m. to 5 p.m..

ADDRESS: The DIAC, Bolling AFB, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Lieutenant Colonel John G. Sutay, USAF, Chief, DIA Advisory Board, Washington, DC 20340–1328 (202/373–4930).

SUPPLEMENTARY INFORMATION: The entire meeting will be devoted to the discussion of classified information as defined in section 552b(c)(1), title 5 of the U.S. Code and therefore was closed to the public. Subject matter will be used in a special study on Counternarcotics.

Dated: July 26, 1990.

L.M. Bynum,

Alternative OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 90–17764 Filed 7–30–90; 8:45 am]

BILLING CODE 3810–01–M

Membership of the Performance Review Board; Office of the Inspector General

AGENCY: Office of the Inspector General, Department of Defense (OIG, DOD).

ACTION: Notice of membership to the Performance Review Board, OIG, DOD.

SUMMARY: This notice announces the appointment of the members of the Performance Review Board (PRB) for the OIG, DOD as required by 5 U.S.C. 4314(c)(4). The PRB provides fair and impartial review of Senior Executive Service performance appraisals and makes recommendations rewarding performance and performance awards to the Inspector General.

EFFECTIVE DATE: July 1, 1990.

FOR FURTHER INFORMATION CONTACT: Ms. Dona Seracino, Chief, Employee Relations, Personnel and Security Directorate, Office of the Assistant Inspector General for Administration and Information Management, OIG, DOD, 400 Army Navy Drive, Arlington, VA., 22202, (202) 693–0257.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 4314(c) (4), the appointed members of the PRB for the OIG, DOD are identified in the enclosure. Members will serve a one year renewable term effective July 1, 1990.

Dated: July 26, 1990.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

1990 Performance Review Board, Office of the Inspector General, Department of Defense

Derek J. Vander Schaaf—Deputy Inspector General, OIG, DOD
Stephen A. Whitlock—Special Assistant to the Deputy Inspector General, OIG, DOD
Katherine A. Brittin—Deputy Assistant Inspector General For Inspections, OAIG-INS, DOD
Nichols T. Lutsch—Assistant Inspector General for Administration and Information Management, OIG, DOD
Edward R. Jones—Deputy Assistant Inspector General for Auditing, OAIG-AUD, DOD
Donald E. Reed—Director, Logistics Support, OAIG-AUD, DOD
William F. Thomas—Director, Readiness/Operations Support, OAIG-AUD, DOD
Michael R. Hill—Assistant Inspector General for Audit Policy and Oversight, OIG, DOD
William G. Dupree—Deputy Assistant Inspector General for Investigations, OAIG-INV, DOD
Leon Snead—Deputy Inspector General, Department of Agriculture
Thomas D. Roslewicz—Deputy Inspector General for Audit Services, Department of Health and Human Services
Patrick J. Conklin—Inspector General, Office of Personnel Management

[FR Doc. 90–17765 Filed 7–30–90; 8:45 am]

BILLING CODE 3810–01–M

DEPARTMENT OF EDUCATION

Office of Educational Research and Improvement; Fund for the Improvement and Reform of Schools and Teaching (First): Dwight D. Eisenhower National Mathematics and Science Education Program

AGENCY: Department of Education.

ACTION: Notice of proposed funding priority for fiscal year 1991.

SUMMARY: The Secretary proposes to establish a funding priority by reserving a portion of the funds available for the Dwight D. Eisenhower National Mathematics and Science Program for fiscal year 1991 to support model projects in elementary schools.

DATES: Comments must be received on or before August 30, 1990.

ADDRESSES: All comments concerning this proposed priority should be addressed to Dr. Richard T. La Pointe, Fund for the Improvement and Reform of Schools and Teaching, Office of Educational Research and Improvement, 555 New Jersey Avenue NW., suite 522, Washington, DC 20208–5524.

FOR FURTHER INFORMATION CONTACT: Dr. Allen Schmieder, Fund for the Improvement and Reform of Schools and Teaching, Office of Educational Research and Improvement, 555 New Jersey Avenue NW., suite 522, Washington, DC 20208–5524. Telephone: (202) 357–6496.

SUPPLEMENTARY INFORMATION: The purpose of the Dwight D. Eisenhower National Mathematics and Science Education Program is to provide assistance to State educational agencies, local educational agencies, institutions of higher education, and public and private nonprofit organizations to conduct projects that improve the quality of teaching and instruction and the access of all students to instruction in the areas of mathematics and science education.

Proposed Absolute Priority

In accordance with the Education Department General Administrative Regulations (EDGAR) in 34 CFR 75.105(c)(3), the Secretary proposes to set aside funds and give an absolute preference to applications that respond to the proposed priority under the Dwight D. Eisenhower National Mathematics and Science Education Program for fiscal year 1991. An absolute priority is one that permits the Secretary to select for funding only those applications proposing projects that meet the priority. The Office of Educational Research and Improvement invites public comment on the merits of the proposed priority, including suggested modifications to the proposed priority.

The final priority will be announced in the **Federal Register**. The final priority will be determined by responses to this notice, available funds, and other departmental considerations. Funding of particular projects depends on the availability of funds, the nature of the final priority, and the quality of the applications received.

Model Elementary School Mathematics-Science Demonstration Programs

The Secretary proposes to give absolute preference to elementary school projects that implement models designed to achieve the following objectives: (a) Keep all students interested and engaged in mathematics and science education through the elementary grades; and (b) Significantly improve mathematics and science achievement of all students, especially by the end of grade four.

Each model must include—(a) An articulated mathematics and science curriculum for all students at all grade levels served by the school that reflects the findings of current research and introduces students to more complex concepts earlier and that is supported by the adoption of instructional materials of the highest quality and effectiveness; (b) Delivery of instruction that increases the amount of time students are engaged in the study of mathematics and science; (c) An outreach program for parents of students at all grade levels designed to help them enhance the mathematics and science learning of their children; (d) An inservice education program for teachers and administrators in the school to ensure the effective implementation of the new program; and (e) An evaluation of program outcomes that will provide results that could lead to approval by the Department of Education's Program Effectiveness Panel and to subsequent dissemination through the National Diffusion Network.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding the proposed priority.

All comments submitted in response to this proposed priority will be available for public inspection, during and after the comment period, in suite 522, 555 New Jersey Avenue NW., Washington, DC, between the hours of 8:30 a.m.and 4 p.m., Monday through Friday of each week except Federal holidays.

Applicable Regulations

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 80, 81, 82, and 85; and (b) The regulations for this program in 34 CFR part 755.

Program Authority: 20 U.S.C. 4992.

(Catalog of Federal Domestic Assistance Number 84.168, Dwight D. Eisenhower National Mathematics and Science Education Program)

Dated: July 25, 1990.

Lauro F. Cavazos,

Secretary of Education.

[FR Doc. 90–17774 Filed 7–30–90; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Financial Assistance Award Intent To Award a Grant to Pipco, Inc.

AGENCY: Department of Energy.

ACTION: Notice of unsolicited financial assistance award.

SUMMARY: The Department of Energy (DOE) announces that pursuant to 10 CFR 600.6(a)(2), it is making a financial assistance award based on an unsolicited application satisfying the criteria of 10 CFR 600.14(e)(1) under Grant Number DE–FG01–90CE15488 to Pipco, Inc. for a laboratory scale reactor which will have a total estimated cost of $90,000.00 to be provided by DOE.

SCOPE: The grant will provide funding for Pipco, Inc. to design, construct and operate a laboratory reactor which will be tested to ascertain its ability to convert hydrogen sulfide into liquid sulfur under conditions which will sustain the reaction without further inputs of energy.

The purpose of the project is to develop a laboratory reactor and to gather experimental data from studying operating conditions to provide the basis for scaling up to a continuous large field reactor. The Gas Research Institute may be interested in funding field demonstrations of this reactor.

ELIGIBILITY: Based on the receipt of an unsolicited proposal, eligibility for this award is being limited to Pipco, Inc., a company owned and operated by George E. Gryka, the co-inventor of this reactor and the major promoter of this technology. When the reactor is available for demonstration, it will be sold or leased to natural gas processing plants throughout the country. It has been determined that this project has high technical merit, representing an innovative and novel idea which has a strong possibility of allowing for future reductions in the Nation's energy consumption.

The term of the grant shall be twenty-four months from the effective data of the award.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Office of Procurement Operations, ATTN: James C. Knudsen, PR–541, 1000 Independence Ave., SW., Washington, DC. 20585.

Thomas S. Keefe,

Director, Contract Operations Division "B", Office of Procurement Operations.

[FR Doc. 90–17781 Filed 7–30–90; 8:45 am]

BILLING CODE 6450–01–M

Morgantown Energy Technology Center Grant; Financial Assistance Award to West Virginia University

AGENCY: Morgantown Energy Technology Center (METC), Department of Energy (DOE).

ACTION: Notice of acceptance of an unsolicited financial assistance application for a research grant.

SUMMARY: Based upon a determination made pursuant to 10 CFR 600.7(b)(2),

DOE, METC, gives notice of its plans to award a twenty-four (24) month Research Grant to West Virginia University, Morgantown, West Virginia in the approximate amount of $133,862 for research entitled "Experimental Phase and Foam Behavior Study of CO_2-Based Foams at Reservoir Pressure and Temperature."

FOR FURTHER INFORMATION CONTACT: Crystal A. Sharp, IO7, U.S. Department of Energy, Morgantown Energy Technology Center, P.O. Box 880, Morgantown, West Virginia 26507-0880, Telephone (304) 291-4386, Procurement Request No. 21-90MC27348.000.

SUPPLEMENTARY INFORMATION: The intended research will (1) determine the phase diagram of at least one model surfactant CO_2/water mobility-control phase diagram at the reservoir pressure(s) and temperature(s) typical of oil reservoirs from which oil is produced on a large, commercial scale; (2) determine in a systematic way how the foam (emulsion) morphology in the system(s) of part (1) depend on the location of the system in the phase diagram(s); and (3) provide experimental data to be used in the design, performance, and interpretation of "core" floods, flow-visualizations, and foam-stability experiments at reservoir pressure.

Dated: July 23, 1990.

Louie L. Calaway,

Director, Acquisition and Assistance Division, Morgantown Energy Technology Center.

[FR Doc. 90-17780 Filed 7-30-90; 8:45 am]

BILLING CODE 6450-01-M

Inventions Available for License

AGENCY: Department of Energy, Office of General Counsel.

ACTION: Notice of inventions available for license.

SUMMARY: The Department of Energy hereby announces that the inventions described in U.S. Patent Application S.N. 387,913, entitled "Rotary Pneumatic Valve"; and U.S. Patent Application S.N. 511,372, entitled "Downhole Hydraulic Seismic Generator" are available for license, in accordance with 35 U.S.C. 207-209.

FOR FURTHER INFORMATION CONTACT: Robert J. Marchick, Office of the Assistant General Counsel for Patents, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585; Telephone (202) 586-2802.

SUPPLEMENTARY INFORMATION: 35 U.S.C. 207 authorizes licensing of Government-owned inventions. Implementing regulations are contained in 37 CFR part 404. 37 CFR 404.7(a)(1) authorizes exclusive licensing of Government-owned inventions under certain circumstances, provided that notice of the invention's availability for license has been announced in the **Federal Register.**

Issued in Washington, DC, on July 24, 1990.

Stephen A. Wakefield,

General Counsel.

[FR Doc. 90-17779 Filed 7-30-90; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. G-13299-010, et al.]

ARCO Oil and Gas Co., Division of Atlantic Richfield Co., et al.; Applications for Termination or Amendment of Certificates [1]

July 24, 1990.

Take notice that each of the Applicants listed herein has filed an application pursuant to section 7 of the Natural Gas Act for authorization to terminate or amend certificates as described herein, all as more fully described in the respective applications which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before August 13, 1990, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party of any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Lois D. Cashell,

Secretary.

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

Docket No. and date filed	Applicant	Purchaser and location	Description
G-13299-010, D, 7-2-90.	ARCO Oil and Gas Company, Division of Atlantic Richfield Company, P.O. Box 2819, Dallas, TX 75221.	ANR Pipeline Company, Laverne Field, Beaver and Harper Counties, Oklahoma.	Assigned 7-1-89 to ONEOK Exploration Company and Mesa Operating Limited Partnership.
G-17474-000, D, 7-13-90.	Texaco Producing Inc., P.O. Box 4700, Houston, TX 77210-4700.	Texas Gas Transmission Corporation, South Bosco Field, Acadia and Lafayette Parishes, Louisiana.	Assigned 10-1-88 to Kaiser-Francis Oil Company.
G-20251-000, D, 7-13-90.	Texaco Inc., P.O. Box 4700, Houston, TX 77210-4700.	Texas Gas Transmission Corporation, South Bosco Field, Acadia Parish, Louisiana.	Assigned 10-1-88 to Kaiser-Francis Oil Company.
CI90-139-000, (CI63-1142), D, 6-25-90.	Oryx Energy Company, P.O. Box 2880, Houston, TX 75221-2880.	Northern Natural Gas Company, a Division of Enron Corp., Como Field, Beaver County, Oklahoma.	Assigned 10-1-89 to Headington Minerals, Inc.
CI90-142-000, (G-14783), D, 7-9-90.	BHP Petroleum (Americas) Inc., 5847 San Felipe, Suite 3600, Houston, TX 77057.	Northern Natural Gas Company, a Division of Enron Corp., Sonora (Upper Canyon Field), Sutton County, Texas.	Assigned 1-1-90 to Enron Oil & Gas Company.

Filing Code: A—Initial service; B—Abandonment; C—Amendment to add acreage; D—Assignment of acreage; E—Succession; F—Partial succession.

[FR Doc. 90-17716 Filed 7-30-90; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. G-5214-004 et al.]

TEX/CON Oil & Gas Co. (Successor-in-Interest to BP Exploration Inc.); Application

July 20, 1990.

Take notice that on January 25, 1990, as supplemented on May 7, 1990, TEX/CON Oil & Gas Company (TEX/CON) of 9401 Southwest Freeway, Suite 1200, Houston, Texas 77074, filed an application pursuant to sections 4 and 7 of the Natural Gas Act and the Federal Energy Regulatory Commission's (Commission) regulations thereunder to amend certain certificates previously granted to BP Exploration Inc. by substituting TEX/CON as the certificate holder. TEX/CON also requests that certain certificates be amended to reflect deletion of acreage resulting from assignment of acreage. The application is on file with the Commission and is open for public inspection.

Effective January 1, 1990, as part of a corporate reorganization BP Exploration Inc. assigned its onshore natural gas assets to TEX/CON. The certificates and rate schedules proposed to be redesignated are listed in Appendix A hereto. In addition, prior to transferring the onshore natural gas assets to TEX/CON, BP Exploration Inc. assigned certain properties under certain certificates and related rate schedules to other producers. The certificates and rate schedules to be amended to reflect deletion of acreage are listed in appendix B hereto.

Any person desiring to be heard or to make any protest with reference to said application should on or before August 9, 1990, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for TEX/CON to appear or to be represented at the hearing.

Lois D. Cashell,

Secretary.

APPENDIX A

BP Exploration Inc., FERC gas rate schedule No.	Certificate docket No.	Purchaser and location
20	G-5214	Tennessee Gas Pipeline Company, Six Parish Area, Calcasieu, Davis and Acadia Parishes, Louisiana.
36	G-12719	Colorado Interstate Gas Company, Mocane-Laverne Field, Beaver County, Oklahoma.
38	G-13334	Panhandle Eastern Pipe Line Company, Light Field, Beaver County, Oklahoma.
47	G-17791	ANR Pipeline Company, Mocane-Laverne Field, Harper County, Oklahoma.
76	CI63-411	Northern Natural Gas Company, Mocane-Laverne Field, Beaver and Ellis Counties, Oklahoma.
89	CI64-342	Questar Pipeline Company, Nitchie Gulch Field, Sweetwater County, Wyoming.
128	CI67-159	Northern Natural Gas Company, Catesby Field, Ellis County, Oklahoma.
129	CI67-199	Northern Natural Gas Company, Mocane-Laverne Field, Beaver County, Oklahoma.
154	CI71-93	Panhandle Eastern Pipe Line Company, N.E. Keenan Field, Woodward County, Oklahoma.
156	CI71-441	Panhandle Eastern Pipe Line Company, N.E. Keenan Field, Woodward County, Oklahoma.

APPENDIX B

CERTIFICATES AND RATES SCHEDULES TO BE AMENDED TO REFLECT ASSIGNMENT OF ACREAGE

BP Exploration Inc. FERC gas rate schedule No.	Certificate docket No.	Purchaser and location	Description
36	G-12719	Colorado Interstate Gas Company, Mocane-Laverne Field, Beaver County, Oklahoma.	Assigned 10-1-89 to Kenneth W. Cory.
47	G-17791	ANR Pipeline Company, Mocane-Laverne Field, Harper County, Oklahoma.	Farmed-out 4-8-86 to Lobo Exploration Co. and assigned 10-1-89 to Kenneth W. Cory.
76	CI63-411	Northern Natural Gas Company, Mocane-Laverne Field, Beaver and Ellis Counties, Oklahoma.	Assigned 10-1-89 to Kenneth W. Cory
129	CI67-199	Northern Natural Gas Company, Mocane-Laverne Field, Beaver County, Oklahoma.	Assigned 10-1-89 to Kenneth W. Cory.

[FR Doc. 90-17717 Filed 7-30-90; 8:45 am]
BILLING CODE 6717-01-M

[Docket Nos. RP89-250-000 et al.]

Columbia Gas Transmission Corp. and Columbia Gulf Transmission Co.; Informal Settlement Conference

July 24, 1990

Take notice that an informal conference will be convened in this proceeding on August 2, 1990, at 1 p.m. at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC, 20426, for the purpose of exploring the possible settlement of the above-referenced dockets.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined by 18 CFR 385.102(b) is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

Lois D. Cashell,

Secretary.

[FR Doc. 90-17719 Filed 7-30-90; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. EC90-16-000]

Kansas City Power & Light Co. and Kansas Gas and Electric Co.; Filing

July 27, 1990.

Take notice that on July 23, 1990, Kansas City Power & Light Company (KCP&L), pursuant to section 203 of the Federal Power Act, 16 U.S.C., 824b, tendered for filing an Application for an order authorizing and approving a proposed merger with Kansas Gas and Electric Company (KG&E). The merger is to be accomplished through a tender offer by KCP&L to purchase at least 90 percent of the capital stock of KG&E followed by a "short form" merger to be consummated upon certain regulatory approvals, with KCP&L being the surviving corporation.

KCP&L is a public utility engaged in the generation, transmission, distribution and sale of electricity. KCP&L generates and distributes electricity to over 409,000 retail customers in a 4,700 square mile area located in all or portions of 23 counties in western Missouri and eastern Kansas. KCP&L's retail operations are subject to regulation by the state commissions of Missouri and Kansas. Subject to the jurisdiction of the Federal Energy Regulatory Commission (Commission), KCP&L also provides full and partial requirements wholesale services and transmission service to municipalities, cooperatives and electric utilities and engages in a variety of coordination transactions with neighboring utilities.

KG&E is a public utility that generates, transmits, distributes and sells electricity to over 253,000 customers in the southeastern quarter of the State of Kansas, including the Wichita metropolitan area. KG&E's retail operation are subject to the jurisdiction of the Kansas State Corporation Commission. Subject to the jurisdiction of the Commission, KG&E provides full and partial requirement wholesale services and transmission service to municipalities, cooperatives and electric utilities and engages in a variety of coordination transactions with neighboring utilities.

KCP&L believes that the merger of KG&E into KCP&L will be in the long-term best interests of the public, and the customers and the shareholders of both KCP&L and KG&E. KCP&L submits that the combination of the two companies will result in significant savings and efficiencies that would be difficult or impossible to achieve through continued operations as separate entities. KCP&L states that these operating benefits, especially in the areas of deferral of new generating facilities, joint dispatch of generating, and more efficient management and maintenance of jointly-owned generating facilities will result in significant long-term savings for the customers of both companies. Customers of both systems will realize an immediate benefit through a commitment by KCP&L to freeze rates for all classes of wholesale and retail service for the combined systems through January 1, 1993.

Concurrently with its Application in this matter, KCP&L filed a Motion for Expedited Aprpoval and Waiver of Evidentiary Hearing (Motion). The Motion asks the Commission to waive an evidentiary hearing and grant expedited approval of the Application so that ratepayers and shareholders of the two companies can enjoy the benefits of the merger at the earliest possible date. If the Commission is able to issue a final order approving the merger without an evidentiary hearing, KCP&L has committed to accept certain transmission obligations designed to ensure that competition will be enhanced by the proposed merger.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before August 17, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make any 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. 90-17989 Filed 7-31-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP86-52-016]

Kentucky West Virginia Gas Co.; Report of Refunds and Credits

July 25, 1990.

Take notice that Kentucky West Virginia Gas Company ("Kentucky West") on July 17, 1990, tendered for filing with the Federal Energy Regulatory Commission ("Commission") its Report of Refunds and Credits, made in accordance with the Stipulation and Agreement filed in this proceeding and approved by Commission letter order of May 3, 1990.

Kentucky West states that the Report of refunds and Credits reflects refunds made to Kentucky West's transportation customers in accordance with Article II of the Stipulation, with interest as required by the Commission's regulations. Moreover, such Report sets forth the credits to be utilized by Rate Schedule GSS-1 customers to reduce their obligations to Kentucky West in Kentucky West's Docket Nos. TQ89-1-46, *et al.*

Kentucky West states that a copy of its filing has been served upon each of its jurisdictional customers 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 Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 C.F.R. 385.214, 385.211 (1989). All such protests should be filed on or before August 1, 1990. Protests with 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. 90-17712 Filed 7-30-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER90-383-000]

Metropolitan Edison Co.; Initiation of Proceeding and Refund Effective Date

July 24, 1990.

Take notice that on July 19, 1990, the Commission issued an order in this proceeding initiating a proceeding under section 206 of the Federal Power Act, as amended by the Regulatory Fairness Act of 1988.

Refund effective date for proposed rates to Kutztown: 60 days after publication of this notice in the Federal Register.

Lois D. Cashell,

Secretary.

[FR Doc. 90-17720 Filed 7-30-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER90-276-000]

Minnesota Power & Light Co.; Filing

July 24, 1990.

Take notice that on July 24, 1990, Minnesota Power & Light Company

(MP&L) tendered for filing amendments to rate schedules for economy energy and replacement capacity service to be supplied by MP&L to Wisconsin Public Power Incorporated, SYSTEM (WPPI), related to the sale by MP&L to WPPI of a twenty percent (20%) undivided ownership share of the Clay Boswell Steam Electric Generation Station Unit No. 4 (Boswell 4).

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 Capital Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before August 1, 1990. 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. 90–17713 Filed 7–30–90; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. GP90–11–000]

NICOR Exploration Co.; Complaint

July 24, 1990.

Take notice that on July 11, 1990, NICOR Exploration Company (NICOR) filed a complaint pursuant to § 157.40(c)(v)(B) of the Commission's regulations. The proceeding concerns contracts entered into by NICOR's predecessor in interest, NI-Gas Supply, Inc., with Sun Oil Company, GHK Company and Amerada Hess Company to purchase natural gas from wells on certain acreage in Beckham and Washita Counties in Western Oklahoma, including the Green #1–1 well that is here in issue. In 1989 Scarth Oil and Gas Company (Scarth) acquired all but 6.250% of the working interests in the well and took assignment of the gas purchase contracts. NICOR protests the claim of Scarth that it is entitled to collect the Natural Gas Policy Act of 1978 section 108 stripper well price pursuant to the area rate clauses in the three contracts. NICOR requests that the Commission determine that those area rate clauses do not provide the necessary contractual authorization for collection of the section 108 price.

Any person desiring to be heard or to intervene should file a motion to intervene or protest in accordance with Rules 214 (18 CFR 385.214 (1989)) or 211 (18 CFR 385.211 (1989)) of the Commission's Rules of Practice and Procedures. All motions to intervene or protests should be submitted to the Federal Energy Regulatory Commission, 825 North Capital Street NE., Washington, DC 20426, or or before August 23, 1990. All protests will be considered by the Commission but will not serve to make protestant parties to the proceeding. Any person wishing to become a party must file a motion to intervene in accordance with Rule 214. Copies of the complaint are on file with the Commission and are available for public inspection. Answers to the complaint shall be filed on or before August 23, 1990.

Lois D. Cashell,

Secretary.

[FR Doc. 90–17718 Filed 7–30–90; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP88–259–033; RP89–136–017]

Northern Natural Gas Division of Enron Corp.; Report of Distribution of Refunds Paid and Surcharges Billed

July 25, 1990.

Take notice that Northern Natural Gas Company, Division of Enron Corp. (Northern) on July 23, 1990 tendered for filing its Report of Distribution of Refunds in the above proceedings.

Northern states that on June 21, 1990 and July 11, 1990 it remitted net refunds and surcharges to its jurisdictional sales and transportation customers of $22,377,294.41. Refunds to jurisdictional sales customers totalled $15,261,703.95 and refunds to transportation customers totalled $7,115,590.46.

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 214 and 211 of the Commission's Rules of Practice and Procedures (18 CFR 385.214, 385.211 (1989). All such protests should be filed on or before August 1, 1990. Protests with 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. 90–17714 Filed 7–30–90; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP88–93–000; Phase II]

Questar Pipeline Co.; Technical Conference

July 25, 1990.

Take notice that on October 15, 1990, at 10 a.m. there will be technical conference in the above-captioned proceeding. The technical conference was suggested by the Presiding Administrative Law Judge by procedural order issued July 11, 1990, and would be for the purpose of discussing the context of all evidentiary submissions prior to hearing, thus obviating the need for unnecessary exploratory cross-examination. The conference will be held in the offices of the Commission at 810 First Street, NE., Washington, DC

Any party or participant, as defined by 18 CFR 385.102(c), may attend. Persons wishing to become parties to the proceeding must move to intervene and receive intervener status pursuant to 18 CFR 385.214.

For additional information, contact John P. Roddy at (202) 208–1176.

Lois D. Cashell,

Secretary.

[FR Doc. 90–17721 Filed 7–30–90; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP90–148–000]

Williston Basin Interstate Pipeline Co.; Change in FERC Gas Tariffs

July 25, 1990.

Take notice that on July 20, 1990 Williston Basin Interstate Pipeline Company (Williston Basin), Suite 200, 304 East Rosser Avenue, Bismarck, North Dakota 58501, tendered for filing certain revised tariff sheets to Original Volume No. 1–B of its FERC Gas Tariff.

Williston Basin states that the tariff sheets reflect the Company's priority of service list for sales and transportation services and make explicit that firm capacity is not to be reserved for interruptible services, including service under Rate Schedule X–3, consistent with Commission's findings in its May 23, 1990 Order in Docket No. RP90–2–002. Williston Basin requests that these tariff sheets be made effective August 20, 1990.

Williston Basin states that copies of this filing were served on Williston

Basin's jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before August 1, 1990. 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 in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 90–17715 Filed 7–30–90; 8:45 am]

BILLING CODE 6717–01–M

Office of Conservation and Renewable Energy

Energy Conservation Program for Consumer Products; Application for Interim Waiver and Petition for Waiver of Furnace Test Procedures From Inter-City Products Corporation (F–023)

AGENCY: Conservation and Renewable Energy Office, Department of Energy.

SUMMARY: Today's notice publishes a letter granting an Interim Waiver to Inter-City Products Corporation (Inter-City Products) from the existing Department of Energy (DOE) test procedures for furnaces regarding blower time delay for its NUGV(—) line of condensing gas furnaces.

Today's notice also publishes a "Petition for Waiver" from Inter-City Products. Inter-City Product's Petition for Waiver requests DOE to grant relief from the DOE test procedures relating to the blower time delay specification. Inter-City Products seeks to test using a blower delay time of 30 seconds for NUGV(—) condensing gas furnaces instead of the specified 1.5 minute delay between burner on-time and blower on-time. DOE is soliciting comments, data, and information respecting the Petition for Waiver.

DATES: DOE will accept comments, data, and information not later than August 30, 1990.

ADDRESSES: Written comments and statements shall be sent to: Department of Energy, Office of Conservation and Renewable Energy, Case No. F–023, Mail Stop CE–43, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC. 20585.

FOR FURTHER INFORMATION CONTACT:

Cyrus H. Nasseri, U.S. Department of Energy, Office of Conservation and Renewable Energy, Mail Station CE–43, Forrestal Building, 1000 Independence Avenue, SW., (202) 586–9127.

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station GC–12, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9507.

Background

The Energy Conservation Program for Consumer Products (other than automobiles) was esablished pursuant to the Energy Policy and Conservation Act (EPCA), Public Law 94–1163, 89 Stat. 917, as amended by the National Energy Conservation Policy Act (NECPA), Public Law 95–619, 92 Stat. 3266, the National Appliance Energy Conservation Act of 1987 (NAECA), Public Law 100–12, and the National Appliance Energy Conservation Amendments of 1988 (NAECA 1988), Public Law 100–357, which requires DOE to prescribe standardized test procedures to measure the energy consumption of certain consumer products, including furnaces. The intent of the test procedures is to provide a comparable measure of energy consumption that will assist consumer in making purchasing decisions. These test procedures appear at 10 CFR part 430, subpart B.

DOE has amended the prescribed test procedures by adding 10 CFR 430.27 on September 26, 1980, creating the waiver process. 45 FR 64108. DOE further amended the Departments' appliance test procedure waiver process to allow the Assistant Secretary for Conservation and Reneweable Energy (Assistant Secretary) to grant an interim waiver from test procedure requirements to manufacturers that have petitioned DOE for a waiver of such prescribed test procedures. 51 FR 42823, November 26, 1986.

The waiver process allows the Assistant Secretary to waive temporarily test procedures for a particular basic model when a petitioner shows that the basic model contains one or more design characteristics which prevent testing according to the prescribed test procedures or when the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption as to provide materially inaccurate comparative data. Waivers generally remain in effect until final test procedure amendments become effective, resolving the problem that is the subject of a waiver.

The interim waiver provisions, added by the 1986 amendment, allow the Assistant Secretary to grant an interim waiver when it is determined that the applicant will experience economic hardship if the Application for Interim Waiver is denied, if it appears likely that the petition for waiver will be granted, and/or the Assistant Secretary determined that it would be desirable for public policy reasons to grant immediate relief pending a determination on the petition for waiver.

On May 1, 1990, Inter-City Products filed an Application for an Interim Waiver regarding blower time delay. Inter-City Products application seeks an interim waiver from the DOE test provisions that require a 1.5 minute time delay between the ignition of the burner and starting of the circulating air blower. Instead, Inter-City Products requests the allowance to test using a 30 second blower time delay when testing its NUGV(—) condensing gas furances. Inter-City Products states that the 30 second delay is indicative of how these furnaces actually operate. Such a delay results in an energy savings of approximately 1.0 percent. Since current DOE test procedures do not address this variable blower time delay, Inter-City Products ask that the interim waiver be granted.

Previous waivers for this type of timed blower delay control have been granted by the Department to the Coleman Company, 50 FR 2710, January 18, 1985, the Magic Chef Company, 50 FR 41553, October 11, 1985, the Rheem Manufacturing Company, 53 FR 48574, December 1, 1988, and 55 FR 3253, January 31, 1990, the Trane company, 54 FR 19226, May 4, 1989, DMO Industries, 55 FR 4004, February 6, 1990, Heil-Quaker Corporation, 55 FR 13184, April 9, 1990, and Carrier Corporation, 55 FR 13182, April 9, 1990. Thus, it appears likely that the Petition for Waiver will be granted for blower time delay.

The Department finds that it would be desirable for public policy reasons to grant Inter-City Products Application for Interim Waiver. Specifically, in those instances where the likely success of the petition for waiver has been demonstrated based upon DOE having granted a waiver for a similar product design, it is in the product's interest to have the similar products tested and rated for energy consumption on a comparable basis.

Pursuant to paragraph (b) of 10 CFR 430.27, DOE is hereby publishing the "Petition for Waiver" in its entirety. The petition contains no confidential information. DOE solicits comments, data, and information respecting the petition.

In addition, pursuant to paragraph (e) of § 430.27 of the Code of Federal Regulations, the following letter granting the Application for Interim Waiver was issued to Inter-City Products Corporation.

Issued in Washington, DC, July 23, 1990.

J. Michael Davis,

Assistant Secretary Conservation and Renewable Energy.

Department of Energy

Washington, DC 20585

July 23, 1990.

Mr. W.E. Dalton,

Vice President Engineering, Inter-City Products Corporation, 1136 Heil-Quaker Boulevard, P.O. Box 3005, Lavergne, TN 37086–1985.

Dear Mr. Dalton: This is in response to your May 1, 1990, Application for Interim Waiver and Petition for Waiver from the Department of Energy (DOE) test procedures for furnaces when testing Inter-City Products Corporation NUGV(−) condensing gas furnaces regarding blower time delay.

Pursuant to the Energy Policy and Conservation Act, as amended, DOE has prescribed test procedures to measure the energy consumption of certain major household appliances, including furnaces. The intent of the test procedures is to provide a comparable measure of energy consumption that will assist consumers in making purchase decisions. These test procedures appear in Code of Federal Regulations at 10 CFR part 430, subpart B.

DOE amended the test procedure regulations on September 26, 1980 [45 FR 64108) and November 26, 1986, [51 FR 42823] by adding paragraph 430.27. These provisions allow the Assistant Secretary for Conservation and Renewable Energy (Assistant Secretary) to waive temporarily test procedures for a particular basic model when a petitioner shows that the basic model contains one or more design characteristic which prevent testing of the basic model according to the prescribed test procedures or may evaluate the basic model in a manner so unrepresentative of its true energy consumption characteristics as to provide materially inadequate comparative data. The 1986 amendments added provisions allowing the Assistant Secretary to grant an interim waiver for a particular basic model when a petitioner demonstrates the likely success of the petition for waiver, it is determined that the applicant will experience economic hardship if the Application for Interim Waiver is denied and/or the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination on the petition for waiver.

Previous waivers for timed blower delay control have been granted to the Coleman Company, 50 FR 2710, January 18, 1985, Magic Chef Company, 50 FR 41553, October 11, 1985, Rheem Manufacturing Company, 53 FR 48574, December 1, 1988, and 55 FR 3253, January 31, 1990, the Trane Company, 54 FR 19226, May 4, 1989, DMO Industries, 55 FR 4004, February 6, 1990, Heil-Quaker Corporation, 55 FR 13184, April 9, 1990, the Carrier Corporation, 55 FR 13182, April 9, 1990.

Inter-City Products Application for Interim Waiver does not provide sufficient information to evaluate what, if any, economic impact or competitive disadvantage Inter-City Products will likely experience absent a favorable determination on the application for interim waiver. Inter-City Products feels that its competitive position in the marketplace would be compromised if this Application for Interim Waiver is not granted. However, the Department finds that it would be desirable for public policy reasons to grant Inter-City Products Application for Interim Waiver. Specifically, in those instances where the likely success of the petition for waiver has been demonstrated based upon DOE having granted a waiver for a similar product design, it is in the public's interest to have the similar products tested and rated for energy consumption on a comparable basis.

Therefore, Inter-City Products Application for an Interim Waiver requesting a change from the DOE test procedures for its NUGV(−) condensing gas furnaces regarding blower time delay is granted.

Inter-City Products shall be permitted to test its line of NUGV(−) condensing gas furnaces on the basis of the test procedures specified in 10 CFR part 430, with the modifications set forth below.

(i) Section 9.3.1 of ANSI/ASHRAE Standard 103–1982 is deleted and replaced with the following paragraph:

Gas- and Oil-Fueled Central Furnaces. After equilibrium conditions are achieved following the cool-down test and the required measurements performed, turn on the furnace and measure the flue gas temperature, using the thermocouple grid described above, at 0.5 and 2.5 minutes after the main burner(s) comes on. After the burner start-up, delay the blower start-up by 1.5 minutes (t−), unless: (1) The furnace employs a single motor to drive the power burner and the indoor air circulation blower, in which case the burner and blower shall be started together; (2) the furnace is designed to operate using an unvarying delay time that is other than 1.5 minutes, in which case the fan control shall be permitted to start the blower, or (3) the delay time results in the activation of a temperature safety device which shuts off the burner, in which case the fan control shall be permitted to start the blower. In the latter case, if the fan control is adjustable, set it to start the blower at the highest temperature. If the fan control is permitted to start the blower, measure time delay, (t−), using a stop watch. Record the measured temperatures. During the heat-up test for oil-fueled furnaces, maintain the draft in the flue pipe with ± 0.01 inch of water gauge of the manufacturer's recommended on-period draft.

This interim waiver is based upon the presumed validity of statements and all allegations submitted by the company. This interim waiver may be revoked or modified at any time upon a determination that the factual basis underlying the application is incorrect.

The interim waiver shall remain in effect for a period of 180 days or until DOE acts on the Petition for Waiver, whichever is sooner. If DOE has not acted by the expiration of that period, it will exercise its statutory authority to extend the interim waiver for an additional 180-day period.

Sincerely,

J. Michael Davis, P.E.

Assistant Secretary, Conservation and Renewable Energy.

May 1, 1990.

Assistant Secretary, Conservation and Renewable Energy,

United States Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585.

Gentleman: Please consider this Petition for Waiver and Application for Interim Waiver pursuant to Title 10 CFR 430.27.

Waiver is requested from the test procedures covering gas furnaces found at appendix N to subpart B of 10 CFR part 430. The current Heat-Up Test procedures requires a 1.5 minute time delay between burner and blower startup. Inter-City Products (formerly Heil-Quaker) is requesting to use 30 seconds instead of 1.5 minutes for condensing gas furnace model family NUGV(−). These models will employ an unvarying electronic timing control which will start the blower in approximately 30 seconds. This will reduce lost energy out the vent system and can improve energy savings approximately 1 percent.

An Interim Waiver is requested. Several other manufacturers of similar furnaces have been granted the waiver to use reduced blower start up times. Known manufacturers of similar furnaces as shown in Attachment A have been sent a copy of our petition.

Respectfully yours,

Inter-City Products Corp.,

W.E. Dalton,

Vice President Engineering.

May 1, 1990.

Attachment A

List of known Manufacturers which we have sent a copy of our request for Petition for Waiver and Interim Waiver to:

Amana Refrigeration, Inc., Mr. Robert DeHann, Amana, Iowa 52204

The Trane Company, Mr. L.E. Chaump, 6200 Troup Hwy., Tyler, Texas 75711

Evcon Industries, Inc., Mr. Bob Hoffman, Heating and Air Conditioning Group, 3110 N. Mead, P.O. Box 19014, Wichita, Kansas 67204–9014

DMO Industries, Mr. Peter Janes, 1969 Leslie Street, Don Mills, Ontario, Canada M3B 2M3

Armstrong Air Conditioning, Inc., Mr. Robert E. Johnson, 421 Monroe Street, Bellevue, Ohio 44811

Bard Manufacturing Company, Mr. Richard O. Bard, P.O. Box 607, Bryan, Ohio 43506

Carrier Corporation; Mr. Edward A. Bailey, Syracuse, New York 13221
Goodman Manufacturing Corporation, Mr. Peter H. Alexander, 1501 Seamist, Houston, Texas 77008
Lennox Industries, Inc., Mr. Donald W. Munson, P.O. Box 809000, Dallas, Texas 75380–9000
Nordyne, Inc., Mr. Robert E.G. Ratcliffe, 10820 Sunset Office Drive, St. Louis, Missouri 63127
Rheem Air Conditioning Division, Mr. Donald F. Foster, 5600 Old Greenwood Road, P.O. Box 6444, Fort Smith, Arkansas 72906
York International Corporation, Central Environmental Systems Division, Mr. Richard C. Barnett, P.O. Box 1592, York, Pennsylvania 17405
Snyder General Corporation, Mr. John M. Wiese, 401 Randolph Street, Red Bud, Illinois 62278.

[FR Doc. 90–17778 Filed 7–30–90; 8:45 am]
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Office of Hearings and Appeals

Issuance of Decisions and Order During the Week of June 11 Through June 15, 1990

During the week of June 11 through June 15, 1990 the decisions and orders summarized below were issued with respect to appeals and applications for exception or other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeals

American Federation of Government Employees Local 3824, 6/12/90, LFA–0043

The American Federation of Government Employees Local 3824 (AFGE) filed an Appeal from a denial by the Assistant Administrator for Management at the Western Power Administration of a Request for Information which the firm had submitted under the Freedom of Information Act (FOIA). The AFGE had requested a copy of a May 11, 1990 report by Dennis Lenz regarding a DOE contract with Fernandez and Associates. In considering the Appeal, the DOE found that the DOE had conducted an adequate search for the requested document, and that the Denying Official correctly concluded that the document no longer existed in the records of the DOE. The DOE also denied the AFGE's requests (i) to order the Western Administrator to issue a notice to Western and contractor employees concerning the requirements of the FOIA; (ii) to have the DOE pay the AFGE's attorney fees; and (iii) to have the DOE pay monetary sanctions of the AFGE.

Committee to Bridge the Gap, 6/11/90, LFA–0041

The Committee to Bridge the Gap (CBG) filed an Appeal from a denial by the Department of Energy's Freedom of Information and Privacy Acts Activities Branch (FOI Branch) of a Request for Information. CBG had sought a copy of draft DOE Order 1700.1, containing revisions to the order which established internal procedures and policies for the processing of requests made to the DOE under the FOIA. The FOI Branch had determined that the draft order sought was exempt from mandatory disclosure pursuant to Exemption 5. CBG challenged the FOI Branch's determination that the withheld document falls within the scope of Exemption 5. In considering the Appeal, the DOE found that draft documents, by their very nature, the predecisional and deliberative. The DOE determined that the document was not a statement of final agency policy, but rather a draft that constituted the predecisional deliberations of its authors, and thus, was properly withheld under Exemption 5. The DOE also found that the release of any segregable information contained in the draft would expose the deliberative process, and that any public interest in the contents of the final DOE order did not extend to a preliminary draft.

Committee to Bridge the GAP, 6/15/90, KFA–0162

Committee to Bridge the Gap filed an Appeal from a partial denial by the Deputy Assistant Secretary for Space and Defense Power Systems of the Office of Nuclear Energy of a Request for Information that it submitted under the Freedom of Information Act (FOIA). In his determination, the Deputy Assistant Secretary released to the Committee a redacted copy of NUS [Corp.] Report 4083 (Rev. 1), "Comparative Risk Analysis of Selected Missions Utilizing Space Nuclear Electric Power Systems," withholding portions of the Report under Exemption 1 of the FOIA. In considering the Appeal, the DOE determined that all of the material previously withheld may now be released under current classification guidelines. Accordingly, the Report was released in its entirety and the Appeal was granted.

Lloyd R. Makey, 6/14/90, LFA–0042

Lloyd R. Makey filed a Privacy Act Appeal from a denial by the DOE's Idaho Operations Office of a request for amendment of his personnel security file (PSF). Mr. Makey had requested that two security infraction reports be removed from his PSF. In considering this Appeal, the DOE found that Mr. Makey had not demonstrated by a preponderance of the evidence that the amendments he sought were appropriate. Accordingly, Mr. Makey's Appeal was denied.

Request for Exception

Brilad Oil Company, 6/15/90, LEE–0009

Brilad Oil Company filed an Application for Exception from the provisions of the Energy Information Administration (EIA) reporting requirements. The exception request, if granted, would relieve Brilad Oil Company of the requirement to file Form EIA–782B, entitled "Reseller/Retailers' Monthly Petroleum Product Sales Report." In considering the request, the DOE found that the firm was not adversely affected by the reporting burden in a way that is significantly different from the burden borne by similar reporting firms. Accordingly, exception relief was denied.

Implementation of Special Refund Procedures

Northeast Petroleum Industries, Inc., 6/11/90, HEF–0580

The Office of Hearings and Appeals issued a Decision and Order implementing special refund procedures with respect to a $2,000,000 fund obtained by the DOE through a consent order with Northeast Petroleum Industries, Inc. (Northeast). Under the terms of the August 15, 1983 Consent Order, Northeast disbursed $800,000 of the $2,000,000 directly to identifiable end-users that purchased No. 6 residual fuel oil from the firm during the consent order period. Of the remaining $1,200,000 in the Northeast escrow account, $207,960 were set aside as a pool of crude oil funds available for disbursement and $992,040 were set aside as a pool of funds to be made available for distribution to claimants who demonstrate that they were injured by Northeast's alleged overcharges in its sales of refined petroleum products. The June 11 Decision stated that the DOE would accept applications for refund filed by purchasers of Northeast's refined coverage products during the period March 6, 1973 through January 27, 1981, but would exclude from this proceeding any claim attributable to transactions covered by a prior Northeast Consent Order or direct refund from Northeast on the basis of purchases pursuant to the August 15 Consent Order.

Refund Applications

Armco Steel Company, L.P., 6/14/90, RF272–394, RD272–394

The Department of Energy (DOE) issued a Decision and Order granting a refund from crude oil overcharge funds to Armco Steel Company, L.P. (Armco) based upon its purchases of 495,464,428 gallons of refined petroleum products during the period August 19, 1973 through January 27, 1981. Armco is involved in the manufacture and sale of steel and steel products. The applicant was an end-user of the products it claimed and was therefore presumed injured. A consortium of states and territories of the United States filed a Statement of Objections and a Motion of Discovery with respect to the applicant. The DOE found that the States' filing was insufficient to rebut the presumption of injury for end-users. The accompanying Motion for Discovery was also denied. The total refund amount granted to Armco was $396,372.

Atlantic Richfield Company/Ashland Oil Company, 6/12/90, RF304–4682

The DOE issued a Decision and Order concerning an Application for refund filed by Ashland Oil Company in the Atlantic Richfield Company (ARCO) special refund proceeding. The DOE determined that Ashland Oil Company was a spot purchaser of ARCO gasoline. Ashland did not attempt to rebut the spot purchaser presumption of non-injury. Accordingly, Ashland's application was denied.

Atlantic Richfield Company/Watts & Durr Oil Co., Inc., 6/14/90, RF304–7882, RF304–7883, RF304–11692

The DOE issued a Decision and Order concerning three Applications for Refund filed by two claimants in the Arco special refund proceeding on behalf of Watts & Durr Oil Co., Inc. (WDI). The claimants, Wayne Watts of WDI (Watts) and George A. Phelps of Phelps Oil Co. (Phelps) are related through change in ownership and filed applications on the basis of the same purchases. The DOE examined the Sales Agreement governing the sale of WDI to Phelps from Watts and determined that the common stock of WDI was transferred to Phelps, therefore transferring WDI's right to refunds to Phelps. Accordingly, the DOE denied Watts' applications and approved the refund application submitted by Phelps. The total amount of refunds approved in this Decision was $3,129, representing $2,266 in principal and $863 in interest.

CertainTeed Corporation, 6/11/90, RF272–456, RD272–456

The Department of Energy (DOE) issued a Decision and Order granting a refund from crude oil overcharge funds to CertainTeed Corporation based on its purchases of refined petroleum products during the period August 19, 1973, through January 27, 1981. CertainTeed is a manufacturer of asphalt roofing products and other building materials. The company used the petroleum products in its manufacturing operations, and determined its claim using actual purchase records and reasonable estimates. The petroleum products claimed, including roofer's flux, shingle saturant and shingle coating, were determined to consist entirely of liquid asphalt, a product covered by the EPAA, and therefore were approved as eligible products. The applicant was an end-user of the products it claimed and was therefore presumed injured. A consortium of 28 states and two territories filed a Statement of Objections and a Motion for Discovery with respect to the applicant. The DOE found that the States' filing was insufficient to rebut the presumption of injury for end-users. The accompanying Motion for Discovery was also denied. CertainTeed's Application for Refund was granted. The total refund amount granted is $832,926.

Cessford Construction Co., 6/15/90, RF272–5427, RD272–5427

The DOE issued a Decision and Order granting a refund from the crude oil overcharge funds to Cessford Construction Company, an asphalt producer and road construction contractor. The Decision also denied a Motion for Discovery filed by a consortium of 32 states and two territories of the United States in opposition to Cessford's refund claim. During the crude oil price control period, Cessford purchased 16,140,958 gallons of refined petroleum products which it consumed in the course of its business operations. The States challenged the refund claim, stating that Cessford was not injured by crude oil overcharges because it passed the overcharges through to the purchasers of its services. The DOE rejected the States' position, noting that the States' reliance upon industry-wide economic analysis to support its position was insufficient. The DOE found that the failure by the States to advance arguments which were applicant-specific left the end-user presumption of injury unrebutted. The DOE therefore granted Cessford a $12,913 refund.

Exxon Corporation/Dead River Petroleum Co., 6/11/90, RF307–272

The DOE issued a Decision and Order concerning an Application for Refund filed by Dead River Petroleum Co. (Dead River) in the Exxon Corporation special refund proceeding. Dead River had attempted to demonstrate injury in order to receive a refund equal to its full allocable share. The DOE determined that the cost bank data submitted by Dead River failed to provide convincing evidence that would lead the agency to conclude that the firm absorbed the alleged overcharges entirely. Since there was no indication that Dead River did not incur some amount of injury as a result of its Exxon purchases, the DOE granted the firm a refund based on the medium-range presumption of injury. The sum of the refund granted in this Decision is $53,002 ($40,824 principal plus $12,178 interest).

Gulf Oil Corporation/Alex Gulf Service, 6/12/90, RF300–8140

The DOE issued a Decision and Order concerning an Application for Refund submitted in the Gulf Oil Corporation special refund proceeding on behalf of Alex Gulf Service. Alex Gulf Service did not substantiate its claim as a purchaser of Gulf products during the consent order period. Accordingly, the Application was denied.

Gulf Oil Corporation/Apollo #1, et al., 6/11/90, RF300–9420, Et Al.

The DOE issued a Decision and Order concerning twelve Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding by Energy Refunds, Inc. on behalf of four former shareholders of Apollo Oil Company (Apollo). Apollo was incorporated on or about July 1, 1967. The four shareholders whom Energy Refunds, Inc. represented sold their shares of Apollo stock on or before April 30, 1982. In so doing, these individuals relinquished all interest in Apollo. As a result, the DOE denied these twelve Applications for Refund filed on behalf of the four former shareholders of Apollo Oil Company.

Gulf Oil Corporation/Bennett's Gulf Service, 6/12/90, RF300–8148

The DOE issued a Decision and Order concerning an Application for Refund submitted in the Gulf Oil Corporation special refund proceeding on behalf of Bennett's Gulf Service. Bennett's Gulf Service did not substantiate its claim as a purchaser of Gulf products during the consent order period. Accordingly, the Application was denied.

Gulf Oil Corporation/Buster's Gulf Service, 6/13/90, RF300–8181

The DOE issued a Decision and Order concerning an Application for Refund submitted in the Gulf Oil Corporation special refund proceeding on behalf of Buster's Gulf Service. Buster's Gulf Service did not substantiate its claim as a purchaser of Gulf products during the consent order period. Accordingly, the Application was denied.

Gulf Oil Corporation/Carey Johnson Oil Co., Inc., 6/11/90, RF300–7138

The Department of Energy issued a Decision and Order regarding an Application for Refund filed in the Gulf Oil Corporation special refund proceeding by Carey Johnson Oil Co., Inc. (Johnson), a reseller of Gulf gasoline. Johnson elected not to adopt the presumptions of injury established in the Gulf proceeding. Rather, it attempted to demonstrate injury by submitting cost banks and a competitive disadvantage analysis. The OHA approved Johnson's cost banks comparison, but found the margins yielded by the competitive disadvantage analysis to be too narrow, given the rough estimates employed in their calculation. Therefore, Johnson's Application for Refund was approved under the 40 percent presumption of injury. The amount of the refund granted, including interest, is $28,288.

Gulf Oil Corporation/Hoffer's Gulf Service, 6/14/90, RF300–8614

The DOE issued a Decision and Order concerning an Application for Refund submitted in the Gulf Oil Corporation special refund proceeding on behalf of Hoffer's Gulf Service. Hoffer's Gulf Service did not substantiate its claim as a purchaser of Gulf products during the consent order period. Accordingly, the Application was denied.

Gulf Oil Corporation/Kent Oil & Trading Company, 6/15/90, RF300–341

The Department of Energy issued a Decision and Order regarding an Application for Refund filed in the Gulf Oil Corporation special refund proceeding by Kent Oil & Trading Company (Kent). Due to the sporadic nature of Kent's purchases of significant volumes from Gulf, it was determined that Kent was a spot purchaser of Gulf products. In the Gulf proceeding, the OHA established a rebuttable presumption that spot purchasers were not injured by Gulf's alleged overcharges. Kent submitted nothing to rebut this presumption. Therefore, Kent's Application for Refund was denied.

Gulf Oil Corporation/McCall Service Stations, Inc., 6/11/90, RF300–8401

The DOE issued a Decision and Order concerning an Application for Refund submitted in the Gulf Oil Corporation special refund proceeding on behalf of McCall Service Stations, Inc. McCall established that it purchased Gulf products indirectly from a Gulf jobber. The jobber that supplied McCall has not applied in the Gulf proceeding. Accordingly, we treated the McCall in the same manner as we generally treat applicants who purchased directly from Gulf. The Application was approved using a presumption of injury. The total refund granted in this Decision is $7,031.

Gulf Oil Corporation/Puerto Rico Electric Power Authority, 6/14/90, RF300–9804

The DOE issued a Decision and Order concerning an Application for Refund submitted in the Gulf Oil Corporation special refund proceeding by Puerto Rico Electric Power Authority (PREPA), a government controlled public utility that purchased 648,203,537 gallons of refined petroleum products during the price control period. PREPA met the special requirements for utility claimants by submitting a certification that it will pass through the amount of the refund to its customers on a dollar for dollar basis. Because PREPA is controlled by the government of Puerto Rico and is not subject to the jurisdiction of any other regulatory agency, the DOE waived the usual requirement that a utility notify its regulatory body upon receiving the refund. However, the DOE required that PREPA submit a report to the Office of Hearings and Appeals describing the manner in which the refund was passed through to its customers. PREPA was granted a total refund of $583,383 using a presumption of injury.

Gulf Oil Corporation/Texaco Chemical Company, 6/11/90, RF300–9226

The DOE issued a Decision and Order concerning an Application for Refund submitted in the Gulf Oil Corporation special refund proceeding. The Application was approved using a presumption of injury. The amount of the refund granted in this Decision, which includes both principal and interest, $74,740.

Gulf Oil Corporation/Vanguard Petroleum Corporation, 6/12/90, RF300–5736

The DOE issued a Decision and Order concerning an Application for Refund submitted in the Gulf Oil Corporation special refund proceeding on behalf of Vanguard Petroleum Corporation. The OHA initially determined that Vanguard was a spot purchaser. Vanguard rebutted the presumption of non-injury for spot purchasers. Vanguard also submitted banks of unrecouped increased product costs and a competitive disadvantage analysis. Vanguard was awarded a refund of its full allocable share, plus accrued interest. The total refund granted in this Decision is $12,852.

H.M. Trimble and Sons, Ltd., Municipal Tanklines, Ltd., 6/15/90, RF272–494, RF272–495

The DOE issued a Decision and Order dismissing two Applications for Refund filed in the subpart V crude oil refund proceedings by H.M. Trimble and Sons, Ltd. (Trimble) and Municipal Tanklines, Ltd. In the Decision, it was determined that the applicants had previously received refunds from the Surface Transporters Escrow in the Stripper Well proceedings. By receiving a refund from this escrow, Trimble and Municipal Tanklines waived their rights to receive subpart V crude oil refunds. Thus, Trimble's and Municipal Tanklines' Applications for Refund were dismissed.

Indian Wells Oil Co./Propane Industrial, Inc., 6/11/90, RF317–3

The DOE issued a Decision and Order denying a refund from the Indian Wells Oil Co. consent order fund to Propane Industrial, Inc. (PII), a reseller of Indian Wells propane. The DOE determined that the PII application should be denied because PII is a subsidiary of one of the consent order firms and that granting a refund to PII would contradict the equitable general policy which precludes a subsidiary of a consent order firm from receiving a refund.

John Royster, Charles B. Wise, 6/14/90, RF272–78643, RF272–78644

The DOE issued a Decision and Order granting a refund of $170 to John Royster and $99 to Charles B. Wise, both end-users of refined petroleum products, in the subpart V crude oil proceeding. Each had filed previous applications in this proceeding which were dismissed because we were unable to determine the applicant's complete address. We have since received their complete addresses, and found that they were eligible for a volumetric refund on their purchases.

Mobil Oil Corp./Flame Gas Co., Inc., 6/15/90, RF225–11094

The Department of Energy issued a Supplemental Order correcting a previous determination to grant Flame Gas Co. a refund of $3,262, consisting of $1,844 in principal plus $1,378 in interest, in the Mobile Oil Corporation special refund proceeding.

Murphy Oil Corporation/Marshfield Oil Co.; Inc., Hill Petroleum Company, 6/11/90, RF309–658, RF309–1290

The DOE issued a Decision and Order denying two Applications for Refund in the Murphy Oil Corporation special refund proceeding. The applicants purchased Murphy petroleum products on sporadic bases and were preliminarily identified as spot purchasers. Marshfield Oil Co., Inc. contested our preliminary finding, but it only presented anecdotal arguments concerning the circumstances of its spot purchases. Hill Petroleum Company chose not to dispute its identification as a spot purchaser. Since neither claimant presented evidence (1) establishing that it was a regular purchaser of Murphy petroleum products, or (2) rebutting the spot purchaser presumption of non-injury, their refund applications were denied.

No. 1 Contracting Co. McAninch Corp., 6/15/90, RF272–4106, RF272–5698

The Department of Energy issued a Decision and Order granting Applications for Refund filed by No. 1 Contracting Co. and McAninch Corp. in the DOE's subpart V crude oil proceeding. The DOE found that the applicants, who are construction companies, were end-users of the refined petroleum products for which they sought refunds, and thus presumed to have been injured by alleged crude oil overcharges. A consortium of 30 States and 2 territories (the States) filed objections of these applications. In their submissions, the States attempted to rebut the end-user presumption of injury. The DOE determined that the presumption was applicable to the applicants. The DOE therefore concluded that refunds totalling $13,388 should be granted to the applicants.

Norval E. Ladsten, 6/14/90, RF272–48839

The DOE issued a Decision and Order granting a refund of $183 to Norval Ladsten, and end-user of refined petroleum products, in the subpart V crude oil proceeding. Mr. Ladsten could only provide dollar figures for his purchases of diesel fuel. The number of gallons purchased was calculated by dividing the dollar value by the average retail cost of diesel fuel accepted in an earlier Decision: $0.458683 per gallon.

Oringderff Tank Lines, Inc., 6/14/90, RF272–63799

The Department of Energy (DOE) issued a Decision and Order concerning an Application for Refund submitted by the Oringderff Tank Lines, Inc. (Oringderff). Oringderff requested a refund based on its purchases of refined petroleum products during the period August 19, 1973, through January 27, 1981 pursuant to the provisions of 10 CFR part 205, subpart V (subpart V). In this Decision, it was determined that Oringderff's rights to a subpart V crude oil refund had been waived by its parent corporation, Groendyke Transport, Inc. (Groendyke). Groendyke, an ICC Regulated Carrier, was granted a refund from the Surface Transporters Escrow, thereby precluding Groendyke Transport and its subsidiaries from eligibility for a subpart V crude oil refund. Thus, as a subsidiary of Groendyke Transport, Orlingderff is ineligible for a subpart V crude oil refund and its Application for Refund was dismissed.

Placid Oil Company/Pride Terminals, Inc., 6/14/90, RF314–1

The Department of Energy issued a Decision and Order regarding an Application for Refund filed in the Placid Oil Company special refund proceeding by Pride Terminals, Inc. (Pride). Due to the sporadic nature of Pride's purchases from Placid, it was determined that Pride was a spot purchaser of Placid products. In the Placid proceeding, the OHA established a rebuttable presumption that spot purchasers were not injured by Placid's alleged overcharges. Pride submitted nothing to rebut this presumption. Therefore, Pride's Application for Refund was denied.

Standard Oil Co. (Indiana)/Louisiana, 6/11/90, RQ21–554, RQ251–555

The DOE issued a Decision and Order granting the second-state refund application filed by the State of Louisiana in the Standard Oil Co. (Indiana) special refund proceeding. Louisiana proposed to spend $116,000 in Amoco I monies on "Commercial Energy Conservation Two-Day Seminars" and $309,300 in Amoco II monies on an "Industrial/Commercial Energy Reduction Program." These two programs would provide energy audits and energy conservation instruction to the builders, owners and operators of commercial and industrial buildings. The DOE found that these programs would provide restitution to injured petroleum consumers by reducing their energy consumption and costs.

The Bibb Company, 6/11/90, RF272–395, RD272–395

The Department of Energy (DOE) issued a Decision and Order granting a refund from crude oil overcharge funds to The Bibb Company (Bibb) based upon its purchases of 17,387,892 gallons of refined petroleum products during the period August 19, 1973 through January 27, 1981. Bibb is involved in the manufacturer and sale of textile products. The applicant was an end-user of the products it claimed and was therefore presumed injured. A consortium of states and territories of the United States filed a Statement of Objections and a Motion of Discovery with respect to the applicant. The DOE found that the States' filing was insufficient to rebut the presumption of injury for end-users. The accompanying Motion for Discovery was also denied. The total refund amount granted to Bibb was $13,910.

Thos. & Jas. Harrison, Ltd., 6/11/90, RF272–13607, et al., RD272–13607, et al.

The DOE issued a Decision and Order concerning applications for refunds filed by four foreign flagship carriers in the Subpart V Crude Oil Special Refund proceeding. A group of States and Territories (the States), objected to the applications on the grounds that, allegedly, foreign firms cannot claim refunds and flagship carriers recouped increased fuel costs through surcharges. The DOE granted the refund applications, determinging that foreign firms can claim refunds, foreign flag ships did not, in general, use surcharges, and the States had failed to show that the individual applicants themselves had passed through increased fuel costs. The DOE also denied the States' Motions for Discovery, determining that all appropriate investigation for these cases had been conducted.

Refund Applications

The Office of Hearings and Appeals granted refunds to refund applicants in the following Decisions and Orders:

Name	Case No.	Date
Alcyon Shipping Agency, Ltd.	RF272–27824	6/12/90
Atlantic Richfield Co./ Dick's Arco, *et al.*	RF304–4822	6/15/90
Atlantic Richfield Co./ Strander Petroleum, Inc., *et al.*	RF304–2950	6/11/90
Atlantic Richfield Co./ Wally Clarke Oil Co., *et al.*	RF304–6558	6/13/90
Exxon Corp./Bud's Exxon #1 Highway Exxon.	RF307–4 RF307–9969	6/13/90

Name	Case No.	Date
Exxon Corp./State of Connecticut Dept. of Transportation, *et al.*	RF307-8801	6/12/90
Exxon Corp./Tryon Exxon Service, *et al.*	RF307-1804	6/11/90
Gulf Oil Corp./John W. Smith, John T. Pryor.	RF300-1032 RF300-10880	6/11/90
Gulf Oil Corp./W.E. Ingram Distributor, Inc.	RF300-10908	6/13/90
Harkins & Co., *et al*	RF272-24806	6/12/90
Placid Oil Co./ Vicksburg Petroleum Products, Hood Oil Co., Inc., Kerr-McGee Corp.	RF314-2 RF314-39 RF314-74	6/12/90
Shell Oil Co./All City Shell, Inc., *et al.*	RF315-8814	6/13/90
Shell Oil Co./Ronald A. Pratt, *et al.*	RF315-9535	6/14/90
Texaco Inc./Lemaire Texaco Service, *et al.*	RF321-606	6/15/90
Tierra West Contracting, Inc. *et al.*	RF272-25261	6/13/90

Dismissals

The following submissions were dismissed:

Name	Case No.
Central Florida Oil Co	RF315-7544
Coast Gas	RR238-4
Farmers Grain, Fuel, and Livestock Co.	RF272-75814
Frank A. McCormick	RF304-11773
Frank Guinta's Exxon II	RF307-177
Gilpatrick Construction Co	RF272-35924 RD272-35924
Glen Rock Car Wash	RF304-11664
John H. Pigman, Inc	RF265-2885
McMillan Spur Station	RF300-10534
Metro Fuel Oil Co., Inc	RF304-5472
Murphy Oil Company	RF300-10536
Pacific Northern Oil	RF307-8844
Posillico Brothers Asphalt Co	RF272-34433 RD272-34433
Stewart's Union #76	RF300-10535
The Carpet Store	RF300-10532
Woborn St. Exxon	RF307-922

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, room 1E-234, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, Monday through Friday, between the hours of 1 p.m. and 5 p.m., except federal holidays. They are also available in Energy Management: Federal Energy Guidelines, a commercially published loose leaf reporter system.

Dated: July 20, 1990.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 90-17777 Filed 7-30-90; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3815-7]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden.

DATES: Comments must be submitted on or before August 30, 1990.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA, (202) 382-2740.

SUPPLEMENTARY INFORMATION:

Office of Water

Title: Search for Environmental Information Resources (ICR #1536.01).

Abstract: EPA's Office of Municipal Pollution Control is proposing a national search for training and other information concerning policy owned wastewater treatment works (POTWs). Specifically, OMPC wants information that can help municipal officials and plant managers to design new plants and to improve the operation and management of existing plants. This will include information to help both financial management and technical operations, including training programs.

OMPC will send a questionnaire to local existing materials, the questionnaire asks respondents to identify their information and training needs and those of their clients. OMPC will then try to match up information needs with those information resources which the questionnaire has identified.

OMPC will compile a list of existing materials which the respondents identify and will make the list available through the National Small Flows Clearinghouse and the Environmental Quality/Instructional Resources Center.

Burden Statement: The reporting burden imposed on respondents by the proposed rule is 1.1 hours per respondent.

Respondents: Municipal wastewater treatment experts.

Estimated No. of Respondents: 490.

Estimated Total Annual Burden on Respondents: 553 hours.

Frequency of Collection: On time.

Send comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden, to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM-223), 401 M Street, SW., Washington, DC 20460

and

Tim Hunt, Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503.

Dated: July 25, 1990.

Paul Lapsley,

Director, Management Division.

[FR Doc. 90-17783 Filed 7-30-90; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3815-6]

Clean Water Act Class II; Proposed Administrative Penalty Assessment and Opportunity To Comment Regarding Carmel Energy, Inc., Houston, TX

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed administrative penalty assessment and opportunity to comment regarding Carmel Energy, Inc., Houston, Texas.

SUMMARY: EPA is providing notice of a proposed administrative penalty assessment for alleged violations of the Clean Water Act. EPA is also providing notice of opportunity to comment on the proposed assessment.

Under 33 U.S.C. 1319(g), EPA is authorized to issue orders assessing civil penalties for various violations of the Act. EPA may issue such orders after filing a Complaint commencing either a Class I or a Class II penalty proceeding. EPA provides public notice of the proposed assessment pursuant to 33 U.S.C. 1319(g)(4)(a).

Class II proceedings are conducted under EPA's Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, 40 CFR part 22. The procedures by which the public may submit written comment on a proposed Class II order or participate in a Class II proceeding, and the procedures by which a respondent may request a hearing, are set forth in the Consolidated Rules. The deadline for submitting public comment on a proposed Class II order is thirty days after issuance of this public notice.

On June 29, 1990, EPA commenced the following Class II proceeding for the assessment of penalties by filing with

the Regional Hearing Clerk, U.S. Environmental Protection Agency, Region VII, 726 Minnesota Avenue, Kansas City, Kansas City, Kansas 66101, (913) 551–7477, the following Complaint: In the Matter of Carmel Energy, Inc., EPA Docket No. VII–90–W–0008. The Complaint proposes a penalty of $61,415 for discharging pollutants into Moore's Branch, a water of the United States, from the company's secondary oil recovery operation near Deerfield in Vernon County, Missouri, in violation of the effluent limitations and conditions of a National Pollutant Discharge Elimination System permit, and, following the expiration of the permit, in violation of the Clean Water Act's prohibition of unpermitted discharges.

FOR FURTHER INFORMATION: Persons wishing to receive a copy of EPA's Consolidated Rules, review the Complaint or other documents filed in this proceeding, comment upon the proposed penalty assessment, or otherwise participate in the proceeding should contact the Regional Hearing Clerk identified above.

The administrative record for the proceeding is located in the EPA Regional Office at the address stated above, and the file will be open for public inspection during normal business hours. All information submitted by Carmel Energy, Inc. is available as part of the administrative record, subject to provisions of law restricting public disclosure of confidential information. In order to provide opportunity for public comment, EPA will issue no final order assessing a penalty in this proceeding for thirty days from the date of this Notice.

Dated: June 29, 1990.

Morris Kay,

Regional Administrator.

[FR Doc. 90–17784 Filed 7–30–90; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirements Submitted to the Office of Management and Budget for Review

July 25, 1990.

The Federal Communications Commission has submitted the following information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of these submissions may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037. For further information on these submissions contact Judy Boley, Federal Communications Commission, (202) 632–7513. Persons wishing to comment on these information collections should contact Eyvette Flynn, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, (202) 395–3785.

OMB Number: 3060–0212.

Title: Section 73.2080, Equal Employment Opportunity Program.

Action: Extension.

Respondents: Businesses or other for-profit (including small businesses), and non-profit institutions.

Frequency of Response: Recordkeeping requirement.

Estimated Annual Burden: 13,072 recordkeepers; 679,744 hours total annual burden; 52 hours average per recordkeeping.

Needs and Uses: Section 73.2080 provides that equal opportunity in employment shall be afforded by all broadcast stations to all qualified persons and no person shall be discriminated against in employment by such stations because of race, color, religion, national origin or sex. This rule section also requires that each broadcast station establish, maintain and carry out a program to assure equal opportunity in every aspect of a broadcast station's policy and practice. The data is used by FCC staff in field investigations involving equal employment opportunity to assess a broadcast station's EEO program.

OMB Number: 3060–0249.

Title: Section 74.781, Station Records.

Action: Extension.

Respondents: Businesses or other for-profit (including small businesses).

Frequency of Response: Recordkeeping requirement.

Estimated Annual Burden: 5,675 recordkeepers; 5,108 hours total annual burden; 0.9 hours average burden per recordkeeper.

Needs and Uses: Section 74.781 requires licensees of low power TV, TV translator and TV booster stations to maintain adquate station records. These records shall include the current instrument of authorization, official correspondence with the FCC, maintenance records, contracts, permission for rebroadcasts, and other pertinent documents. They should also include any observed or otherwise known extinguishment or improper functioning of a tower light. The records are used by FCC in field investigations to assure that reasonable measures are taken to maintain proper station operation and to ensure compliance with the Commission's rules.

OMB Number: 3060–0250.

Title: Section 74.784, Rebroadcasts.

Action: Extension.

Respondents: Businesses or other for-profit (including small businesses).

Frequency of Response: On occasion.

Estimated Annual Burden: 1,891 responses; 1,891 hours total annual burden; 1 hour average burden per response.

Needs and Uses: Section 74.784(b) requires that a licensee of a low power TV or TV translator station shall not rebroadcast the programs of any other TV broadcast station without obtaining prior consent of the station whose signals or programs are proposed to be retransmitted. This rule section also requires licensees of low power TV and TV translator stations to notify the Commission when rebroadcasting programs or signals of another station. The notification shall include the call letters of each station rebroadcast. The licensee shall certify that written consent has been obtained from the licensee of the station whose programs are retransmitted. The data is used by FCC staff to ensure compliance with section 352(a) of the Communications Act of 1934, as amended, which states that no broadcasting station shall rebroadcast the program or any part thereof, of another broadcasting station without the express authority of the originating station.

OMB Number: 3060–0251.

Title: Section 74.833, Temporary Authorizations.

Action: Extension.

Respondents: Businesses or other for-profit (including small businesses).

Frequency of Response: On occasion.

Estimated Annual Burden: 20 responses; 40 hours total annual burden; 2 hours average burden per response.

Needs and Uses: Section 74.833 requires that requests for special temporary authorization be made by informal applications for low power auxiliary stations which cannot be conducted in accordance with § 74.24 of the FCC rules and for operations of a temporary nature. (§ 74.24 states that classes of broadcast auxiliary stations may be operated on a short-term basis under the authority conveyed by a part 73 licensee without prior authorization from the FCC, subject to certain conditions.) The data is used by FCC staff to insure that the temporary operation of a low power auxiliary station will not cause interference to other existing stations and to assure

compliance with current FCC rules and regulations.

OMB Number: 3060–0394.

Title: Section 1.420, Additional procedures in proceedings for amendment of FM, TV or Air-Ground Table of Allotments.

Action: New collection

Respondents: Businesses or other for-profit (including small businesses).

Frequency of Response: On occasion.

Estimated Annual Burden: 80 responses; 120 hours total annual burden; 1.5 hours average burden per response.

Needs and Uses: Section 1.420 requires a petitioner seeking to withdraw or dismiss its expression of interest in allotment proceedings to file a request for approval. This request would include a copy of any related written agreement and an affidavit certifying that the party withdrawing its interest nor its principals has received any consideration in excess of legitimate and prudent expenses in exchange for dismissing/withdrawing its petition and an itemization of the expenses for which it is seeking reimbursement. Each remaining party to any written or oral agreement must submit an affidavit within five days of petitioner's request for approval stating that it has paid no consideration to the petitioner in excess of the petitioner's legitimate and prudent expenses. The data is used by FCC staff to ensure that an expression of interest in applying for, constructing, and operating a station was filed under appropriate circumstances and not to extract payment in excess of legitimate and prudent expenses.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 90–17802 Filed 7–30–90; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL RESERVE SYSTEM

Interbanc Financial Group, Inc., et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. 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 outweight possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any 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 each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than August 22, 1990.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Interbanc Financial Group, Inc.*, Fort Lauderdale, Florida; to acquire Interbanc Real Estate, Inc. Fort Lauderdale, Florida and thereby engage in leasing activities pursuant to § 225.25(b)(5) of the Board's Regulation Y. These activities will be conducted in Fort Lauderdale, Florida.

B. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *First City Bancorporation of Texas, Inc.*, Houston, Texas; to acquire Baii Banking Corporation, New York, New York, and thereby acquire an Article XII corporation and engage in making and servicing loans, trade finance and foreign exchange activities pursuant to § 225.25(b)(1) of the Board's Regulation Y. These activities will be conducted on a worldwide basis.

Board of Governors of the Federal Reserve System, July 26, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90–17746 Filed 7–30–90; 8:45 am]

BILLING CODE 6210–01–M

Tobias Carrero, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in action on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than August 14, 1990.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Tobias Carrero*, Caracas, Venezuela; Rossano Cocconcelli, Lomas De Las Mercedes, Venezuela; Hely Malaret Miranda, Caracas, Venezuela; Jorge Thery, La Periquera, Los Guayabitos, Venezuela; Miguel Alberto Boccardo, Caracas, Venezuela; Hector Hoffman, Apro Phi, Caracas, Venezuela; Alfredo Alvarez Gallardo, Caracas, Venezuela; Alfredo Lafee, Altamira Sur, Venezuela; Federico Antonio Ariza Burges, URB. Alto Hatillo, Venezuela; George Bocaranda, Caracas, Venezuela; Alfredo Esquivar, Caracas, Venezuela; Jaime Benitez, Gonzalea Rincones, Qta Ismita, Venezuela; and Salvador Lairet, Caracas, Venezuela; to acquire 100 percent of the voting shares of Plaza Bank of Miami, Miami, Florida.

B. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Kary S. Paulson; to acquire 71.01 percent of the voting shares of Northwood Financial Services Corporation, Northwood, Iowa, and thereby indirectly acquire Northwood State Bank, Northwood, Iowa.*

Board of Governors of the Federal Reserve System, July 25, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-17747 Filed 7-30-90; 8:45 am]

BILLING CODE 6210-01-M

Truman Bancshares, Inc.; Application To Engate de Novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 22, 1990.

A. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Truman Bancshares, Inc.*, Truman, Minnesota; to engage *de novo* in making and servicing loans pursuant to section 225.25(b)(1) of the Board's Regulation Y. These activities will be conducted in Watonwan, Jackson, Martin, Faribault and Blue Earth Counties.

Board of Governors of the Federal Reserve System, July 25, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-17748 Filed 7-30-90; 8:45 am]

BILLING CODE 6210-01-M

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register.**

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 07/09/90 AND 07/20/90

Name of acquiring person, Name of acquired person, Name of acquired entity	PMN No.	Date terminated
NS Group, Inc., Robert Alpert, Robert Alpert	90-1696	07-09-90
Michael YING Lee-Yuen, SFO Acquisition Inc., SFO Acquisition Inc	90-1703	07-09-90
Susie R. Tomphins and Doug R. Tompkins, SFO Acquisition Inc., SFO Acquisition Inc	90-1705	07-09-90
Bruce R. Katz, SFO Acquisition Inc., SFO Acquisition Inc	90-1709	07-09-90
Steven F. Spiritas, Darling-Delaware Company, Inc., Darling-Delaware Company, Inc., and CBP Resources, Inc	90-1723	07-09-90
Frank Batten, Stephen Adams, Adams Communications Corporation II	90-1742	07-09-90
Sinko Kogyo Co., Ltd., Brod & McClung-Pace Co., Brod & McClung-Pace Co	90-1757	07-09-90
IMETAL, Asea AB, Minerals Holdings, Inc	90-1713	07-10-90
Western Gas Resources, Inc., Parker Drilling Company, Parker Gas Companies, Inc., Parker Pipeline Company	90-1714	07-10-90
IMETAL, BBC Brown Boveri, Ltd., Minerals Holdings Inc	90-1715	07-10-90
UtiliCorp United Inc., PostCorp Inc., PSI-Post General Holdings, L.P	90-1732	07-10-90
Ultramar PLC, E. I. DuPont de Nemours and Company, Conoco Inc	90-1739	07-10-90
Telesphere Communications, Inc., Ronald J. Haan, National Telephone Services, Inc	90-1688	07-11-90
The Carpenters Pension Trust for Southern California, HomeFed Corporation, HomeFed Bank, Federal Savings Bank	90-1689	07-12-90
C-TEC Corporation, Oliver R. Grace, Jr., Oliver R. Grace, Jr	90-1564	07-13-90
Doctors' Hosptial, Inc., American Medical Holdings, Inc., AMI Doctors' Hospital of Prince Georges County	90-1648	07-13-90
Wellman, Inc., New England CR Inc., New England CR Inc	90-1708	07-13-90
Amoco Corporation, Amoco Nisseki CLAF, Inc., Amoco Nisseki CLAF, Inc	90-1736	07-13-90
Nippon Oil Company, Limited, Amoco Nisseki CLAF, Inc., Amoco Nisseki CLAF, Inc	90-1738	07-13-90
Peters Kiewit Son's, Inc., Fischbach/Natkin Associates Inc., Fischbach/Natkin Associates Inc	90-1769	07-13-90
American International Group, Inc., Fischbach/Natkin Associates Inc., Fischbach/Natkin Associates Inc	90-1770	07-13-90
Maruko Inc., Hawthrone-Orange Partners, L.P., Hawthrone-Orange Partners, L.P	90-1776	07-13-90
Mitsubishi Mining & Cement Co., Ltd., Dillingham Construction Holdings, Inc., Dillingham Construction Guam, Ltd	90-1782	07-13-90
Waste Management, Inc., Thomas F. Lafferty, Warner Company	90-1791	07-13-90
N.V. Koninklijke Bijenkorf Beheer KBB, Peter C. Morse, Morse, Harris Group, Inc. and M & H Acquisition, Inc	90-1796	07-13-90
Armco Inc., Statesman Insurance Company Stock Ownership Plan, SICO Inc	90-1797	07-13-90
Fritz R. Kundrun, Fluor Corporation, Virginia Crews Coal Company	90-1798	07-13-90
Canon Inc., Dupli-Fax, Inc., Dupli-Fax, Inc	90-1803	07-13-90

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 07/09/90 AND 07/20/90—Continued

Name of acquiring person, Name of acquired person, Name of acquired entity	PMN No.	Date terminated
George N. Gillett, Jr., Clarence V. McKee, WTVT Holdings, Inc	90-1767	07-16-90
The Chase Manhattan Corporation, Midlantic Corporation, Midlantic Commercial Leasing Corp	90-1826	07-16-90
Western Publishing Group, Inc., Zeb and Deborah J. Billings, Sight & Sound, Inc	90-1773	07-17-90
Zeb and Deborah J. Billings, Western Publishing Group, Inc., Western Publishing Group, Inc	90-1774	07-17-90
Acer Incorporated, Altos Computer Systems, Altos Computer Systems	90-1815	07-17-90
Northwestern Healthcare Network, Northwestern Memorial Corporation, Northwestern Memorial Corporation	90-1038	07-18-90
Northwestern HealthCare Network, Lakeland Health Services, Inc., Lakeland Health Services, Inc	90-1062	07-18-90
Northwestern Healthcare Network, Children's Memorial Medical Center, Children's Memorial Medical Center	90-1063	07-18-90
Northwestern Healthcare Network, Evanston Hospital Corporation, Evanston Hospital Corporation	90-1064	07-18-90
PacifiCorp, The Washington Water Power Company, Washington Irrigation & Development Company	90-1778	07-18-90
Mitsubishi Oil Co., Ltd., Alan Bond **, Merlin Petroleum Company	90-1804	07-18-90
Tomkins PLC, Philips Industries, Inc., Philips Industries, Inc	90-1730	07-19-90
Edisto Resources Corporation, ESCO Energy, Inc., ESCO Energy, Inc	90-1753	07-19-90
Citicorp, Security Pacific Corporation, Security Pacific Equipment Finance (Europe), Inc	90-1768	07-19-90
Newell Co., Better Vision Hardware Group Inc., VSI Fasteners Inc	90-1775	07-19-90
Crowley Maritime Corporation, International Controls Corp., Coordinated Caribbean Transport, Inc	90-1780	07-19-90
Willy R. Strothotte, Willy R. Strothotte, Ravenswood Aluminum Corp	90-1792	07-19-90
Alexander and Baldwin, Inc., New England Mutual Life Insurance Company, Great Southwest Associates	90-1816	07-19-90
PPG Industries Inc., Transitions Optical, Inc., Transitions Optical, Inc	90-1820	07-19-90
Essilor International (Compagnie Generale D' Optique), Transitions Optical, Inc., Transitions Optical, Inc	90-1821	07-19-90
Unocal Corporation, Unocal Corporation, Union Exploration Partners, Ltd.	90-1828	07-19-90
Taihei Shokuhin Kogyo KK, David G. Price, California Golf, Ltd. and American Golf Corporation	90-1833	07-19-90
Metallgesellschaft AG, Pegasus Holdings, Inc., Horsehead Resource Development Company, Inc	90-1659	07-20-90
American Express Company, Epsilon Data Management, Inc., Epsilon Data Management, Inc	90-1746	07-20-90
Sears, Roebuck and Co., Southeast Banking Corporation, Southeast Banking Corporation	90-1807	07-20-90
The Berkshire Fund, R. Scott Schafler, Loveshaw Corporation and Padlocker, Inc	90-1836	07-20-90
Mr. Tetsuo Nishida, H Group Holding, Inc., HT-Westlake Hotel	90-1837	07-20-90
Alltel Corporation, TPI Enterprises, Inc. Maxcell Telecom Plus, Inc	90-1838	07-20-90
GATX Corporation, The Drexel Burnham Lambert Group, Inc., Burnham Leasing Corporation	90-1839	07-20-90
MCA Inc., Cineplex Odeon Corporation, Plitt Theatres, Inc	90-1851	07-20-90
ACCOR S.A., Motel Associates, L. P., Motel 6 G. P., Inc. and Motel 6, L. P.	90-1857	07-20-90

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay or Renee A. Horton, contract representatives, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, room 303, Washington, DC 20580, (202) 326-3100.

By Director of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 90-17755 Filed 7-30-90; 8:45 am]

BILLING CODE 6750-01-M

[Dkt. 9225]

Robert G. Koski, D.O.; Prohibited Trade Practices and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Dismissal order.

SUMMARY: The Federal Trade Commission issued a complaint against Dr. Robert G. Koski alleging that he conspired to boycott Marquette General Hospital, to prevent it from opening a clinic. In light of newly discovered evidence, the Commission has decided to dismiss the complaint.

DATES: Complaint issued February 13, 1989. Dismissal order issued October 10, 1989.[1]

FOR FURTHER INFORMATION CONTACT: David Pender, FTC/S-3115, Washington, DC 20580. (202) 326-2549.

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

Commissioners: Janet D. Steiger, Chairman, Terry Calvani, Mary L. Azcuenaga, Andrew J. Strenio, Jr., Margot E. Machol.

Order Dismissing Complaint

On February 28, 1989, the Commission issued a complaint charging that Dr. Robert G. Koski conspired with other health care practitioners, the Dickinson County Memorial Hospital Medical Staff, and two medical societies to boycott Marquette General Hospital to prevent it from opening a clinic. The complaint charged that on September 13, 1986, members of the Medical Staff, including Dr. Koski, voted to adopt a resolution pledging "that we will not cooperate or be hired by the Marquette Hospital Clinic or any subsidiary thereof."

Complaint Counsel have moved that the Commission dismiss the complaint against Dr. Koski, and the Administrative Law Judge has certified the motion to the Commission. Although the minutes of the Medical Staff meeting of September 13, 1986, indicate that Dr. Koski was present at the meeting, subsequent to the issuance of the complaint the respondent produced evidence establishing that he left the meeting prior to the boycott vote. That evidence included hospital records indicating that Dr. Koski was in surgery at the time of the boycott vote and a corroborating affidavit by a nurse anesthetist. In light of the newly discovered evidence, the Commission has decided to dismiss the complaint.

The complaint is hereby dismissed.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 90-17756 Filed 7-30-90; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control (CDC), Protocol Peer Review of Combined Chemical/RF Radiation Teratogenesis; Meeting

Name: Protocol Peer Review of Combined Chemical/RF Radiation Teratogenesis.

Time and Date: 9 a.m.-2:30 p.m., August 30, 1990.

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

Place: Robert A. Taft Laboratories, Room B–28, NIOSH, CDC, 4676 Columbia Parkway, Cincinnati, Ohio 45226.

Status: Open to the public, limited only by the space available.

Purpose: To conduct an open meeting for the review of a research protocol to assess the interactive teratogenicity of 2-methoxyesthanol and radiofrequency radiation in rats.

Contact Person for Additional Information: David L. Conover, Ph.D., NIOSH, CDC, 4676 Columbia Parkway, Mailstop C–27, Cincinnati, Ohio 45226, telephone 513/533–8482 or FTS 684–8482.

Dated: July 25, 1990.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 90–17738 Filed 7–30–90; 8:45 am]

BILLING CODE 4160–19–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–967–4230–15; AA–10458]

Alaska Native Claims Selection

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of sections 14(h)(1) and 14(h)(7) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(h)(1), and 1613(h)(7) will be issued to Sealaska Corporation for approximately 1.49 acres. The lands involved are in the vicinity of Hetta Cove on Prince of Wales Island, Alaska.

T. 77 S., R. 85 E., Copper River Meridian, Alaska

A notice of the decision will be published once a week, for four (4) consecutive weeks, in the Ketchikan Daily News. Copies of the decision may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7599 ((907) 271–5960).

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government or regional corporation, shall have until August 30, 1990, to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

Terry R. Hassett,

Chief, Branch of KCS Adjudication.

FR Doc. 90–17742 Filed 7–30–90; 8:45 am]

BILLING CODE 4310–JA–M

[CO–010–87–4133–17]

Road Closure; White River Resources Area, CO

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of road closure.

SUMMARY: Pursuant to 43 CFR part 8364 the BLM will close roads located on public lands in the White River Resource Area.

Blue Mountain Area approximately 8.4 miles of road closed and 17.8 miles of road restricted.
Township 4 North, Range 104 West
Sections 7, 8, 17, 18, 19, 20
Township 4 North, Range 103 West
Sections 10, 12, 13, 14, 15, 23, 24
Township 5 North, Range 102 West
Sections 19, 31, 32
Township 5 North, Range 103 West
Sections 24, 25, 26, 35

Certain roads on public land in the above described area will be closed to public access. This road closure and restriction will be in effect for a period from September 1, 1990 and will remain in effect until terminated. This closure is to prevent excessive erosion of fragile soils, provide protection of wildlife values and habitat in the area, and protect public safety. Administrative motorized vehicular access by Federal and State agencies, private landowners within the area and access-associated with oil and gas activity may be approved for certain roads by the authorized officer.

DATES: This action is effective September 1, 1990 and will remain in effect until terminated.

ADDRESSES: Maps showing the location of and information pertaining to the above closures will be available at the BLM White River Resource Area Office in Meeker, Colorado; BLM Craig District Office in Craig, Colorado; Dinosaur National Monument Headquarters in Dinosaur, Colorado; and on County Road 16 and the Dinosaur National Monument Access Road.

FOR FURTHER INFORMATION CONTACT: B. Curtis Smith, Area Manager, BLM White River Resource Area, P.O. Box 928, Meeker, Colorado 81641, (303) 878–3601.

Dated: July 23, 1990.

B. Curtis Smith,

Area Manager, White River Resource Area.

[FR Doc. 90–17740 Filed 7–30–90; 8:45 am]

BILLING CODE 4310–JB–M

[Docket No. NV020–4320–02]

Meeting; Winnemucca District Grazing Advisory Board Meeting

AGENCY: Bureau of Land Management, DOI.

ACTION: Winnemucca District Grazing Advisory Board Meeting.

SUMMARY: Notice is hereby given in accordance with Public Law 94–579 and section 3, Executive Order 12548, February 14, 1986, that a meeting of the Winnemucca District Grazing Advisory Board will be held on September 6, 1990. The meeting will begin at 10 a.m. in the conference room of the Bureau of Land Management Office at 705 East Fourth Street, Winnemucca, Nevada 89445.

The agenda for the meeting will include:

1. Public Statement—10 a.m.
2. District Manager's Update
3. Paradise-Denio R. A. Update on Allotment Evaluations, Decisions and Appeals
4. Advisory Board Members Comments to the Rodeo Creek and Soldier Meadows Allotment Management Plans
5. Update on Range Improvement funds:
   FY 90 Projects
   FY 91 Projects
   FY 92 Projects
6. Advisory Board Prioritize FY 91 Range Improvement Projects

The meeting is open to the public. Interested persons may make oral statements for the Board's consideration. Anyone wishing to make an oral statement should notify the District Manager, 705 East Fourth Street, Winnemucca, Nevada 89445 by August 30, 1990. Depending on the number of persons wishing to make oral statements, a per person time limit may be established by the District Manager. Summary minutes of the Board meeting will be maintained in the District Office and available for public inspection (during regular business hours) within 30 days following the meeting.

Dated: July 23, 1990.

Ron Wenker,

District Manager.

[FR Doc. 90–17711 Filed 7–30–90; 8:45 am]

BILLING CODE 4310–HC–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-24,429]

Anadarko Petroleum Corp., Houston, TX; Investigations Regarding Certifications of Eligibility to Apply for Worker Adjustment Assistance; Correction

This notice corrects the location of workers' firm for the subject petition published on June 7, 1990 in the **Federal Register** on page 23310 of FR Document 90–13226.

Under appendix, in column 2 line 2 on page 23310 the location of the workers' firm is corrected to read "Englewood, Colorado" and "Midland, Texas" instead of Houston, Texas.

Signed at Washington, DC, this 23rd day of July 1990.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 90–17775 Filed 7–30–90; 8:45 am]

BILLING CODE 4510–30–M

Pension and Welfare Benefits Administration

Advisory Council on Employee Welfare and Pension Benefit Plans; Meeting

Pursuant to the authority contained in section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, a public meeting of the Work Group on Enforcement of the Advisory Council on Employee Welfare and Pension Benefit Plans will be held at 9 a.m. Monday, August 20, 1990, in room C–2313, U.S. Department of Labor Building, Third and Constitution Avenue NW., Washington, DC 20210.

This ten member Working Group was formed by the Advisory Council to study issues relating to Annuities for employee welfare plans covered by ERISA.

The purpose of the August 20, meeting is to invite and hear comments from interested groups and the general public concerning proposals to amend the current ERISA enforcement scheme. The Working Group will also take testimony and or submissions from employee representatives, employer representatives and other interested individuals and or groups regarding the subject matter.

Individuals, or representatives or organizations, wishing to address the Working Group should submit written requests on or before August 16, 1990, to William E. Morrow, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, suite N–5677, 200 Constitution Avenue NW., Washington, DC 20210. Oral presentations will be limited to ten minutes, but witnesses may submit an extended statement for the record.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statement should be sent to the Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before August 16, 1990.

Signed at Washington, DC this 24th day of July, 1990.

David George Ball,

Assistant Secretary for Pension and Welfare Benefits Administration.

[FR Doc. 90–17732 Filed 7–30–90; 8:45 am]

BILLING CODE 4510–29–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–322]

Long Island Lighting Co.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of (1) A license amendment which would impose a new license condition 2.C(14), and (2) an exemption from the required emergency preparedness requirements of 10 CFR 50.54(q) to the Long Island Lighting Company (LILCO, the licensee), in connection with its Shoreham Nuclear Power Station (SNPS), located in Suffolk County, New York.

Environmental Assessment

Identification of Proposed Action

The proposed action would grant (1) A license amendment which would impose a new license condition 2.C(14), which would suspend the operation of license conditions 2.C(9) through 2.C(13) and (2) an exemption from the emergency preparedness requirements of 10 CFR 50.54(q). By letter dated December 15, 1989, the licensee requested an exemption from certain emergency preparedness requirements, provided that all fuel presently located in the Shoreham spent fuel pool remains in that storage facility and that the licensee implements and maintains its proposed Defueled Emergency Preparedness Plan. This requested exemption, coupled with the proposed license amendment requested by LILCO in that letter, would suspend the operation of license conditions 2.C(9) through 2.C(13) while Shoreham is in a defueled condition with its fuel stored in the spent fuel pool or other approved storage configuration and would allow LILCO to (1) Cease all offsite emergency planning and preparedness activities, (2) implement the Defueled Emergency Preparedness Plan in place of LILCO's current onsite plan for SNPS. The cessation of all offsite emergency preparedness planning and activities and the reduction of onsite emergency planning is the proposed action being considered by the Commission.

The Need for the Proposed Action

The licensee's December 15, 1989 letter provided technical justification for its view that the reduction of onsite emergency preparedness activities and the cessation of all offsite emergency preparedness activities would not adversely affect the public health and safety, based on Shoreham's defueled condition with the fuel stored in the spent fuel pool. Granting the proposed license amendment and request for exemption would relieve the licensee from the unnecessary financial burden of performing emergency preparedness activities and planning as required by 10 CFR 50.54(q) and current licensee conditions 2.C(9) through 2.C(13).

Environmental Impacts of the Proposed Action

The proposed license amendment affects only offset emergency planning and the proposed exemption affects onsite and offsite emergency planning. Neither the proposed license amendment nor the exemption affect the manner of facility operation or increase the risk of facility accidents. The reduction of onsite emergency planning and the elimination of all offsite emergency planning may affect the financial arrangements of the licensee and have some economic consequences while SNPS is maintained in a defueled condition. However, the environmental impact of licensed activities would not be altered.

The licensee's December 15, 1989 submittal included a technical report, "Radiological Safety Analysis for Spent Fuel Storage and Handling," which assesses the radiological consequences of fuel handling accidents for Shoreham in its present defueled configuration. The safety analysis establishes that Shoreham's spent fuel is in a low burnup condition (equivalent to two full power days) and that the amount of decay heat being generated by the fuel in the spent fuel pool as of June 1989 is negligible—

approximately 550 watts. With the fuel in such a low burnup condition, the safety analysis indicates that active systems for pool water makeup are not required and that passive cooling in the fuel pool is sufficient to maintain fuel cladding integrity.

Based on its safety analysis, LILCO has determined that the consequences of previously evaluated accidents are greatly decreased given Shoreham's nonoperating, defueled status. The safety analysis reviews the spectrum of accidents evaluated in the Shoreham Updated Safety Analysis Report (USAR) and identifies those events that apply to the storage and handling of spent fuel. Two events have been found to be relevant: (1) Fuel-Handling Accident (USAR § 15.1.36), and (2) Liquid Radwaste Tank Rupture (USAR § 15.1.32). For the Fuel-Handling Accident, the safety analysis calculates that the integrated whole body dose (1.74E–06 rem) is well below the Environmental Protection Agency's Protective Action Guides (EPA PAGs) for protecting the public from exposure (1–5 rem whole body dose). For the Liquid Radwaste Tank Rupture, the whole body dose (1.80E–08 rem) is also much less than the EPA PAG limits. The safety analysis also postulates a "worst case" radiological event, in which the total gaseous inventory of the core is released. For this event the whole body dose (1.08E–03 rem) is still well below the EPA PAG limits.

Based on a staff review of LILCO's analysis of possible events at Shoreham, the Commission concurs with the analysis and concludes that there is no credible accident for Shoreham in the defueled condition which could result in the release of radioactive materials to the environment in quantities which would require protective actions for the public.

In addition, the requested license amendment and exemption would not authorize construction or operation, and would not authorize a change in licensed activities or effect changes in the permitted types or amounts of radiological effluents. Post-accident radiological releases will not be greater than those determined previously, and the proposed license amendment and exemption do not otherwise affect facility radiological effluents or occupational exposures. With regard to potential non-radiological impacts, the proposed license amendment and exemption do not affect plant non-radiological effluents and have no other environmental impact. Therefore, the Commission concludes there are no measurable radiological or non-radiological environmental impacts associated with the proposed license amendment and exemption.

Alternative to the Proposed Action

Since the Commission concluded that there are no measurable environmental impacts associated with the proposed license amendment and exemption, any alternatives with equal or greater environmental impacts need not be evaluated.

The principal alternative to the license amendment and exemption is to require the licensee to maintain both its onsite and offsite emergency plans consistent with the requirements of 10 CFR 50.54(q). However, the Commission has determined that there are no credible accidents which could result in a radiological release which would require protective actions for the public with SNPS in the defueled condition. Requiring the maintenance of both its onsite and offsite emergency plans consistent with the requirements of 10 CFR 50.54(q) and current license conditions 2.C(9) through 2.C(13) would impose an unnecessary financial burden and would not enhance protection of the public or the environment.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the Shoreham Nuclear Power Station.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and consulted with the U.S. Federal Emergency Management Agency and the State of New York.

Finding of No Significant Impact

The Commission has determined not to prepared an environment impact statement for the proposed license amendment and exemption.

Based upon the foregoing environmental assessment, the Commission concludes that the proposed actions will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the licensee's letter dated December 15, 1989. This letter is available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC and at the Shoreham-Wading River Public Library, Route 25A, Shoreham, New York 11786–9697.

Dated at Rockville, Maryland, this 25th day of July 1990.

For the Nuclear Regulatory Commission.

Walter Butler,

Director, Project Directorate I–2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 90–17757 Filed 7–30–90; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–327 and 50–328]

Tennessee Valley Authority; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. DPR–77 and DPR–79 to the Tennessee Valley Authority (the licensee) for the Sequoyah Nuclear Plant, Units 1 and 2, respectively. The units are located at the licensee's site in Hamilton County, Tennessee. The amendments were requested by the licensee in its letter dated May 4, 1990. The amendments would change the Units 1 and 2 Technical Specifications (TSs) to increase the maximum allowed fuel enrichment in fuel assemblies used onsite from 4.0 to 5.0 weight-percent Uranium(U)–235. In addition, a surveillance requirement would be added to the TSs.

This assessment shall also apply to any changes proposed in the reactor core U–235 enrichment limit, up to and including 5.0 weight-percent, and to any increases in the average level of irradiation of fuel discharged from the reactors up to a batch average discharge burnup limit of 60,000 MWD/MT. There are no restrictions on fuel burnup in the TSs.

The Need for Environmental Impact Statement

The Commission has found that the proposed amendments constitute no additional significant environmental impact and has, therefore, determined not to prepare an environmental impact statement.

Environmental Assessment

Identification of Proposed Action

Currently, the maximum permitted enrichment limit for the Sequoyah Nuclear Plant for (1) New and spent fuel stored onsite and (2) fuel in the reactor core is 4.0 weight-percent U–235. The licensee is in the process of changing its core design to incorporate higher enrichment fuel assemblies, up to 5.0 weight-percent U–235.

In addition, the licensee has proposed to add a surveillance requirement on the

boron concentration in the spent fuel pool. This is to assure the boron concentration in the spent fuel pool is consistent with the criticality analysis for 5.0 weight-percent fuel assemblies in the pool.

The Need for the Proposed Action

The proposed exemption is required to permit the licensee to operate with higher enriched fuel than currently allowed.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed amendments to the TSs. The staff has concluded that such changes would not adversely affect plant safety. The proposed changes have no significant adverse effects upon the probability of any analyzed accident. The increased burnup may alter slightly the mix of fission products that could be released in the event of a serious accident but such small changes would not significantly affect the consequences of serious acidents. The effect of increasing the fuel enrichment to 5.0 percent and burnups to 60,000 MWD/MTU would be to only increase the calculated thyroid dose for the postulated fuel handling accident by about 20% and would not exceed acceptable values. There would be no effect on the estimated consequences of other postulated design basis accidents. This is documented by the staff in the Envionmental Assessment and Findings of No Significant Impact for Extended Burnup Fuel Use in Commercial Light Water Reactors (LWRs) (**Federal Register**, 53 FR 6040, February 29, 1988). In addition, no changes would result in the types or amounts of any radiological effluents that may be released offsite. The proposed changes to the TSs do not change any of the restrictions on radioactive effluents from Sequoyah in section 11, Radioactive Effluents, and section 12, Radioactive Enviornmental Monitoring, of the TSs. Finally, these changes would not contribute to any significant increase in individual or cumulative occupational radiation exposure.

Regarding the potential non-radiological impact of reactor operation with higher enrichment fuel and possible increased levels of irradiation of the fuel, the proposed changes involve systems located within the restricted area, as defined in 10 CFR part 20. They do not affect non-radiological plant effluents and have no other non-radiological environmental impact.

In addition, as indicated in the above **Federal Register** notice, the uranium fuel cycle environmental impact data in Table S–3 of 10 CFR 50.51 are conservative and bound the impacts for fuel enrichments up to 5.0 weight-percent U–235 and burnups of 60,000 MWD/MTU. The Sequoyah plant was licensed in part on the environmental impact data in Table S–3. These findings are applicable to the amendments for the Sequoyah Nuclear Plant, Units 1 and 2.

The potential environmental impact resulting from the transportion of higher fuel enrichment and burnup levels is discussed in the staff assessment entitled (1) "Extended Burnup Fuel Use in Commercial LWRs: Environmental Assessment and Finding of No Significant Impact" which was published in the **Federal Register** on February 29, 1988 (53 FR 6040) and (2) "NRC Assessment of the Environmental Effects of Extended Fuel Enrichment and Irradiation," which was published in the **Federal Register** on August 11, 1988 (53 FR 30355) in connection with the Shearon Harris Nuclear Power Plant, Unit 1, Environmental Assessment and Finding of No Significant Impact. As indicate in the notices, the environmental cost contribution of the transportation of fuel and waste due to the increases in the fuel enrichment up to 5.0 weight-percent of U–235 and irradiation limits up to 60,000 MWD/MT, are either unchanged or may, in fact, be reduced from those summarized in Table S–4 as set forth in 10 CFR 51.52(c). These findings are applicable to these amendments for the Sequoyah Nuclear Plant, Units 1 and 2.

Therefore, the Commission concludes that the proposed amendments to the TSs pose no significant radiological or non-radiological environmental impact.

Alternatives to the Proposed Action

Since the Commission concluded that there are no significant environmental effects that would result from the proposed changes, any alternatives with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested fuel enrichment increase. This would not reduce the environmental impact of plant operation and would result in reduced plant operational flexibility.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in connection with the "Final Environmental Statement Related to the Operation of the Sequoyah Nuclear Plant, Units 1 and 2," dated February 21, 1974.

Agencies and Persons Consulted

The NRC staff has reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have significant effect on the quality of the human environment.

For details with respect to this action, see the licensee's request dated May 4, 1990 for amendments to the Sequoyah Units 1 and 2 Technical Specifications which is available for public inspection at the Commission's Public Dcoument Room, Gelman Building, 2120 L Street NW., Washington, DC, and at the Chattanooga-Hamilton County Bicentennial Library, 1001 Broad Street, Chattanooga, Tennessee 37402.

Dated at Rockville, Maryland, this 25th day of July, 1990.

For the Nuclear Regulatory Commission.

Frederick J. Hebdon,

Director, Project Directorate II–4, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 90–17758 Filed 7–30–90; 8:45 am]

BILLING CODE 7590–01–M

Enforcement Policy Regarding Occupational Doses From "Hot Particles;" Policy Statement

AGENCY: Nuclear Regulatory Commission.

ACTION: Policy statement.

SUMMARY: This policy statement presents the criteria the Commission will follow to provide for the use of enforcement discretion in cases that involve an occupational dose to the skin resulting from exposure to radiation emitted from a hot particle on or near the skin. The provisions of this policy will be followed by the NRC staff until a new limit applicable to such cases is established by a revision of 10 CFR part 20.

EFFECTIVE DATE: July 30, 1990.

FOR FURTHER INFORMATION CONTACT: James Lieberman, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone (301) 492–0741.

SUPPLEMENTARY INFORMATION:

Purpose

The purpose of this policy statement is to explain the enforcement policy that the Commission intends to follow (notwithstanding the current enforcement policy in 10 CFR part 2,

appendix C), regarding the use of enforcement discretion in cases that involve an occupational dose to the skin resulting from exposure to radiation emitted from a hot particle on or near the skin. The provisions of this policy will be followed by the NRC staff until a new limit applicable to such cases is established by revision of 10 CFR part 20.

Scope

This policy applies only to occupational doses to the skin that exceed the limits of 10 CFR 20.101 for the "hands and forearms, feet and ankles" or the "skin of the whole body" and that are the result of radiation emitted from a hot particle on the body or clothing of the exposed individual. This policy does not change criteria for whole-body doses.

Definitions

As used in this policy—

Beta emission means either (1) the number of beta particles emitted from the radionuclide(s) in the hot particle during the time period of the occupational exposure of the skin or (2) the number of beta particles emitted from the surface of the particle during that time period.

Hot particle means a discrete radioactive fragment that is insoluble in water and is less than 1 mm in any dimension.

Hot particle exposure means an occupational dose to the skin resulting from exposure to radiation emitted from the radionuclides in a hot particle on the body or on the clothing of the exposed individual.

Occupational dose includes exposure of an individual to radiation (1) In a restricted area or (2) in the course of employment in which the individual's duties involve exposure to radiation, provided, that "occupational dose" shall not be deemed to include any exposure of an individual to radiation for the purpose of medical diagnosis or medical therapy of such individual.

Note: This is the definition of this term given in 10 CFR part 20.

Occupational Exposure Criteria

The limits on occupational dose specified in the table in paragraph (a) of 10 CFR 20.101 for the hands and forearms, feet and ankles, and the skin of the whole body apply to all exposures, including hot particle exposures. However, because of the nature of the principal radiation involved (beta), the extremely localized effects, and the lower biological risk, the NRC believes a different limit for hot particle exposures should be established through rulemaking action and that enforcement discretion should be applied until a new limit for hot particle exposures is established by rule. Consequently, the staff will use a new emission criterion and a new skin dose criterion for determining appropriate discretionary enforcement actions and appropriate severity levels for hot particle exposures; however, the staff will continue to evaluate hot particle exposures to terms of absorbed dose for comparison with the limits of 10 CFR 20.101.

For a hot particle exposure of an individual above the limits of 10 CFR 20.101 that results from a hot particle in contact with the skin, the NRC will issue a notice of violation if the beta emission from the particle is greater than the beta emission criterion. For purposes of this policy, the beta emission criterion is established as a beta emission value of 10^{10} beta particles (75 microcurie hours). A notice of violation will not be issued when an individual receives a hot particle exposure that is equal to or less than the beta emission criterion.

For each hot particle exposure, the hot particle will be assumed to have been in contact with the skin throughout the possible irradiation period, even if the particle was found on the hair or clothing of the exposed individual, unless it can be determined that the particle was never in contact with the skin (for example, if the particle was between two layers of clothing).

If it can be determined that the particle was never in contact with the skin, the skin dose criterion, rather than the beta emission criterion, applies. That is, in this case, the NRC will issue a notice of violation if the dose to the skin exceeds the skin dose criterion. For purposes of this policy, the skin dose criterion is established as an occupational dose to the skin of 50 rad at a depth of 7 mg/cm^2 averaged over an area 1 cm^2 in the region of the highest dose. A notice of violation will not be issued when an individual receives a hot particle exposure that is equal to or less than the skin dose criterion.

The beta emission criterion or the skin dose criterion will be used for each hot particle exposure. There are no quarterly or annual limitations.

In any case, a notice of violation may be issued for violations of other regulatory requirements associated with an event involving hot particle exposures (e.g., violation of 10 CFR 20.201, "Surveys") regardless of the magnitude of the hot particle exposure.

In determining whether a hot particle exposure has exceeded the limits of 10 CFR 20.101, the beta emission criterion, or the skin dose criterion, hot particle exposures will not be added to skin doses from sources other than hot particles, nor will hot particle exposures from different particles be summed unless the different particles result in doses to the same area (location) of skin.

Records, Notifications, and Reports

Nothing in this policy should be construed as changing, or in effect changing, other requirements of 10 CFR parts 19 and 20. In particular, the requirements of 10 CFR 20.401 (records), 10 CFR 20.403 (notification of incidents), 10 CFR 20.405 (reports of overexposures), 10 CFR 20.408 (reports of personnel monitoring or termination), and 10 CFR 20.409 and 10 CFR 19.13 (notifications and reports to individuals) remain in effect and concern the current dose limits in 10 CFR 20.101, For example, a hot particle exposure resulting in a skin dose of 75 rads to the feet, ankles, hands, or forearms must be reported to the NRC within 24 hours. However, no notice of violation will be issued for a failure to make an immediate notification required by 10 CFR 20.403(a) for a skin dose that is a result of a hot particle exposure. A notice of violation will be issued for a failure to make a 24-hour notification required by 10 CFR 20.403(b) or to report as required by 10 CFR 20.405 for a dose that is a result of hot particle exposure.

Enforcement Examples

In addition to the enforcement discretion concerning issuing notices of violations, enforcement discretion also will be used concerning the severity levels of violations. For a dose to the skin from hot particle exposures, the following examples will be used for determining severity levels:

a. Severity Level III—Violations Involving, for Example

(1) Hot particle exposures for which the dose to the skin exceeds the limits of 10 CFR 20.101 and exceeds three times the relevant criterion (either the beta emission criterion or the skin dose criterion).

(2) Failure to make a notification required by 10 CFR 20.403(b) or a report (required by 10 CFR 20.405) for a hot particle exposure that results in a skin dose that exceeds the limits of 10 CFR 20.101 and exceeds three times the relevant criterion (either the beta emission criterion or the skin dose criterion).

b. Severity Level IV—Violations Involving, for Example

(1) Hot particle exposures for which the dose to the skin exceeds the limits of 10 CFR 20.101 and exceeds the relevant criterion but does not exceed three times the relevant criterion (either the beta emission criterion or the skin dose criterion).

(2) Failure to make a notification required by 10 CFR 20.403(b) or a report (required by 10 CFR 20.405) for a hot particle exposure that results in a skin dose that exceeds the limits of 10 CFR 20.101 and exceeds the relevant criterion but does not exceed three times the relevant criterion (either the beta emission criterion or the skin dose criterion).

c. Severity Level V—Violations Involving, for Example

(1) Failure to make a notification required by 10 CFR 20.403(b) or a report (required by 10 CFR 20.405) for a hot particle exposure that results in a skin dose that exceeds the limits of 10 CFR 20.101 but that does not exceed the relevant criterion (either the beta emission criterion or the skin dose criterion).

Note: No numerical criteria (beta emission values or skin doses) have been established as examples for Severity Levels I and II.

Dated at Rockville, Maryland, this 25th day of July 1990.

For The Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 90–17760 Filed 7–30–90; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards; Meeting Agenda

In accordance with the purposes of sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards will hold a meeting on August 9–11, 1990, in Room P–110, 7920 Norfolk Avenue, Bethesda, Maryland. Notice of this meeting was published in the **Federal Register** on June 20, 1990.

Thursday, August 9, 1990, Room P–110, 7920 Norfolk Avenue, Bethesda, Md.

8:30 a.m.–8:45 a.m.: Chairman's Remarks (Open)—The ACRS Chairman will briefly report regarding items of current interest.

8:45 a.m.–10:45 a.m.: Generic Issue B–56, Diesel Generator Reliability (Open)—The Committee will review and report on proposed resolution of this generic issue. Representatives of the NRC staff and the nuclear industry will participate as appropriate.

11 a.m.–12:30 p.m.: Alvin W. Vogtle Nuclear Plant (Open)—Members of the Incident Investigation Team (IIT) will brief the Committee on the results of their investigation of the recent loss of emergency power at Unit No. 1 of the Vogtle Nuclear Plant during a shutdown mode of operation.

1:30 p.m.–3:30 p.m.: Requirements for Essentially Complete Design (Open)—The Committee will review and report on the proposed definition of "essentially complete design" for standardized nuclear plants. Representatives of the NRC staff and the nuclear industry will participate as appropriate.

3:45 p.m.–5 p.m.: Severe Accident Risk Report (NUREG–1150) (Open)—The Chairman of the NRC Peer Review Group will brief the Committee regarding the results of the NUREG–1150 peer review.

5 p.m.–5:30 p.m.: ACRS Subcommittee Activities (Open)—The Committee will hear a report and discuss ACRS subcommittee and members' activities in designated areas, including the planning and conduct of ACRS activities.

Friday, August 10, 1990, Room P–110, 7920 Norfolk Avenue, Bethesda, Md.

8:30 a.m.–9:30 a.m.—EPRI Requirements for Advanced LWRS (Open)—The Committee will discuss proposed ACRS comments and recommendations regarding the NRC staff report on chapters 1–5 of proposed EPRI Requirements for ALWRs.

9:30 a.m.–12 noon—Organizational Factors Research Progress Report (Open)—The Committee will review and report on NRC-sponsored research within the human factors program on organizational factors.

1 p.m.–2 p.m.—Solenoid Valve Case Study (Open)—Representatives of the NRC Office for Analysis and Evaluation of Operational Data will brief the Committee on the AEOD report on the performance of solenoid valves in nuclear plants.

2 p.m.–4:45 p.m.—Reactor Operating Experience (Open/Closed)—A briefing and discussion of reactor operating experience and events will be held including the recent feedwater line failure at the Loviisa Nuclear Power Plant and proposed changes in the frequency of turbine stop valve testing in Westinghouse nuclear power plants.

Portions of this session will be closed to discuss Proprietary Information applicable to the matter being discussed.

4:45 p.m.–5:30 p.m.—Future ACRS Activities (Open)—The Committee will discuss anticipated ACRS subcommittee activities and items proposed for consideration by the full Committee.

5:30 p.m.–6:30 p.m.—Preparation of ACRS Reports (Open)—The Committee will discuss proposed reports to the NRC regarding items considered during this meeting.

Saturday, August 11, 1990, Room P–110, 7920 Norfolk Avenue, Bethesda, Md.

8:30 a.m.–12 Noon and 1 p.m.–2:30 p.m.—Preparation of ACRS Reports (Open)—The Committee will continue discussion of proposed ACRS reports to the NRC.

Procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on September 27, 1989 (54 FR 39594). In accordance with these procedures, oral or written statements may be presented by members of the public, 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 Committee, its consultants, and staff. Persons desiring to make oral statements should notify the ACRS Executive Director as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still, motion picture and television cameras during this meeting may be limited to selected portions of the meeting as determined by the Chairman. Information regarding the time to be set aside for this purpose may be obtained by a prepaid telephone call to the ACRS Executive Director, Mr. Raymond F. Fraley, prior to the meeting. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the ACRS Executive Director if such rescheduling would result in major inconvenience.

I have determined in accordance with subsection 10(d) Public Law 92–463 that it is necessary to close portions of this meeting noted above to discuss Proprietary Information applicable to the matter being discussed (5 U.S.C. 552b(c)(4)).

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 can be obtained by a prepaid telephone call to the ACRS Executive Director, Mr. Raymond F. Fraley (telephone 301/492–8049), between 7:45 a.m. and 4:30 p.m.

Dated: July 24, 1990.

John C. Hoyle,

Advisory, Committee Management Officer.

[FR Doc. 90–17759 Filed 7–30–90; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–213]

Connecticut Yankee Atomic Power Co.; Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Hearing; Correction

In the Federal Register of July 23, 1990, in the center column of page 29926, make the following corrections:

1. In the fifth and sixth lines of the second complete paragraph of the document "1.0MCi/gm" should be changed to read "1.0microCi/gm."

2. In the first line of the fourth complete paragraph of the document the date of August 20, 1990 should be changed to read August 22, 1990.

Dated at Bethesda, Maryland, this 26th day of July 1990.

David L. Meyer,

Chief, Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration.

[FR Doc. 90–17761 Filed 7–30–90; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–327 and 50–328 License Nos. DPR–77 and DPR–79 EA 90–011]

Tennessee Valley Authority Sequoyah Nuclear Plant Units 1 and 2; Order Imposing Civil Monetary Penalty

I

Tennessee Valley Authority (Licensee) is the holder of Operating License No. DPR–77 and No. DPR–79 issued by the Nuclear Regulatory Commission (Commission or NRC) on September 17, 1980 and September 15, 1981, respectively. The licenses authorize the Licensee to operate the Sequoyah Nuclear Plant, Units 1 and 2, at Soddy-Daisy, Tennessee, in accordance with the conditions specified therein.

II

An inspection of the Licensee's activities was conducted on January 8–12, 1990. The results of this inspection indicated that the Licensee had not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was served upon the Licensee by letter dated April 12, 1990. The Notice stated the nature of the violations, the provisions of the NRC's requirements that the Licensee had violated, and the amount of the civil penalty proposed for the violations. The Licensee responded to the Notice by letter dated May 9, 1990. In its response, the Licensee admitted the violations but requested reconsideration of escalation of the base civil penalty based on its asserted identification of the residual heat removal (RHR) pump problem prior to the NRC identification and its asserted extensive corrective action put in place prior to and following discovery of the RHR pump problem.

III

After consideration of the Licensee's response and the statements of fact, explanations, and argument for reconsideration contained therein, the staff has determined, as set forth in the Appendix to this Order, that the violations occurred as stated and that the penalty proposed for the violations designated in the Notice should be imposed.

IV

In view of the foregoing and pursuant to section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205, *it is hereby ordered* that:

The Licensee pay a civil penalty in the amount of Seventy-five Thousand Dollars ($75,000) within 30 days of the date of this Order, by check, draft, or money order, payable to the Treasurer of the United States and mailed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Attn: Document Control Desk, Washington, DC 20555.

V

The Licensee may request a hearing within 30 days of the date of this Order. A request for a hearing shall be clearly marked as a "Request for an Enforcement Hearing" and shall be addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Attn: Document Control Desk, Washington, DC 20555. Copies also shall be sent to the Assistant General Counsel for Hearings and Enforcement at the same address, and to the Regional Administrator, Region II, Atlanta, Georgia.

If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. If the Licensee fails to request a hearing within 30 days of the date of this Order, the provisions of this Order shall be effective without further proceedings. If payment has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event the Licensee requests a hearing as provided above, the issues to be considered at such hearing shall be whether, on the basis of the violations admitted by the Licensee, this Order should be sustained.

Dated at Rockville, Maryland this 20th day of July 1990.

For the Nuclear Regulatory Commission.

James Lieberman,

Director, Office of Enforcement.

Appendix—Evaluations and Conclusion

On April 12, 1990, a Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was issued for violations identified during a special NRC inspection at the Sequoyah Nuclear Plant, Units 1 and 2. TVA responded to the Notice in a letter dated May 9, 1990. In its response, the licensee admitted the violations, but requested reconsideration of the proposed civil penalty. The NRC staff's evaluation and conclusion regarding TVA's response is as follows:

I. Restatement of Violations

a. 10 CFR part 50, appendix B, Criterion XVI, Corrective Action, requires in part, that measures shall be established to assure that conditions adverse to quality, such a failures, deviations and nonconformance are promptly identified and corrected.

NRC Bulletin 88–04, Potential Safety Related Pump Loss, issued May 5, 1988, alerted licensees to a significant condition adverse to quality that involved the potential for the deadheading of one or more pumps in safety-related systems that have a miniflow line common to two or more pumps or other piping configurations that do not preclude pump-to-pump interaction during miniflow operation.

Licensee engineering calculation DNE SQN–74–D053, dated July 22, 1988, determined that RHR pump damage would occur for a pump that was run deadheaded for greater than 11 minutes.

10 CFR 50.9 requires, in part, that information provided to the Commission by a licensee, be complete and accurate in all material respects.

Licensee letter to the NRC in response to NRC Bulletin 88–04, dated August 2, 1988, stated that the potential existed for deadheading a safety-related RHR pump due to pump-to-pump interaction under miniflow conditions when the head differential between the pumps exceeded 11 pounds per square inch (psi). The letter also stated that recent surveillance test data demonstrated that

the head differential between the two RHR pumps was less than 11 psi, ensuring a minimum flow of 100 gallons per minute to allow pump operation for up to 20 minutes without requiring operator intervention.

Contrary to the above, as of December 5, 1989, the licensee failed to adequately identify and correct a significant condition adverse to quality regarding the potential for safety-related RHR pump damage from deadheading due to pump-to-pump interaction during miniflow conditions in that:

1. No action had been taken to preclude damage to a RHR pump should deadheading develop due to pump-to-pump interaction under miniflow conditions, until a special test demonstrated that the Unit 1 RHR pumps deadheaded under those conditions on December 5,

2. The licensee's evaluation of Unit 1 RHR pump surveillance test data, referenced in their August 2, 1988 letter to the NRC, was inadequate to identify that an RHR pump was likely to deadhead due to pump-to-pump interaction, as the majority of the test data from July 1987 through August 1988 indicated that the head differential pressure between the pumps exceeded 11 psi. As a result inaccurate information was provided to the Commission on August 2, 1988.

b. Technical Specification 6.8.1, requires in part, that written procedures be established, implemented and maintained covering the applicable procedures recommended in appendix "A" of Regulatory Guide 1.33, Revision 2, February 1978.

Appendix "A" of Regulatory Guide 1.33, Revision 2, requires procedures for combating emergencies and other significant events.

Technical Specifications 6.8.2, requires in part, that changes to procedures be reviewed and approved prior to implementation as set forth in Specification 6.5.1.A.

Technical Specification 6.5.1.A, requires in part, that each review determine whether or not an unreviewed safety question is involved pursuant to 10 CFR 50.59.

Contrary to the above, on December 6, 1989, the licensee performed an inadequate review of Emergency Instruction E–O, Reactor Trip and Safety Injection, Revision 7, required by Regulatory Guide 1.33 to combat emergency events. The procedure change would terminate RHR operation prior to the procedure steps requiring operator examination of certain parameters to diagnose whether a LOCA was occurring. The review failed to ensure that the procedure change did not involve an unreviewed safety question pursuant to 10 CFR 50.59.

Violations A.1, A.2, and B are a Severity Level III Problem (Supplement I).

Civil Penalty—$75,000 (assessed equally among the violations).

II. Summary of Licensee's Response

The licensee admitted the violations cited in the subject Notice. However, the licensee believed that escalation of the base civil penalty based on NRC identification should be reconsidered. In addition, the licensee stated that escalation of the proposed civil penalty to emphasize the need for TVA to identify and address these past problems was unnecessary.

Pertaining to the mitigation factors in section V.B of the enforcement policy in 10 CFR part 2, appendix C, the licensee made the following arguments relative to reconsideration of the proposed civil penalty.

a. The licensee stated that prior to the date of NRC discovery, TVA had discovered data suggesting the problem and was in the process of determining the significance of the data. The licensee contended that its actions to address this issue both preceded and occurred in parallel to NRC's involvement leading up to full identification and confirmation of the RHR pump problem.

b. The licensee also stated that the extensive programmatic corrective actions which had been put in place both prior to and following discovery of the RHR pump problem merited consideration. The licensee believes that these actions demonstrate TVA's willingness and ability to identify and correct problems. Additionally, because many of the corrective actions addressing key programmatic weaknesses had been put in place before discovery of the RHR pump problem, the licensee argued that escalation of the proposed civil penalty to emphasize the need for TVA to identify and address these past problems was unnecessary.

III. NRC Evaluation of Licensee's Response

a. Identification and Reporting

The violation was escalated 50% based on NRC identification of the issue. The NRC determined that the licensee should have reasonably discovered the violation before the NRC identified it.

In its determination to escalate under the Identification and Reporting factor, the NRC had already considered that the system engineer had found the discrepant RHR pump differential pressure data. The NRC believes that the data should have indicated to him that dead-heading of the RHR pumps would actually have occurred if a safety injection signal was received. However, System Engineering forwarded this information to Site Engineering without determining its significance and without determining if this condition constituted inoperability or if a condition adverse to quality existed. Both of these determinations would have entered this issue into licensee administrative programs which would have placed a time limit on correcting the problem.

When the system engineer's memorandum reached Site Engineering, which was about the same time that the NRC identified the problem, Site Engineerng also did not determine that this condition constituted inoperability nor that a condition adverse to quality existed until 5 days later when a confirmatory test was run by the operations department.

Similarly, Systems Engineering and Site Engineering were also involved with a review of the Unit 2 RHR pump performance data prior to November 29, 1989 which indicated that the performance of one RHR pump had changed. One of the criteria for changing the ASME section XI acceptance criteria for the pump to maintain it as operable was whether pump-to-pump differential pressure would result in deadheading of the weaker pump. The determination that dead-heading of the Unit 2 pumps would not occur was made using the quarterly RHR pump test data. However, in the case of the Unit 1 RHR pumps, these two groups failed to determine that the pumps were inoperable when a majority of the quarterly RHR pump test data indicated that pump-to-pump differential pressure exceeded 11 psi. The NRC believes that sufficient data was available to both System Engineering and to Site Engineering to have immediately questioned capability of the Unit 1 pumps and as a minimum to have identified the condition as a condition adverse to quality.

Since the licensee had not identified the issue in any established program that would have led to corrective action until five days after the issue was identified by the NRC, and since significant additional NRC involvement was necessary to obtain licensee action to properly identify the issue, the NRC concludes that the violation was NRC identified.

Prior opportunities to identify the problem were also available before NRC identified it. These included the original review as part of the Bulletin response, system engineer reviews of the quarterly

ASME Section XI pump test data, the System Engineering and Site Engineering reviews of the Unit 2 data described above, and the system engineer review of the Unit 1 data described above. In addition, during preparation of corrective action at the time of the Bulletin response and during implementation after the Bulletin response, the licensee had opportunities to identify that the consequences of deadheading would not be prevented by the implementation of the corrective action. Had the licensee used the 11 minute value calculated by it for time to damage during deadheaded operation instead of 20 minutes (the value submitted by the licensee in its letter dated August 2, 1988, which assumes a 100 gpm minimum flow) when reviewing the Emergency Procedures, the consequences of deadheading probably would have been prevented.

Based on the above, the NRC believes that the licensee should have reasonably discovered the violations prior to NRC involvement.

b. Corrective Action

In the area of corrective action, 10 CFR part 2, appendix C states that mitigation should be based on prompt and extensive corrective action. Escalation is appropriate if corrective action is not prompt or minimally acceptable. Consideration should be given to timeliness, degree of licensee initiative, and comprehensiveness of corrective action.

Initial corrective action taken after NRC identification of the issue was not prompt. Plant management was notified by the NRC of this condition on December 1, 1989, the day after the condition was pointed out to Systems Engineering by the resident inspector. During the NRC resident inspector exit on December 4, 1989, the NRC specifically requested the licensee's position on operability of the RHR pumps. The determination that inoperability existed occurred after a confirmation test was run the following day. At that time, the licensee also determined that a condition adverse to quality existed. Therefore, corrective action began approximately 2 weeks after System Engineering completed its review of the data and 5 days after Site Engineering and the NRC became aware of the condition.

After the confirmatory test was run and inoperability declared, the licensee's immediate corrective action resulted in Violation B. NRC prompting was necessary in order to achieve adequate immediate corrective action in relation to the emergency procedure revision.

As stated in the letter dated April 12, 1990 transmitting the Notice of Violation and Proposed Imposition of Civil Penalty, the NRC had recognized that most programmatic corrective actions had already been identified and were either already in place or were in the process of being put in place. As a result, the proposed civil penalty was not escalated because the comprehensiveness of the overall programmatic corrective actions offset the lack of promptness and acceptability of the immediate corrective actions, and the degree of NRC interaction necessary to achieve it.

IV. NRC Conclusion

The licensee did not provide a sufficient basis for reduction of the proposed civil penalty. The NRC believes that escalation of the civil penalty is appropriate to emphasize the need to use established programs to identify and correct problems. These programs ensure that potential conditions adverse to quality are adequately evaluated and prompt, effective corrective action taken. Consequently, the NRC staff concludes that the proposed civil penalty in the amount of $75,000 should be imposed.

[FR Doc. 90–17762 Filed 7–30–90; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

Principles for Federal Oversight of Biotechnology: Planned Introduction Into the Environment of Organisms With Modified Hereditary Traits

AGENCY: Office of Science and Technology Policy, Executive Office of the President.

ACTION: Announcement of policy; notice for public comment.

SUMMARY: This Federal Register notice announces new, proposed principles for the scope of oversight for the planned introduction into the environment of organisms with deliberately modified hereditary traits [1] that will be subject to Federal oversight. As this proposed policy will affect subsequent rulemaking, the public is invited to comment.

DATES: Comments must be received on or before October 1, 1990.

Public Participation: The Office of Science and Technology Policy (OSTP), is seeking advice on the proposed principles for the scope of oversight for the planned introduction of organisms, a refinement to the previously published Coordinated Framework for the Regulation of Biotechnology (51 FR 23303). The proposed policy is important to the Coordinated Framework because it may refine the oversight of planned introductions of organisms.

ADDRESSES: Comments should be addressed to: Biotechnology Docket, Office of Science and Technology Policy, Executive Office of the President, EOB–room 494, Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Rachel E. Levinson, OEOB–room 498, Washington, DC 20506, (202) 395–4850.

D. Allan Bromley,

Director, Office of Science and Technology Policy.

A. Background

In 1986 the Coordinated Framework for the Regulation of Biotechnology described the comprehensive Federal regulatory policy for ensuring the safety of biotechnology research and products built upon experience with agricultural, pharmaceutical, and other products developed by traditional genetic modification techniques. It determined that existing statutes provide a basic network of agency jurisdiction over both research and products assuring reasonable safeguards for the public. This framework was expected to evolve in accordance with the experiences of the industry and the agencies, and, thus, modifications to the framework were anticipated. The Coordinated Framework for the Regulation of Biotechnology continues to be the Federal Government policy today except as it may be refined by the proposed principles for the scope of oversight for planned introduction as described in this notice.

The Coordinated Framework, in part, addressed the Federal oversight necessary for biotechnology research and products involving environmental applications. This oversight includes notification to, approval by, or other appropriate review as directed by the Federal Government.

The Coordinated Framework noted that any proposal to regulate the research and products of genetic

[1] Includes organisms resulting from any process or technique. Discussed below are examples of potential categories for exclusion, such as introductions involving organisms resulting from: Natural reproduction or the use of traditional breeding techniques, chemical or physiological processes, regeneration of vascular plants from tissue culture, processes that create marker genes, self-cloning, and techniques producing new phenotypic traits conferring no greater risk to the target environment than the parental strain.

manipulation techniques quickly confronts the issue of which introductions of organisms should be considered appropriate for oversight. While the statutory bases for regulation differ among the involved agencies, it was determined that, to the extent appropriate, common definitions should circumscribe those introductions of organisms subject to oversight. Definitions were proposed by the Biotechnology Science Coordinating Committee (BSCC), an interagency committee responsible for coordination of science policy. The BSCC, consisting of senior policy officials of agencies involved in the oversight of biotechnology research and products, is part of the Federal Coordinating Council for Science, Engineering and Technology, a statutory interagency coordinating mechanism administered by the Office of Science and Technology Policy.

In 1986, the BSCC proposed that the planned introduction of organisms meeting one of two different sets of criteria should be subject to oversight. The first were "intergeneric organisms" formed by deliberate combination of genetic material from sources in different genera. The second were organisms that belong to a pathogenic species or that contain genetic material from source organisms that are pathogenic.

Public comments raised questions regarding the adequacy of these 1986 BSCC proposed definitions. Moreover, Federal regulatory agencies experienced unanticipated difficulty developing operational definitions for regulatory purposes. A question also arose regarding the scope of oversight for federally funded agricultural research. Accordingly, the BSCC sought to revise the scope of introduced organisms that should be subject to oversight in light of increased knowledge and experience gained since 1986.

B. Purpose

These principles for the scope of oversight for the planned introduction of organisms are designed to ensure the safety of planned introductions of organisms into the environment while not unduly inhibiting these introductions. The Coordinated Framework explained that planned introductions are commonplace.

Within agriculture, for example, introductions of new plants, animals and microorganisms have long occurred routinely with only some of those that are not native or are pathogenic requiring regulatory approval. It should be noted that microorganisms play many essential and varied roles in agriculture and the environment and that for decades agricultural scientists have endeavored to exploit their advantages through routine experimentation and introduction into the environment; and as a rule these agricultural and environmental introductions have taken place without harm to the environment.[2]

The term oversight includes a range of possible Federal responses to a planned introduction: approval by a Federal agency; notification to a Federal agency; or other appropriate review as directed by a federal agency. The latter could involve, for example, a research institution establishing an "institutional biosafety committee" for review of certain planned introduction experiments. The exact oversight for specific types of introduction experiments will be the subject of specific regulations and guidelines to be promulgated by particular Federal agencies pursuant to existing statutory authority. In this regard, the U.S. Environmental Protection Agency will be proposing regulations under the Federal Insecticide, Fungicide, and Rodenticide Act and the Toxic Substances Control Act, and the U.S. Department of Agriculture will be proposing guidelines for federally funded agricultural research.

C. Development of principles for scope of oversight for the planned introduction of organisms

During 1989 the BSCC established a working group to develop a scope definition. The BSCC working group endeavored to take into consideration the currently existing oversight for planned introduction experiments in order to avoid unnecessarily creating another layer of oversight. For example, oversight currently exists for certain experiments under the requirements of the NIH Guidelines for the Research Involving Recombinant DNA Molecules, and the USDA Animal and Plant Health Inspection Service regulations Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which are Plant Pests or Which There is Reason to Believe are Plant Pests. The BSCC scope definition would not imply duplicative layers of oversight for these planned introduction experiments.

At first, the BSCC working group considered three scope options: (1) All organisms; (2) intergeneric organisms, those formed by deliberate combination of genetic material from sources in different genera, and (3) organisms modified through the use of recombinant DNA. The working group found option (2), intergeneric organisms, problematic because of its heavy reliance on taxonomy, which is imprecise for microorganisms. Option (3) was not acceptable since the use of recombinant DNA is not alone a determinant of risk. The working group was unable to reach consensus on option (1), all organisms. As an alternative, several members of the working group proposed a fourth option that included organisms deliberately modified by the introduction into or manipulation of genetic material in their genomes; however, five categories of modifications were subtracted from the total set of such organisms.[3] Although the working group did not reach consensus, option (4) was brought to the full BSCC.

The BSCC discussed option (4) but did not reach consensus. The BSCC suggested that further views might possibly be solicited from EPA's Biotechnology Science Advisory Committee, and USDA's Agricultural Biotechnology Research Advisory Committee. Option (4) was discussed at public meetings of these committees. The effort to reach a common definition was generally appreciated, and the approach in option (4) supported in principle.

Upon further consideration, the BSCC remained unable to reach consensus on the scope definition. However, recognizing the importance of the issue, and the need to move ahead, the BSCC forwarded the non-consensus draft

[2] Federal Register, June 26, 1986 [51 FR 23303].

[3] After a subsequent revision, the following five categories of modifications were excluded:

"1. Plants and animals that result from natural reproduction or the use of traditional breeding techniques. These include, for example, for vascular plants, mutagenesis and hand pollination, and for vertebrate animals, artificial insemination, superovulation, and transfer of embryos."

"2. Microorganisms modified solely: (a) Through chemical or physical mutagenesis; (b) the movement of nucleic acids using physiological processes including, but not limited to transduction, transformation, or conjugation; or (c) by plasmid loss or spontaneous deletion. If nucleic acid molecules produced by manipulation in vitro are transferred using the techniques listed in (a) through (c), the resulting organisms do not fall under this exclusion."

"3. Vascular plants regenerated from tissue culture, including those produced through selection of somaclonal variants, embryo rescue, protoplast fusion, or treatments that cause changes in chromosome number."

"4. Organisms which have been modified by the introduction of non-coding, non-expressed nucleotide sequences that cause no phenotypic or physiological changes in the parental organism."

"5. Organisms other than those exempted in 1–4 above, if it can be demonstrated that: (1) They could be readily produced by the techniques listed above; and (2) there is sufficient familiarity [enough information to be able to judge the introduction's safety or risk] with the organism to foresee environmental effects equivalent to those associated with past safe introductions of similar organisms in similar target/test environments."

scope document using option (4) to the Office of Science and Technology Policy (OSTP). The Director of OSTP noted that the resolution of the scope definition had policy implications beyond the jurisdiction of the BSCC, issues which should be resolved by an appropriate policy body. Accordingly, the Director of OSTP forwarded the draft scope document to the Vice President's Council on Competitiveness, an interagency policy body comprised of senior representatives of Federal agencies. Members of the BSCC are represented on the Vice President's Council on Competitiveness by their respective departments or agencies. The Council referred the consideration of the scope document to its Working Group on Biotechnology, which in turn established an Ad Hoc Committee on Scope. Both these groups included the representatives of agencies on the BSCC. That review resulted in the Principles for Scope of Oversight presented in this notice.

D. Characteristics of Principles for the Scope of Oversight for the Planned Introduction of Organisms

The principles for scope address "organisms with deliberately modified hereditary traits," the planned introduction of which pose a level of risk requiring oversight. This is a new term different from the previously proposed BSCC working group options and, indeed, other definitions such as "genetically modified organism." The term includes organisms resulting from any process or technique. One reason for this new term is to avoid the incorrect implication that the use of any particular genetic modification process *per se* makes a modified organism of greater risk than its unmodified parent. For example, including only modified organisms achieved through molecular techniques such as recombinant DNA could suggest incorrectly that the risk or safety of modifications achieved through molecular techniques were inherently of greater risk and that those resulting from non-molecular techniques such as plant breeding were inherently of lesser concern. Such a misconception could inadvertently tend to retard research and the beneficial development of the biotechnology industry.

The principles for scope are risk based. Oversight is not required for planned introduction experiments unless information concerning the risk posed by the introduction indicates that oversight is necessary. The scope principles do not dictate precisely what information on risk must be considered. Rather, different ways of making the risk determination are possible. One means suggested by the scope principles of judging the risk posed by an introduction is to compare its risk to an introduction of a similar organism previously used in introductions in similar target/test environments. An introduction is considered similar to a previous introduction when the level of risk of the introduction is the same as or less than a previous introduction. An experimental organism can be similar to a previously used organism regardless of the process by which that experimental organism has been modified. Thus, regardless of how the organism has been modified, an introduction should not be subject to oversight when it involves a test organism similar to one previously used in past safe introductions in a similar target environment.

The principles for scope set forth general criteria for assisting agencies in developing possible categories of introductions for exclusion from oversight. Agencies are to consider the risk or safety of the introductions including knowledge that existing practices or regulations adequately address the possible risks posed by such introductions. It is noted that information concerning the process, means or techniques by which an organism is modified could provide evidence about risk or safety, but could not itself be the sole criterion. Effective confinement techniques can also reduce the potential risk of an introduction, and accordingly, the need for oversight. A non-exhaustive list of possible risk factors for the organism and the target environment are specified. Agencies could consider some or all of these risk factors, or consider other risk factors, rather than or in addition to these.

Six examples of potential exclusion categories are delineated. These are examples of introductions included in the initial scope principles and the term "organisms with deliberately modified hereditary traits," but excluded because of relevant risk information. In large part these represent minor refinements to the exclusions associated with the BSCC option (4). Planned introductions of organisms in these types of categories would be generally excluded from oversight because their introduction is considered to be similar to previous safe introductions, or because other information available regarding the risk posed by such introduction (including knowledge that existing practices or regulations adequately address possible risks posed by the introduction) makes oversight unnecessary. For example the sixth potential exclusion category states "organisms with a new phenotypic trait(s) conferring no greater risk to the target environment than the parental strain, which is considered safe." Included under this example could be unregulated organisms and those associated with safe introductions. Federal agencies should determine which of these or other categories are relevant and appropriate to their statutes, and develop measures to implement the scope principles.

The manner in which the principles for scope will be implemented is within the discretion of individual agencies. While consistency among agencies' approaches is desirable, agencies' approaches may vary. Nothing in these principles for scope of oversight displaces agencies' existing duties under applicable law.

E. Principles for Scope of Oversight for the Planned Introduction of Organisms with Modified Hereditary Traits into the Environment

Principles for Scope of Oversight

To the extent permitted by law, planned introductions into the environment of organisms with deliberately modified hereditary traits[4] should not be subject to oversight (that is, notification to, approval by, or other appropriate review as directed by, a Federal Government agency) unless information concerning the risk posed by the introduction indicates that oversight is necessary. One means of evaluating the risk posed by an introduction is to compare its risk to previous introductions of similar organisms in similar target/test environments. For certain introductions there may be sufficient knowledge that existing practices or regulations adequately address the possible risk posed by the introduction.

An introduction is considered similar to a previous introduction when the level of risk of the introduction is the same as or less than a previous introduction. An organism can be similar to a previously used organism regardless of the process by which the organism has been modified. Thus, regardless of how the organism has been modified, an introduction should not be subject to oversight used in past safe

[4] Includes organisms resulting from any process or technique. Discussed below are examples of potential categories for exclusion, such as introductions involving organisms resulting from: natural reproduction or the use of traditional breeding techniques, chemical or physical mutagenesis, movement of nucleic acids using physiological processes, regeneration of vascular plants from tissue culture, processes that create marker genes, self-cloning, and techniques producing new phenotypic traits conferring no greater risk to the target environment than the parental strain.

introduction in a similar target/test environment. The potential risk of an introduction may be reduced by the use of confinement techniques considered to be effective with similar organisms.

Criteria for Evaluating Risk

Based on experience with introductions and other available information, it is anticipated that Federal agencies will develop categories of introductions for exclusion from oversight. In developing such categories for exclusion, Federal agencies should consider the risk or safety of the introduction, including whether existing practices or regulations adequately address the possible risks posed by the introductions. Information concerning the process, means or technique by which an organism has been modified could provide evidence about, but may not be dispositive of, such risk or safety. The use of confinement techniques considered to be effective with similar organisms also can reduce the potential risk of an introduction, and the need for oversight, and should therefore be included in the risk evaluation. Agencies may evaluate the risk or safety of the introductions by considering relevant risk factors, which may include:

For the organism: fitness; infectivity, virulence, pathogenicity, toxicity; host range; the type of substrate or resources utilized; environmental limits to growth or resources utilized; environmental limits to growth or reproduction (habitat, microhabitat); susceptibility to control by antibiotics, biocides, by substrate, or by mechanical means; whether and how introduced traits are expressed.

For the target environment: selection pressure for the introduced trait; presence of wild, weedy or feral relatives within dispersal capability of the organism or its genes; presence of vectors or agents of dissemination or dispersal (*e.g.*, mites, insects, rodents, birds, humans, machines, wind, water); direct involvement in basic ecosystem process (*e.g.*, nutrients cycling); whether there are alternative hosts or partners (*e.g.*, the organism is involved in symbiosis or mutualism); range of environments for testing or use in light of potential geographic range; effectiveness of confinement, monitoring and mitigation plans.

Examples of Potential Exclusion Categories

The following are examples of categories of organisms that would generally be excluded from oversight because their introduction is considered to be similar to previous safe introductions, or because other information available regarding the risk posed by such introduction (including knowledge that existing practices or regulations adequately address possible risks posed by the introduction) makes oversight unnecessary:

Plants and animals that result from natural reproduction or the use of traditional breeding techniques. These include, for example, for vascular plants, mutagenesis and hand pollution, and for vertebrate animals, artificial insemination, superovulation and transfer of embryos.

Microorganisms modified solely: (a) Through chemical or physical mutagenesis; (b) by the movement of nucleic acids using physiological processes including, but not limited to, transduction, transformation, or conjugation; or (c) by plasmid loss or spontaneous deletion.

Vascular plants regenerated from tissue culture, including those produced through selection of somaclonal variants, embryo rescue, protoplast fusion, or treatments that cause changes in chromosome number.

Organisms that have been modified by the introduction of non-coding, non-expressed nucleotide sequences that cause no phenotypic or physiological changes in the parental organism.

Organisms resulting from deletions, rearrangements and amplifications, within a single genome, including tits extrachromosomal elements.

Organisms with a new phenotypic trait(s) conferring no greater risk to the target environment than the parental strain, which is considered to be safe.

Agencies should determine which of these or other categories are relevant and appropriate to their statutes, and develop measures to implement the principles expressed in this document.

F. Request for Comments

OSTP is requesting comments during the 60 days following the date of this notice on the principles for scope of overnight for the planned introduction of organisms with modified hereditary traits into the environment. Of particular interest will be comments that address:

1. The scope of planned introductions of organisms.

2. The risk-based approach addressing both the traits of the organism and the characteristics of the environment.

3. The "criteria for evaluating risk" and "examples of potential exclusion categories."

[FR Doc. 90–17754 Filed 7–26–90; 1:19 pm]

BILLING CODE 4160–17–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Intergovernmental Policy Advisory Committee; Meeting and Determination of Closing of Meeting

The meeting of the Intergovernmental Policy Advisory Committee to be held July 31, 1990 from 2 p.m. to 5:30 p.m., in Mobile, Alabama, will include the development, review and discussion of current issues which influence the trade policy of the United States. Pursuant to section 2155(f)(2) of title 19 of the United States Code, I have determined that this meeting will be concerned with matters the disclosure of which would seriously compromise the Government's negotiating objectives or bargaining positions.

Additional information can be obtained by contacting Mollie Van Heuven, Director, Office of Private Sector Liaison, Office of the United States Trade Representative, Executive Office of the President, Washington, DC 20506.

Carla A. Hills,

United States Trade Representative.

[FR Doc. 90–17751 Filed 7–30–90; 8:45 am]

BILLING CODE 3190–01–M

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings; Agreements Filed During the Week Ended July 20, 1990

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: 47075

Date filed: July 19, 1990.
Parties: Members of the International Air Transport Association.
Subject: Mid Atlantic Resolutions.
Proposed Effective Date: October 1, 1990.

Docket Number: 47076

Date filed: July 19, 1990.
Parties: Members of the International Air Transport Association.
Subject: TC1-South Asian Subcontinent Via Atlantic (Except TP/From USA/US Territories).
Proposed Effective Date: October 1, 1990.

Docket Number: 47077

Date filed: July 19, 1990.
Parties: Members of the International Air Transport Association.

Subject: TC1-South Asian Subcontinent Via Atlantic (To/From USA/US Territories).

Proposed Effective Date: October 1, 1990.

Docket Number: 47078

Date filed: July 19, 1990.

Parties: Members of the International Air Transport Association.

Subject: Japan-USA/US Territories Resolutions.

Proposed Effective Date: October 1, 1990.

Docket Number: 47079

Date filed: July 19, 1990.

Parties: Members of the International Air Transport Association.

Subject: Southeast Asia/Korea–TC1 (Except USA/US Territories) Resolutions.

Proposed Effective Date: October 1, 1990.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 90–17728 Filed 7–30–90; 8:45 am]

BILLING CODE 4910–62–M

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended July 20, 1990

The following applications for certificates of public convenience and necessity and foreign air carrier permits were filed under subpart Q of the Department of Transportation's Procedural Regulations (see 14 CFR 302.1701 *et seq.*). The due date for answers, conforming application, or motion to modify scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tenative order, or in appropriate cases a final order without further proceedings.

Docket Number: 47066

Date filed: July 16, 1990.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: August 13, 1990.

Description: Application of Alitalia-Linee Aeree Italiane-S.p.A. pursuant to section 402 of the Act and subpart Q of the Regulations, requests amendment of its foreign air carrier permit authorizing use of new route rights established by the Memorandum of Understanding between the Government of the United States and the Government of the Republic of Italy.

Docket Number: 47068

Date filed: July 17, 1990.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: August 14, 1990.

Description: Application of Aerlinte Eireann plc, pursuant to section 402 of the Act and subpart Q of the Regulations, requests an amendment of its foreign air carrier permit which authorizes it to engage in foreign air transportation between Ireland, on the one hand, and certain points in the United States, on the other hand.

Docket Number: 47069

Date filed: July 17, 1990.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: July 23, 1990.

Description: Application of Northwest Airlines, Inc., pursuant to section 401 of the Act and subpart Q of the Regulations applies for a certificate of public convenience and necessity to provide scheduled service between the United States and the United Kingdom.

Docket Number: 47071

Date filed: July 18, 1990.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: July 23, 1990.

Description: Application of USAir, Inc., pursuant to section 401 of the Act and subpart Q of the Regulations, for issuance of a new or amended certificate of public convenience and necessity so as to authorize USAir to provide scheduled foreign air transportation of persons, property and mail on a nonstop basis between Pittsburgh, Pennsylvania, on the one hand, and Manchester, England, on the other hand.

Docket Number: 47072

Date filed: July 18, 1990.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: July 23, 1990.

Description: Application of Trans World Airlines, Inc. pursuant to section 401 of the Act and subpart Q of the Regulations requests amendment of its certificate for Route 147 to authorize TWA to provide scheduled air transportation of persons, property and mail between New York, New York and Manchester, England, and between Boston, Massachusetts and Manchester, England, either nonstop or via intermediate point(s) that TWA may otherwise be authorized to serve, and such other and further relief as may be appropriate.

Docket Number: 47081

Date filed: July 20, 1990.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: August 17, 1990.

Description: Application of Miami Air International, Inc., pursuant to section 401(d)(3) of the Act and subpart Q of the Regulations, requests authority to engage in interstate and overseas charter air transportation of persons, property, and mail between any point in any State in the United States or the District of Columbia, or any territory or possession of the United States, and any other point in any State of the United States or the District of Columbia, or any territory or possession of the United States.

Docket Number: 47082

Date filed: July 20, 1990.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: August 17, 1990.

Description: Application of Miami Air International, Inc., pursuant to section 401(d)(3) of the Act and subpart Q of the Regulations requests a certificate of public convenience and necessity authorizing foreign charter air transportation of persons, property, and mail between any point in any State in the United States or the District of Columbia, or any territory or possession of the United States, and any point outside thereof.

Phyllis T. Kaylor,

Chief, Documentary Service Division.

[FR Doc. 90–17729 Filed 7–30–90; 8:45 am]

BILLING CODE 4910–62–M

Hartford-Brainard Airport, Hartford, CT; FAA Approval of Noise Compatibility Program

AGENCY: Federal Avaiation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announced its findings on the noice compatibility program submitted by the State of Connecticut under the provisions of title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96–193) and 14 CFR part 150. These findings are made in recognition of the description of Federal and nonfederal responsibilites in Senate Report No 96–52 (1980). On November 15, 1989, the FAA determined that the noise exposure maps, submitted by the State of Connecticut, under part 150, were in compliance with applicable requirements. On May 14, 1990, the Administrator approved the Hartford-Brainard (HFD) noise compatibility

program. Out of the 19 proposed program elements, 18 were approved.

EFFECTIVE DATE: The effective date of the FAA's approval of the HFD noise compatibility program is May 14, 1990.

FOR FURTHER INFORMATION CONTACT: John C. Silva, Federal Aviation Administration, New England Region, Airports Division, ANE-602, 12 New England Executive Park, Burlington, Massachusetts 01803, Telephone (617) 273-7060.

Documents reflecting this FAA action may be obtained from the same individual.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA has given its overall approval to the HFD noise compatibility program, effective May 14, 1990.

Under section 104(a) of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter the Act), an airport operator who has previously submitted a noise exposure map submit to the FAA a noise compatibility program which sets forth the measure taken or proposed by the airport operator for the reduction of existing non-compatible land uses and prevention of additional non-compatible land uses within the area covered by the noise exposure maps. The Act requires such programs to be developed in consultation with interested and affected parties including local communities, government agencies, airport users, and FAA personnel.

Each airport noise compatibility program developed in accordance with Federal Aviation Regulation (FAR) part 150 is a local program, not a Federal program. The FAA does not substitute its judgement for that of the airport proprietor with respect to which measures should be recommended for action. The FAA's approval or disapproval of FAR part 150 program recommendations is measured according to the standards expressed in part 150 and the Act, and is limited to the following determinations:

(a) The noise compatibility program was developed in accordance with the provisions and procedures of FAR part 150;

(b) Program measures are reasonably consistent with achieving the goals of reducing existing non-compatible land uses around the airport and preventing the introduction of additional non-compatible land uses;

(c) Program measures would not create an undue burden on interstate or foreign commerce, unjustly discriminate against types or classes of aeronautical uses, violate the terms of airport grant agreements, or intrude into areas preempted by the Federal Government; and

(d) Program measures relating to the use of flight procedures can be implemented within the period covered by the program without derogating safety, adversely affecting the efficient use and management of the Navigable Airspace and Air Traffic Control System, or adversely affecting other powers and responsibility of the Administrator as prescribed by law.

Specific limitations with respect to FAA's approval of an airport noise compatibility program are delineated in FAR part 150, section 150.5. Approval is not a determination concerning the acceptability of land uses under Federal, state, or local land. Approval does not by itself constitute an FAA implementing action. A request for Federal action or approval to implement specific noise compatibility measures may be required, and an FAA decision on the request may require an environmental assessment of the proposed action. Approval does not constitute a commitment by the FAA to financially assist in the implementation of the program nor a determination that all measures covered by the program are eligible for grant-in-aid funding from the FAA under the Airport and Airway Improvement Act of 1982. Where Federal funding is sought, requests for project grants must be submitted to the FAA Regional Office in Burlington, Massachusetts.

The State of Connecticut submitted to the FAA, on June 16, 1989, the noise exposure maps, descriptions, and other documentation produced during the noise compatibility planning study conducted from January 1988 through October 1989. The HFD noise exposure maps were determined by FAA to be in compliance with applicable requirements on November 15, 1989. Notice of this determination was published in the **Federal Register** on November 30, 1989.

The HFD study contains a proposed noise compatibility program compromised of actions designed for phased implementation by airport management and adjacent jurisdictions from the date of study completion to beyond the year 1993. It was requested that the FAA evaluate and approve this material as a noise compatibility program as described in section 104(b) of the Act. The FAA began its review of the program on November 15, 1989, and was required by a provision of the Act to approve or disapprove the program within 180 days (other than the use of new flight procedures for noise control). Failure to approve or disapprove such a program within the 180 day period shall be deemed to be an approval of such a progam.

The submitted program contained 19 proposed actions for noise mitigation on and off the airport. The FAA completed its review and determined that the procedural and substantive requirements of the Act and FAR Part 150 have been satisfied. The overall program, therefore, was approved by the Administrator effective May 14, 1990.

Approval was granted for 18 specific program elements. One element (mandatory use resriction) was disapproved pending submission of additional information.

The 18 approved program elements include noise abatement departure procedures, noise abatement helicopter flight corridors, and a nighttime maintenance run-up restriction.

Approved adminstrative measures include a part-time Noise Abatement Officer, noise complaint receipt and response procedures, a noise monitoring system, an automated aircraft recording system, a public information update of the review and implementation program, Letters to Airmen, airside signs, Automatic Terminal Information Service advisories, air traffic control tower advisories, informational brochures, quantitive evaluation of cumulative changes in noise exposure, assessment of Noise Exposure Map (NEM) and Noise Compatibility Program (NCP) with changes in airport layout or operation, and assessment of NEM and NCP at minimum intervals of time.

FAA's determinations are set forth in detail in a Record of Approval endorsed by the Administrator May 14, 1990. The Record of Approval, as well as other evaluation materials and the documents comprising the submittal, are available for review at the FAA office listed above and at the Connecticut Department of Transportation, Bureau of Planning, 24 Wolcott Hill Road, Wethersfield, Connecticut.

Issued in Burlington, Massachusetts, on July 23, 1990.

Vincent A. Scarano,

Manger, Airports Division, New England Region.

[FR Doc. 90-17792 Filed 7-30-90; 8:45 am]

BILLING CODE 4910-13-M

Federal Highway Administration

Environmental Impact Statement; Gaston and Lincoln Counties, NC

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in Gaston and Lincoln Counties, North Carolina.

FOR FURTHER INFORMATION CONTACT: Mr. Roy C. Shelton, District Engineer, Federal Highway Administration, P.O. Box 26806, Raleigh, North Carolina 27611, Telephone (919) 790–2852.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the North Carolina Department of Transportation (NCDOT), will prepare an Environmental Impact Statement (EIS) on a proposed connector between NC 16 Gaston County, North Carolina and relocated US 321 in Lincoln County, North Carolina. The proposed action would be the construction of NC 16 as a four-lane limited access highway on new location from the northern terminus of relocated NC 16, north of Lucia to relocated US 321. The proposed highway is considered necessary to handle existing and projected traffic demand and to provide a link between Charlotte and the Lincolnton-Hickory areas. The proposed action is part of the 1982 Gaston county Thoroughfare Plan and is anticipated to be included on an upcoming Lincoln County Thoroughfare Plan.

Alternatives under consideration include:

(1) No-build, and

(2) Two build alternatives consisting of a limited access highway on new location.

Letters describing the proposed action and soliciting comments are being sent to appropriate Federal, State and local agencies. A series of public meetings and a public hearing will be held. Public notice will be given of the time and place of the meetings and hearing. The draft EIS will be available for public and agency review and comment at the time of the hearing.

To ensure that the full range of issues related to the proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments and questions concerning the proposed action should be directed to the FHWA at the address provided above.

(Catolog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation in Federal programs and activities apply to this program).

Issued on: July 24, 1990.

Roy C. Shelton,

District Engineer, Federal Highway Administration.

[FR Doc. 90–17743 Filed 7–30–90; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF THE TREASURY

Fiscal Service

[Dept. Circ. 570, 1990 Rev., Supp. No. 1]

Surety Companies Acceptable on Federal Bonds; Sun Insurance Co. of New York

A Certificate of Authority as an acceptable surety on Federal bonds is hereby issued to the following company under sections 9304 to 9308, title 31, of the United States Code. Federal bond-approving officers should annotate their reference copies of the Treasury Circular 570, 1990 Revision, on page 27366 to reflect this addition:

Sun Insurance Company of New York

Business Address: 4 World Trade Center, New York, NY 10048

Underwriting Limitation *b/*: $6,132,000

Surety Licenses *c/*: AK, AZ, CA, CT, DE, DC, GA, IL, IA, KY, LA, ME, MD, MA, MI, MN, MO, MT, NJ, NY, OH, OR, PA, RI, TN, TX, VA, WA, AND WI

Incorporated in: New York

Certificates of Authority expire on June 30 each year, unless revoked prior to that date. The Certificates are subject to subsequent annual renewal as long as the companies remain qualified (31 CFR, part 223). A list of qualified companies is published annually as of July 1 in Treasury Department Circular 570, with details as to underwriting limitations, areas in which licensed to transact surety business and other information.

Copies of the Circular may be obtained from the Surety Bond Branch, Finance Division, Financial Management Service, Department of the Treasury, Washington, DC 20227, telephone (202) 287–3921.

Mitchell A. Levine,

Assistant Commissioner, Comptroller, Financial Management Service.

Dated: July 24, 1990.

[FR Doc. 90–17708 Filed 7–30–90; 8:45 am]

BILLING CODE 4810–35–M

Sunshine Act Meetings

Federal Register
Vol. 55, No. 147
Tuesday, July 31, 1990

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL ENERGY REGULATORY COMMISSION, DOE

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: July 23, 1990, 55 FR 29933.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: July 25, 1990, 10:00 a.m.

CHANGE IN THE MEETING: The following Docket Numbers have been added to Items CAG–12, CAG–21, CAG–29, CAG–48 and CAG–51 scheduled on the Agenda of July 25, 1990:

Item No., Docket No., and Company

CAG–12—RP90–147–000, Northwest Pipeline Corporation
CAG–21—RP89–224–000 and RP89–203–000, Southern Natural Gas Company
CAG–29—RP88–115–012, Texas Gas Transmission Corporation
CAG–48—CP87–309–008, Paiute Pipeline Company
CAG–51—CP78–124–014, Northern Broder Pipeline Company

Lois D. Cashell,
Secretary.
[FR Doc. 90–17834 Filed 7–26–90; 4:56 pm]
BILLING CODE 6717–02–M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 11 a.m., Monday, August 6, 1990.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: July 27, 1990.
Jennifer J. Johnson,
Associate Secretary of the Board.
[FR Doc. 90–17969 Filed 7–27–90; 4:05 pm]
BILLING CODE 6210–01–M

UNITED STATES INTERNATIONAL TRADE COMMISSION

Meeting

[USITC SE–90–16]

TIME AND DATE: Tuesday, August 7, 1990 at 2:00 p.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda
2. Minutes
3. Ratifications
4. Petitions and Complaints:
   1. Certain Plastic Encapsulated Integrated Circuits (D/N 1572)
   2. Certain Power Chains, Chain Assemblies, Components Thereof, and Products Containing the Same (D/N 1575)
5. Inv. No. 731–TA–462 (P) (Benzyl Paraben from Japan)—briefing and vote.
6. Any items left over from previous agenda.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary, (202) 252–1000.

Dated: July 25, 1990.
[FR Doc. 90–17933 Filed 7–27–90; 8:45 am]
BILLING CODE 7020–02–M

NUCLEAR REGULATORY COMMISSION

Notice

DATE: Weeks of July 30, August 6, 13, and 20, 1990.

PLACE: Commissioners' Conference room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of July 30

Wednesday, August 1

10 a.m.
Briefing on Development of Radiation Protection Standards (Public Meeting).

Thursday, August 2

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed).

Week of August 6—Tentative

Friday, August 10

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (If needed).

Week of August 13—Tentative

Thursday, August 16

8:30 a.m.
Collegial Discussion of Items of Commissioner Interest (public meeting).
11:30 a.m.
Affirmation/Discussion and Vote (public Meeting) (if needed).

Week of August 20—Tentative

There are no meetings scheduled for the Week of August 20.

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

To verify the status of meetings call (recording)—(301) 492–0292.

CONTACT PERSON FOR MORE INFORMATION: William Hill (301) 492–1661.

Dated: July 26, 1990.
Andrew L. Bates,
Office of the Secretary.
[FR Doc. 90–17965 Filed 7–27–90; 3:45 am]
BILLING CODE 7590–01–M

POSTAL RATE COMMISSION

Meeting

TIME AND DATE: 2 p.m., Tuesday, August 14, 1990.

PLACE: Commission Conference room, 1333 H Street, NW., Washington, DC 20268–0001.

STATUS: Open.

MATTERS TO BE CONSIDERED: To discuss and vote on the Postal Rate Commisison Budget for FY 1991.

CONTACT PERSON FOR MORE INFORMATION: Charles L. Clapp, Secretary, Postal Rate Commission, room 300, 1333 H Street, NW., Washington, DC 20268–0001, Telephone (202) 789–6840.

Charles L. Clapp,
Secretary.
[FR Doc. 90–17940 Filed 7–27–90; 3:05 pm]
BILLING CODE 7710–FW–M

SECURITIES AND EXCHANGE COMMISSION

Agency Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of July 30, 1990.

A closed meeting will be held on Thursday, August 2, 1990, at 2:30 p.m.

The Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meetings. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Schapiro, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matter of the closed meeting scheduled for Thursday, August 2, 1990, at 2:30 p.m., will be:

Institution of injunctive actions.
Formal orders of investigation.
Settlement of injunctive actions
Institution of administrative proceedings of an enforcement nature.
Settlement of administrative proceedings of an enforcement nature.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: David Underhill at (202) 272–2000.

Dated: July 25, 1990.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90–17977 Filed 7–27–90; 4:08 pm]

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Federal Register

Tuesday
July 31, 1990

Part II

Department of Labor

Mine Safety and Health Administration

30 CFR Part 104
Pattern of Violations; Final Rule

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Part 104

RIN 1219-AA04

Pattern of Violations

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Final rule.

SUMMARY: This final rule establishes criteria and procedures for identifying mines with a "pattern of violations" of mandatory standards that significantly and substantially contribute to safety or health hazards. The rule implements section 104(e) of the Federal Mine Safety and Health Act of 1977 (Mine Act). Congress established this provision to bring into compliance mines where operators habitually allow violations of standards to occur, resulting in serious safety or health hazards.

EFFECTIVE DATE: October 1, 1990.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations, and Variances, MSHA; room 631; Ballston Tower No. 3; 4015 Wilson Boulevard; Arlington, Virginia 22203; phone (703) 235-1910.

SUPPLEMENTARY INFORMATION:

I. Background

On May 30, 1989, MSHA published a proposed rule that would establish criteria for the identification of mines with a "pattern of violations" of mandatory standards that significantly and substantially contribute to safety or health hazards (54 FR 23156).

On October 19, 1989, MSHA published a notice in the **Federal Register** which outlined major issues raised by commenters to the proposed rule and scheduled public hearings (54 FR 43028). Public hearings were held on November 1, 1989, in Pittsburgh, Pennsylvania, and on November 8, 1989, in Denver, Colorado. A transcript of each proceeding was made available for public inspection. Following the hearings, MSHA allowed commenters to submit supplementary statements and data until the record closed on December 22, 1989.

This rulemaking implements section 104(e) of the Mine Act. Congress drafted this provision to focus attention on mines that have a serious safety and health management problem. These mines are characterized by repeated "significant and substantial" (S&S) violations of mandatory health and safety standards that the operator merely abates when cited, without taking effective steps to prevent the recurrence of similar violations. Congress considered the enforcement provisions of the Mine Act's predecessor legislation, the Federal Coal Mine Health and Safety Act of 1969 and the Metal and Nonmetallic Mine Safety Act of 1966, inadequate to break such a cycle of violation, citation, and abatement without restoring the mine to a safe and healthful work place for the miners. As a means to address this situation, Congress added a new provision to the Mine Act, section 104(e), which authorizes MSHA to impose stringent sanctions on mines that develop a "pattern of violations."

Section 104(e) requires that a notice be issued to a mine operator if the mine has a pattern of violations of mandatory standards that could significantly and substantially contribute to health or safety hazards at the mine. Once a section 104(e) pattern notice is issued, the statute requires that any inspection within 90 days that reveals another S&S violation must result in an order to withdraw all persons from the affected area of the mine until the violation is abated. MSHA must issue withdrawal orders for subsequent S&S violations until an inspection of the entire mine reveals no S&S violations. A withdrawal order requires all miners to be removed from the area affected by the violation and prohibits entry into the area, with the exception of persons assigned by the operator to abate the hazard caused by the violation.

The legislative history of the Mine Act [1] emphasizes that the provisions of section 104(e) are intended for use at mines with a record of repeated S&S violations and where the other enforcement provisions of the statute have not been effective in bringing the mine into compliance with Federal health and safety standards. The Mine Act does not define "pattern of violations," but rather authorizes the Secretary to make such rules as necessary to establish criteria for determining when a pattern exists.

The need for a pattern of violations provision in the Mine Act became apparent to Congress in its investigation of the Scotia Mine disaster which occurred in March 1976. The Scotia Mine had a chronic history of persistent dangerous violations that were cited by the inspector and abated by the operator. The operator, however, would then permit the mine to lapse back into violation, exposing the miners to the same risks all over again. The Senate Committee report stated that Congressional drafters intended section 104(e) of the Mine Act to be "an effective tool to protect miners when the operator demonstrates his disregard for the health and safety of miners through an established pattern of violations." (Leg. Hist. at 620). The Committee viewed the pattern notice as an indication:

> * * * to both the mine operator and the Secretary that there exists at that mine a serious safety and health management problem, one which permits continued violations of safety and health standards. The existence of such a pattern should signal to both the operator and the Secretary that there is a need to restore the mine to effective safe and healthful conditions and that the mere abatement of violations is insufficient. (Leg. Hist. at 621).

MSHA's initial rulemaking to implement section 104(e) of the Mine Act began on August 15, 1980, with the publication of a proposed rule to establish criteria for identifying mines which have a pattern of violations (45 FR 54656). In response to the proposal, numerous commenters stated that the resolution of litigation then pending before the Federal Mine Safety and Health Review Commission (Review Commission) involving how to interpret the S&S provisions of the Mine Act was a critical precedent to the establishment of meaningful pattern of violations regulations. Prior to this time, MSHA had cited all violations as S&S, except technical violations and violations that posed only a remote or speculative risk of injury. In April 1981, the Review Commission narrowed the concept of S&S violations by defining them as violations that have a reasonable likelihood of resulting in a reasonably serious injury or illness (*Secretary of Labor* v. *Cement Division, National Gypsum Co.*, 3 FMSHRC 822 (1981)). MSHA adopted this revised definition as Agency policy in May 1981. In 1986, the Review Commission also held that the principles of National Gypsum apply to violations of health standards (*Consolidation Coal Co.* v. *Secretary of Labor*, 8 FMSHRC 890 (1986)).

In addition to these concerns, commenters in 1980 stated that the Agency's then-pending review of the civil penalty regulations could affect provisions of the pattern of violations proposal. In May 1982, MSHA revised its regulations for the assessment of civil penalties. Other commenters criticized the 1980 proposal as complex, too statistically oriented and vague.

In February 1985, MSHA announced its withdrawal of the 1980 proposal and

[1] S. Rep. No. 95-181, 95th Cong., 1st Sess. 33 (1977) reprinted in "Legislative History of the Federal Mine Safety and Health Act of 1977," [hereafter "Leg. Hist."] Subcomm. on Labor of the Comm. on Human Resources, 95th Cong., 2nd Sess. 620 (1978).

gave an advance notice of a proposed rulemaking (ANPRM) intended to address many of the concerns expressed (50 FR 5470). The 1985 ANPRM established the major concepts for this rulemaking; the notice stated that MSHA believed that issuance of a section 104(e) pattern of violations notice should be an enforcement tool reserved for chronic violators who do not respond to other efforts by MSHA to bring their mines into compliance with health and safety standards. MSHA stated that the regulation should focus on the safety and health record of each mine, rather than on strictly quantitative comparisons of mines to industry-wide norms. The Agency further indicated that it planned to develop simplified criteria to identify the existence of a pattern, coupled with procedures for fair and full notice, including an opportunity for the affected parties to respond to the Agency's initial evaluation that a pattern of violations may exist at a mine. The May 1989 proposal and this final rule reflect the importance MSHA attaches to these concepts.

MSHA's enforcement program is directed at gaining compliance with mandatory safety and health standards. The 1977 Mine Act requires the Agency to inspect all surface mines twice a year and all underground mines four times a year. If, during the course of any inspection, an MSHA inspector discovers violations of the law or regulations, the mine operator receives a citation. The purpose of MSHA's enforcement action is to prevent unsafe or unhealthful working conditions and to correct unsafe or unhealthful conditions when they occur.

The most frequently used enforcement action is a section 104(a) citation. MSHA may issue such citations for violations of the Mine Act, violations of mandatory health or safety standards, or violations of other rules and regulations issued under the Mine Act. The inspector issuing the citation provides the operator a reasonable time to correct the violation. At the close of an inspection, or sooner if necessary, the MSHA inspector meets with the mine operator and the miners' representative to discuss any violations found and to ensure that both labor and management have a full understanding of the safety and health conditions at the mine. In most instances, if an increasing number of violations are found during an inspection, the inspector notifies the operator of the problem during this conference. MSHA might suggest that the operator take such remedial actions as increasing education and training activities or requesting engineering assistance from MSHA's Office of Technical Support.

For a mine with identifiable compliance difficulties, MSHA increases its inspector presence at the mine, possibly sending in specialists in such areas as ventilation or electrical equipment to assess the problem. The mine operator can also expect to see an increase in civil penalty assessments if the problems recur.

If an inspector determines in a follow-up inspection that a mine has failed to abate a section 104(a) violation within the time set in the original citation, and if the inspector determines that the time period for abatement should not be extended, the inspector issues a closure order under section 104(b) of the Mine Act. The closure order applies to the area affected by the violation and prohibits anyone, except for individuals needed to correct the condition and certain other individuals, from entering the area until the violation has been abated.

Another enforcement tool available to MSHA is the section 104(d) citation and closure order for an operator's unwarrantable failure to comply with a mandatory standard. An inspector issues a 104(d) citation when a significant and substantial violation of a mandatory safety or health standard results from the unwarrantable failure of the operator to comply with the standard. MSHA considers unwarrantable failure to mean aggravated conduct, constituting more than ordinary negligence by the operator. After an MSHA inspector issues an unwarrantable failure citation, closure orders follow under these conditions: (1) during the same inspection or during any subsequent inspections within 90 days after issuance of the citation when an inspector finds another violation of a health or safety standard and (2) the violation was caused by an unwarrantable failure to comply.

The closure sanctions of the section 104(d) order are broader than the 104(b) closure sanction. The 104(b) closure order applies to the area affected by the single violation. After MSHA issues an unwarrantable failure citation and subsequent closure order, the mine operator will continue to receive withdrawal orders for subsequent unwarrantable failure violations issued anywhere in the mine. These closure orders continue until there has been a full mine inspection with no unwarrantable failure violations. This escalation of sanctions under section 104(d) reflects the need for a stronger remedial tool aimed at an operator who knew or should have known that a significant and substantial violation existed, or who failed to abate the violation because of indifference or a lack of due diligence or reasonable care. As with 104(a) violations, a continuing number of 104(d) orders may also lead to increased civil penalties.

Implementation of the pattern of violations provision in section 104(e) will provide MSHA with a means to gain remedial action from mine operators who have not responded to the Agency's other enforcement efforts. MSHA believes that the statutory requirement to withdraw all persons from the area of the mine affected by an S&S violation until the violation is abated will provide an effective incentive for an operator to restore safe and healthful conditions at the mine. The Agency realizes that the statutory requirements for terminating a pattern of violations sequence place a great burden on the operator of the mine. An inspection of the entire mine, particularly a large underground mine, that reveals no violations of a significant and substantial nature may be difficult to achieve. For this reason, MSHA expects to reserve the use of the section 104(e) sanctions for mines where the operator has not responded to an escalating series of enforcement actions by the Agency. Any operator to whom MSHA issues a pattern notice should, by then, have experienced sufficient Agency enforcement action to have readily foreseen implementation of the procedures of this final rule.

II. Discussion of Final Rule

A. General Discussion

This final rule includes the following elements: a statement of purpose and scope; procedures for initial identification of mines that may be developing a pattern of violations; criteria for determining whether a pattern of violations exists at a mine; notification procedures that provide both the mine operator and miners' representatives an opportunity to respond to the Agency's evaluation that a pattern of violations may exist at a mine; and procedures for termination of a pattern notice.

The issues most often raised by the commenters throughout this rulemaking have been MSHA's enforcement practices concerning S&S violations and the definition of key terms contained in the rule. Because S&S violations form the basis of a pattern of violations, several commenters stated that a more uniform application of the criteria for determining what violations are S&S is

needed in MSHA's enforcement activities. These commenters suggested that the criteria for S&S violations be defined in the rule as it was by the Review Commission in the National Gypsum case, and that the criteria for unwarrantable violations be defined as it was by the Commission in *Emery Mining Corp.* v. *Secretary of Labor*, 9 FMSHRC 1997 (1987).

MSHA agrees that application of the pattern of violations provision must be consistent with the definition of terms established by the Review Commission and adopted by the Agency. However, MSHA does not believe that it is either appropriate or necessary to define the terms "significant and substantial" or "unwarrantable" in this rule.

The terms "significant and substantial" and "unwarrantable" have application beyond the scope of section 104(e) and the part 104 regulations. If these terms were defined in the rule and subsequent case law modified or changed the current definitions of these terms, confusion could result. Therefore, to avoid this confusion, consistent adherence with prevailing case law will continue to be the practice of the Agency, particularly as it relates to section 104(e).

In accordance with prevailing case law, each violation must be independently evaluated by inspectors to determine whether the circumstances warrant the violation's designation as S&S or unwarrantable. Any criteria that are based, in part, on subjective evaluation, as application of the terms "S&S" and "unwarrantable" must be, may result in some variation in how they are applied. However, the Agency has been working, and will continue to work, with its inspectors toward a consistent application of principles for determining whether violations are S&S or unwarrantable.

B. Section-by-Section Discussion

Section 104.1 Purpose and Scope

This section sets out the purpose and scope of the pattern of violations rule. It states that the pattern of violations criteria and procedures in part 104 address those mines with an inspection history of recurrent significant and substantial violations that demonstrate an operator's disregard for the health and safety of miners. It sets the purpose of these provisions to be the restoration of safe and healthful conditions at such mines. These statements are derived from the Senate Committee report which clearly expresses Congress' intent to protect miners from continued violations of safety and health standards. The committee reports and floor debates in the Mine Act's legislative history make it clear that Congress directed the pattern of violations enforcement provisions at the few mine operators who repeatedly violate the law. In particular, Congress focused its attention on mines where citations or orders are issued for S&S violations which are abated but continue to recur without mine management taking effective preventive measures. MSHA believes that Congress intended the pattern sanctions to be directed at restoring safe and healthful mine conditions rather than merely at the closure of mines.

Although section 104(e) does not define "pattern of violations," the legislative history gives some general guidance on the kinds of situations to which the provision should apply. The Senate Committee stated its intent that:

> A pattern may be established by violations of different standards, as well as by violations of a particular standard. Moreover, while the Committee considers that a pattern is more than an isolated violation, a pattern does not necessarily mean a prescribed number of violations of predetermined standards nor does it presuppose any element of intent or state of mind of the operator. (Leg. Hist. at 621).

Section 104.1 is consistent with this legislative background. Some commenters, however, suggested further clarification of the scope and purpose of part 104, indicating that the rule should state its intended application to only "recalcitrant" operators. MSHA notes that the floor debates on pattern include references to "* * * [the] few [operators] who repeatedly thumbed their noses at the law." (Leg. Hist. at 1071.) Obviously, any operator who allows health and safety conditions to deteriorate into repeated S&S violations shows an attitude of recalcitrance. However, the inclusion of factors such as an operator's recalcitrance are too suggestive of a specific state of mind requirement. As noted above, Congress did not necessarily intend a pattern to suggest any particular element or state of mind of the operator. In practice, however, MSHA agrees with the underlying premise of the commenters and views a notice of a pattern as an enforcement mechanism to be used when other enforcement tools fail to improve the health and safety conditions at a mine.

Section 104.2 Initial Screening

The final rule describes the review process MSHA will use to initially select mines to be evaluated for the existence of a potential pattern of violations. As discussed more fully below, mines identified through initial screening under § 104.2 will be evaluated further under the criteria set out in § 104.3 of this part.

Under the final rule, the compliance record of each mine will be examined to determine whether there are indications of the recurrent presence of problems that threaten miner safety and health. The final rule specifies that MSHA will review the compliance records of mines at least annually. Some commenters stated that an annual review is inadequate, given that mining conditions can change quickly. These commenters urged that MSHA conduct an initial screening of each mine semiannually or even quarterly.

Under the final rule, one screening per mine per year is the minimum review the Agency will undertake. The Agency believes that this interval will normally be sufficient for the majority of mines. In cases where an operator's compliance record warrants more frequent review, the rule provides the Agency the flexibility to examine the operator's compliance record as often as necessary to ensure that the mine is not developing a pattern of violations.

The final rule does not specify the period of a mine's history to be examined during the initial screening process. In general, evaluation of a mine's compliance records for a period of 2 years will provide an informative, relevant perspective of safety and health conditions. In some cases, however, interruptions in mining operations, changes in mine management or ownership, or other factors could indicate that this period should be longer or shorter. In such instances, MSHA will determine, on a case-by-case basis, the period of a mine's compliance record to examine.

Some commenters stated that the initial screening should involve a comparison of a mine's compliance record for the current 12-month period to the compliance record of the preceding 12 months. Commenters stated that this comparison would give a more accurate representation of a mine's overall compliance history and would reflect whether a mine's level of safety and health was improving or deteriorating during the 2-year period. The Agency has not included such a specific procedure in the final rule. However, distinct trends in a mine's compliance history over a period of time may be relevant to the determination of whether an operator has established a potential pattern of violations. Such trends will be taken into account during initial screening, or in the application of the pattern criteria under § 104.3 of this part, as appropriate.

Paragraph (a) indicates that MSHA will examine each mine's history of S&S violations, withdrawal orders for failure to abate S&S violations, and withdrawal orders for conditions posing an imminent danger to miners. Some commenters stated that the initial screening process should focus on S&S violations that are associated with more than an ordinary degree of negligence and that imminent danger withdrawal orders should not be considered unless they are related to a violation of a standard. Other commenters stated that MSHA should consider only those violations which are clearly repetitive or indicative of a particular type of hazard.

The final rule retains the proposed factors. Consideration of these factors will best enable MSHA to identify those mines with recurrent safety or health management problems. Violations which are designated S&S, if they continue to occur, indicate an unsafe or unhealthful working environment. Repeated withdrawal orders issued for failure to abate S&S violations reflect inadequate attention on the part of the operator to correcting unsafe or unhealthful conditions. Imminent danger withdrawal orders are issued for conditions or practices that could reasonably be expected to cause death or serious physical harm before the conditions or practices could be abated.

Paragraph (b) of the rule sets out four additional factors which will be considered by MSHA in the initial screening process. The final rule does not require that a particular number or combination of these factors be found in order to identify a potential pattern of violations. This is consistent with the Agency's decision to thoroughly evaluate the safety and health record of each individual mine, rather than to apply rigid numerical guidelines to determine whether the issuance of a pattern notice is appropriate.

Under paragraph (b)(1), MSHA will consider what enforcement measures the Agency has applied at the mine, other than those initiated under section 104(e). For example, if repeated S&S violations of a standard have occurred, the Agency will take into account whether the Mine Act's "unwarrantable failure" provisions have been used. This factor recognizes that, in the enforcement scheme of the Mine Act, Congress intended the pattern provisions to be reserved for operators who are unresponsive to the other statutory enforcement measures.

Paragraph (b)(2) specifies that MSHA will consider whether there is evidence of the mine operator's lack of good faith in correcting the problem or problems that result in repeated S&S violations. Perfunctory abatement of S&S violations without correction of the underlying causes indicates disregard for compliance with safety and health standards. The Agency will focus on determining if enforcement activities at the mine have broadened beyond those expected for the operation. Examples may include whether any one or more of the following actions occurred: meetings held between MSHA officials and the operator failed to result in improved compliance; the Agency found it necessary to increase inspector presence at the mine; or increases were requested in the special assessments for violations.

Under paragraph (b)(3), MSHA will consider the mine's accident, injury or illness record. The Agency will look particularly at those mines having incidence rates above the average for that type of operation, or that have been found to under-report accidents, injuries or illnesses, indicating either intentional concealment of problems or a serious management problem. Injuries, fatalities, or occupational illnesses among the work force should place a mine operator on notice of a need for greater attention to the mine's safety or health programs. This should be reflected in the compliance history.

Paragraph (b)(4) provides for consideration of whether mitigating circumstances exist. This factor takes into account, in the assessment of the cause of repeated violations, causes which are beyond an operator's control even through diligent compliance efforts. This factor is consistent with directing the Mine Act's pattern provisions at improving compliance at mines where repeated S&S violations result from an inadequate commitment by mine management to achieving and maintaining compliance with safety and health standards.

Some commenters stated that the factors contained in paragraphs (b)(2) through (b)(4) have no basis in the legislative history of section 104(e) of the Mine Act and should not be included in the final rule. The Agency, however, believes that consideration of these factors will assist in the preliminary evaluation of an operator's compliance record and will enable the Agency to identify those operators whose compliance histories warrant closer scrutiny under the criteria of § 104.3.

A number of commenters stated that the initial screening factors do not provide adequate notice to operators of the specific number or combination of citations and orders which would cause an operator to be identified through initial screening as having a potential pattern of violations. Commenters suggested a variety of specific statistical screening mechanisms, including comparison of a mine's rate of violations with an industry-wide average. Although the Agency has considered such a scheme, MSHA believes that the initial screening criteria will allow identification of those mines which are in a recurrent cycle of violation and abatement with no correction of the underlying circumstances giving rise to the violations. Additionally, the final rule is consistent with the legislative history of section 104(e), which stresses that a pattern of violations does not necessarily mean a specific number of violations of any particular standard.

The initial screening factors are coupled with procedures affording parties full and fair notice of the Agency's initial determination that a potential pattern may exist at a mine. Application of these procedures will ensure that operators are made aware well in advance of the circumstances giving rise to the issuance of a pattern notice and will have a reasonable opportunity to address these circumstances prior to the issuance of a pattern notice.

A number of commenters stated that fairness requires prospective application of the initial screening process. The Agency agrees. Paragraph (c) provides that only citations and orders, whether final or non-final, issued after the effective date of the rule, will be considered in the initial screening process. MSHA believes that this approach will provide clear notice to mine operators of the citations and orders to be used in identifying those mines to be evaluated under the pattern criteria of § 104.3.

Section 104.3 Pattern Criteria

The final rule establishes the criteria MSHA will apply to identify mines with a potential pattern of violations. Comments on the proposal indicated some misunderstanding among commenters about how these criteria relate to the initial screening procedures in § 104.2. The final rule clarifies this relationship by underscoring the purpose and scope of part 104. It states that the pattern criteria will be applied only after initial screening reveals that the operator may continually allow the recurrence of S&S violations of mandatory safety standards or health standards. Thus, § 104.2 and § 104.3 establish a two-step approach to identifying mines with a potential pattern of violations: (1) initial screening to identify those mines which may exhibit a serious compliance problem, and (2) application of the pattern criteria

to those mines identified through initial screening to determine which, if any, of these mines demonstrate a potential pattern of violations.

The final rule retains the three proposed criteria for establishing a potential pattern of violations. These criteria focus on the mine's history of repeated S&S violations. However, MSHA has not adopted the recommendations of commenters that MSHA consider unrelated S&S violations in identifying a pattern. Instead, MSHA has retained the proposed approach and will consider only S&S citations which are linked together in one of three ways: (1) violations of the same standard; (2) violations of standards related to the same hazard; or (3) violations resulting from the operator's unwarrantable failure to comply. Violations falling into these categories are the best indicators of a mine's serious safety or health management problem. Further, MSHA believes that most repeated S&S violations will fall into one of the categories, especially categories 2 and 3. MSHA will independently evaluate each category, and a pattern evident in any single category will be sufficient for the Agency to consider issuing a notice of pattern.

Commenters stated that the proposed pattern criteria were vague and that operators would not know how to avoid conduct that would result in a pattern notice. Some commenters suggested that the pattern criteria should include consideration of the mine's accident experience and that a correlation between violations and accidents be established. Other commenters suggested comparison of the number of S&S violations to other factors, such as the national average of S&S violations, inspection days, and hours worked. To establish a pattern, these commenters suggested that the mine's rate of S&S violations be some percentage above the national average. Commenters also suggested that the criteria be modified to permit consideration of "unwarrantable failure" violations only where a current unwarrantable failure cycle is in effect at the mine.

The final rule does not adopt the commenters' suggestions. The legislative history of section 104(e) directs that the pattern criteria will "necessarily have to be broad enough to encompass the varied mining activities within the Act's coverage." (Leg. Hist. at 621). Limiting application of section 104(e) of the Mine Act by accident experience and current unwarrantable failure cycles would unduly restrict the Agency's ability to use the pattern mechanism as envisioned by Congress. Congress clearly intended the pattern notice and the unwarrantable failure mechanism to be available to MSHA as separate enforcement tools. One cannot be contingent upon the other. Regarding the suggested correlation between violations and reportable accidents and injuries at the mine, the screening criteria acknowledge the relevance of accidents, injuries and illnesses to a pattern of violations regulation. However, as stated in the preamble to the proposal, MSHA is unable to precisely link S&S violations to the occurrence of accidents and injuries, except when they involve an accident. Individual health violations are likewise difficult to directly link with the development of occupational illnesses. In addition to being potentially unworkable, this approach would be inconsistent with the preventive purposes of the Mine Act. Finally, numerical comparisons are not mandated by section 104(e): the legislative history of section 104(e) states that "* * * pattern does not necessarily mean a prescribed number of violations of predetermined standards * * *" (Leg. Hist. at 621).

One commenter also stated that the pattern criteria should consider the size of the operation. The commenter indicated that larger operations would tend to have more S&S violations and thus would be at greater risk of receiving a pattern notice. The final rule does not distinguish between large and small mining operations. The legislative history of section 104(e) does not support any distinction between large and small operations in establishing a pattern. In the Agency's view, Congress intended section 104(e) to be used against any operation demonstrating disregard for the health and safety of miners, regardless of size. However, § 104.2(b)(4) allows mitigating factors to be considered in the initial screening process. Size of the operation may be determined to be such a mitigating factor, along with other variables, such as severe geologic conditions.

The pattern criteria are broad enough to encompass varied mining situations while maintaining the focus of section 104(e) on repeated S&S violations. Also, the rule avoids triggering a pattern notice based on a predetermined number of violations of particular standards. Therefore, a quantity of violations that might constitute a pattern at one mine may be insufficient to trigger a pattern notice at another. In order to avoid inequities regarding which mines are placed on a pattern, the Agency must make ample provision for due process when applying the broad framework established by Congress in section 104(e). Before MSHA issues a pattern notice, § 104.4 of the final rule provides that MSHA must notify operators of the conduct that MSHA believes constitutes a pattern. Operators then will have an opportunity to correct this conduct or to present information to MSHA as to why such conduct does not constitute a pattern. Additionally, MSHA will continue to evaluate the pattern criteria as experience with section 104(e) increases.

Under paragraph (b) of the final rule, MSHA will consider only final citations and orders when identifying mines with a potential pattern of violations. Some commenters objected to this approach in the proposal, while others agreed. The commenters who objected stated that there is no support in the legislative history for consideration of only final citations and orders. They were concerned that operators would be motivated to challenge every S&S citation and order, thus delaying application of the pattern criteria. The commenters who agreed with the proposed approach requested that MSHA consider only final citations and orders issued after the effective date of the pattern rule. These commenters stated that the decision to contest the majority of citations and orders is made by operators on the basis of a business decision that weighs the cost of appeal against the payment of the fine, rather than strictly on the merits of the citation or order. According to the commenters, the use of citations and orders issued prior to this rule to support a pattern notice would not have been a factor in the operator's past evaluation of whether to challenge these actions.

The final rule specifies that MSHA will consider only citations and orders issued after the effective date of the rule that have become final to identify mines with a potential pattern of violations. MSHA believes that this approach will provide clear notice to mine operators of which citations and orders will be considered in identifying mines with a potential pattern of violations. Proper notice of which citations and orders will be used to identify mines with a potential pattern is of paramount importance given the extraordinary nature of the pattern notice.

MSHA will continue to evaluate non-final citations and orders in the initial screening conducted under § 104.2 of this part. Also, MSHA has not adopted the suggestion of commenters that only final citations and orders issued within certain time periods, such as the 24 months prior to the initial screening, be

considered in applying the pattern criteria. In the Agency's view, time frames such as these would unduly restrict the Agency's ability to enforce section 104(e) if an operator demonstrates disregard for the health and safety of miners through an established pattern of violations lasting longer than 2 years. In order to be an effective enforcement mechanism, the pattern criteria must be broad enough to encompass situations involving lapse of time between related S&S violations. However, the Agency believes that, in practice, most violations considered under the pattern criteria will normally have been issued within the preceding 2 years.

Section 104.4 Issuance of Notice

The final rule describes the procedures MSHA will follow when a potential pattern of violations has been identified. Due to the significance of pattern closure sanctions, the final rule provides ample notice to the mine operator prior to the issuance of such a notice, as well as meaningful opportunities to present the Agency with information as to why MSHA should not issue the pattern notice.

Under paragraph (a) of the final rule, the local District Manager will notify the mine operator in writing that a potential pattern of violations has been identified and will provide a copy of the notification to the representative of miners at the mine. The notification will include the basis for identifying the mine as having a potential pattern of violations and the time frame within which the mine operator may respond to the notification. The Agency intends that, in all cases, the operator be given a reasonable opportunity to respond. However, recognizing that potentially dangerous conditions may exist at the mine, the final rule limits the time for response to 20 days. Also, depending on the circumstances at the mine, the District Manager may set a shorter period.

In addition to giving the mine operator an opportunity to review all documents upon which the pattern of violations evaluation was based during the time for responding to a notification that a potential pattern of violations has been identified, the final rule allows the operator to provide additional information and to request a conference with the District Manager. If a conference is requested, the rule specifies that the conference be held within 10 days of the request. Also, the miners' representative must be notified of the conference and be given an opportunity to participate. A commenter suggested that although miners' representatives may be allowed to participate, they will generally be unable to do so because they are not paid to attend the conferences. Therefore, the commenter recommended that any information provided by the operator be in writing unless, as a precondition to requesting a conference, the operator agrees to reimburse the miners' representative for lost wages.

The final rule does not adopt the recommendation of the commenter. In the Agency's view, requiring the operator to provide pay to the miners' representative as a precondition to a conference falls outside the scope of the enforcement authority provided by section 104(e). Additionally, MSHA believes that such a precondition may unduly restrict the operator's opportunity to be heard prior to the issuance of a pattern notice. Where miners' representatives cannot participate in a conference, the Agency will make a reasonable effort to secure the representatives' comments.

Another commenter stated that no reason exists for providing an opportunity for input from mine operators or the representative of miners prior to the issuance of a pattern notice. In the commenter's view, the citations and orders issued to the operator for repeated S&S violations provide ample notice that the operator could be placed on a pattern of violations. Other commenters supported the opportunity to specifically address MSHA's reasons for identifying a mine as having a pattern prior to a notice being issued. The Agency views the opportunity for a full and fair notice to all parties involved prior to issuance of a pattern of violations notice to be an important feature of an effective pattern of violations rule. This opportunity for input applies to both mine operators and representatives of miners.

During the period permitted for response to notification of a potential pattern of violations, the operator also may institute a program at the mine to avoid further repeated S&S violations. If the operator implements such a program, the final rule authorizes the District Manager to allow additional time to determine whether the operator's program is effectively reducing the occurrence of S&S violations at the mine. Under the final rule, the period of evaluation may not exceed 90 days, and the representative of the miners must be given an opportunity to discuss the program with the District Manager.

Some commenters objected to this provision in the proposal, stating that it would allow operators to avoid being issued a notice of a pattern of violations. Other commenters, however, supported the opportunity to implement a program at the mine for avoiding S&S violations. MSHA continues to believe that the preventive purpose of the Mine Act is best served by encouraging an opportunity for the operator to undertake the measures necessary to restore a safe and healthful working environment at the mine. In MSHA's view, a sound safety and health program developed and adopted by the mine operator most effectively reduces S&S violations and fulfills the objectives of section 104(e).

A commenter recommended that the 90-day period for the District Manager's evaluation of the operator's program be structured so that the District Manager is granted authority to give no more than two 30-day extensions after an initial 30-day evaluation period. In the commenter's opinion, a 90-day period for evaluation may be too long in some cases. This suggested approach was not adopted in the final rule. Instead, the final rule allows the District Manager to set the evaluation period based on the circumstances at each mine, and periods shorter than 90 days can be specified as necessary. Also, the period of evaluation can be terminated at any time by the District Manager if the program is not achieving its purpose.

Another commenter was concerned that an operator may reduce the number of repeated S&S violations by implementing a program but return to the pattern after a determination is made not to issue a pattern notice. A commenter also suggested that if an operator is identified as having a pattern of violations for a second time, a pattern notice should be issued without the benefit of the procedures of this section. The final rule adequately addresses both of these situations. If an operator resumes the practice that gave rise to the issuance of the original notification of a pattern of violations, a new notice could be issued to the operator based on the circumstances that resulted in the original notice, as well as the operator's most recent conduct. In determining whether to allow the operator another 90-day period to implement a program to reduce S&S violations, the District Manager would take into consideration the operator's performance following the previous notification.

Under the final rule, the determination as to whether a pattern of violations notice should be issued will be made by the Administrator. Paragraph (b) describes the procedures for submitting information to the Administrator to be used in determining if a pattern exists. Under paragraph (b), the District

Manager will submit a report to the Administrator if the District Manager continues to believe that a pattern exists after the operator is afforded the procedures of paragraph (a). The District Manager's report is required within 120 days from the notification of a potential pattern of violations at the mine. As discussed below, a copy of the report will be provided to the mine operator and representative of miners before being submitted to the Administrator. Both parties will have the opportunity to comment on the report within 10 days of receipt.

Paragraph (c) requires the Administrator to issue a decision as to whether a pattern of violations notice will be issued within 30 days of receipt of a report from the District Manager. MSHA will provide a copy of the Administrator's decision to both the operator and the representative of the miners. Under paragraph (d), the operator must post notification of a pattern of violations at the mine.

Several commenters stated that the time frames for issuance of a notice of a pattern of violations are too short. The Agency recognizes that the time frames outlined in this section require prompt action by all parties involved. However, given the seriousness of the safety and health risks when the mine is identified as having a potential pattern of violations, the time frames specified are reasonable and provide ample opportunity for the operator to present facts to the Agency as to why the pattern notice should not be issued.

A commenter objected to the proposal, indicating that it would allow the District Manager 120 days to issue the report to the Administrator, even if a program to reduce S&S violations is not implemented at the mine. In the commenter's view, this amount of time is excessive. After consideration of this comment, the final rule specifies that where a program to reduce S&S violations has not been implemented, a report must be submitted to the Administrator within 60 days of the issuance of the notification that a potential pattern of violations exists.

One commenter suggested that the District Manager's report be submitted to the operator and the representative of the miners for review prior to being sent to the Administrator. The commenter indicated that this procedure would allow the District Manager to submit the report and comments from the parties to the Administrator at the same time, thereby ensuring that the Administrator evaluates the report and comments simultaneously. The commenter stated that otherwise, if the report were to be submitted to the Administrator before the comments from the parties, the Administrator may already have formed an opinion regarding the issuance of a pattern notice by the time the comments are received. The Agency believes that allowing the Administrator the opportunity to review the information submitted by all parties at the same time would be beneficial. Accordingly, the final rule allows the operator and miners' representative 10 days to comment on the District Manager's report before the report is sent to the Administrator.

Several commenters recommended that the application of the pattern of violations criteria should be by the Administrator and that the decision to issue a notice of a pattern be made by the Assistant Secretary. Other commenters stated that an operator should have the right to appeal the decision to issue a pattern notice before it goes into effect or have a right to request a conference with the Secretary of Labor. MSHA has not adopted these suggestions. The Agency believes that the District Manager is in the best position to know and evaluate the conditions at the mines within the district and therefore is in the best position to know what enforcement activities have been directed at a particular operation and how successful those efforts have been at improving compliance. Additionally, MSHA believes that the Administrator is in the best position to ensure that the provisions of the final rule are consistently and evenly implemented throughout the nation.

With regard to establishing further routes of administrative appeal within the Agency, it is MSHA's view that the procedures set out in the final rule provide a full opportunity for all parties to express their concerns and that additional review at higher levels within the Agency or Department is unnecessary. Insofar as further review outside of the Agency is concerned, operators who contest the issuance of a section 104(e) withdrawal order before the Federal Mine Safety and Health Review Commission may challenge, in the same proceeding, the issuance of the underlying pattern notice.

A commenter stated that a report should be written even if a decision is made by the District Manager not to recommend placing a mine on a pattern of violations. After consideration of the comment, the final rule does not incorporate this suggestion. A District Manager's decision not to recommend issuance of a pattern notice can be presumed to be based on improved compliance at the mine. The operator's compliance record at the mine will document this improvement. Therefore, MSHA believes that there is no need to issue a report in such circumstances.

A commenter noted that the proposal specified no time limit for how long the notice of a pattern should remain posted at the mine. The final rule clarifies that the notice must remain posted during the entire period the mine is on the pattern of violations sequence.

Section 104.5 Termination of Notice

The final rule reflects the Mine Act's requirement of termination of a pattern notice after an MSHA inspection of the entire mine finds no S&S violations. The final rule also clarifies the proposal. Consistent with the Mine Act, it specifies that an order must be issued to establish a pattern cycle within 90 days after issuance of a pattern notice. If no order is issued during the 90-day period, the pattern notice will terminate, regardless of whether a clean inspection of the entire mine occurs during the 90 days. The final rule also retains the proposed provision regarding operator requests for an inspection of the entire mine or a portion of the mine and defines what constitutes an inspection of the entire mine.

The latter provisions are included in paragraph (b) of the final rule. As in the proposal, an operator may request an inspection of the entire mine or a portion of a mine. Partial inspections covering the entire mine within 90 days will constitute an inspection of the entire mine for purposes of terminating a pattern notice. The concept of combining a series of partial inspections to compose a complete inspection of the mine is consistent with the decision of the U.S. Court of Appeals for the District of Columbia Circuit interpreting the section 104(d) unwarrantable failure provision in *UMWA* v. *FMSHRC*, 768 F.2d 1477 (D.C. Cir. 1985).

A commenter objected to the 90-day period for tying together a series of partial inspections, suggesting instead that since conditions in a mine can change rapidly a more appropriate time would be 30 days. The final rule does not adopt the suggested 30-day period. As stated in the preamble to the proposal, MSHA believes the 90-day period included in the final rule is appropriate since it is consistent with the period specified in sections 104(d) and 104(e) of the Mine Act for placing an operator on the withdrawal order sequence.

Also consistent with the Mine Act, MSHA will give no advance notice of an inspection or partial inspection. Thus, while an operator may request an inspection under the final rule, there will

be no indication from MSHA as to when the inspection will occur. Additionally, the final rule retains the proposed provision that the scope of all inspections will be determined by MSHA. Therefore, although an operator may request only a partial inspection of the mine, MSHA maintains the right to visit additional areas during the inspection.

Some commenters suggested that this section be modified to permit termination of the pattern notice in specific areas of a mine. Alternatively, commenters stated that the rule should permit termination of the pattern notice for the entire mine when specific hazards which resulted in the original issuance of the notice have been eliminated. The commenters also suggested that the operator be permitted to request inspections focusing only on these hazards. According to the commenters, such procedures would encourage correction of the problems leading to a pattern.

The final rule does not include these suggestions. The Mine Act clearly establishes that an inspection which results in the termination of a pattern notice must be of the entire mine. Section 104(e) also states that operators are subject to withdrawal orders until an inspection of the mine in its entirety discloses no S&S violations of any standards. Additionally, no support is found in the legislative history for issuing or terminating a pattern notice for portions of a mine or for particular hazards. Congress stated its belief that a pattern notice indicates a serious safety and health management problem and that the purpose of such a notice is therefore to signal a need to restore the mine to effective safe and healthful conditions. In the Agency's view, a pattern notice must be applied to and terminated for an entire mine in order to fulfill this congressional mandate.

Commenters also suggested that operators should have the option of requesting an inspection by personnel from a different district than the one in which the mine is located. This comment was also not incorporated into the final rule. While the final rule does not prohibit use of inspectors from other districts, the Agency believes that local inspectors will be the MSHA personnel most familiar with the mine and with the factors which led the Agency to issue the pattern notice. In addition, MSHA must retain the ability to allocate inspection resources efficiently and without such a potential restriction.

Other comments indicated that the final rule should specify that the pattern notice will terminate if a mine is sold or otherwise changes ownership while the mine is under a pattern sequence. Although the final rule does not incorporate this suggestion, the Agency agrees that, under most circumstances, a pattern notice should not remain in effect if mine management changes. In the Agency's view, Congress intended section 104(e) to enable MSHA to address mines with serious safety and health management problems. Therefore, under normal circumstances, if mine management changes, the new management should not be presumed to have the same inability or unwillingness to manage compliance with applicable safety and health standards as the previous mine management. This view is consistent with the application of section 104(e) to mine operators at particular mine sites and not to the mines themselves. Thus, when mine management changes while a pattern notice is in effect, MSHA will consider, on a case-by-case basis, terminating a pattern notice in order to allow the new mine management to demonstrate to MSHA its ability to provide to miners at the mine a safe and healthful workplace.

III. Executive Order 12291 and Regulatory Flexibility Act

In accordance with Executive Order 12291, MSHA has prepared a final analysis to identify potential costs and benefits associated with part 104. This analysis has formed the basis for the final Regulatory Flexibility Analysis required by the Regulatory Flexibility Act. In this analysis, MSHA has determined that the final rule would not result in major cost increases nor have an incremental effect of $100 million or more on the economy. Therefore, the rule does not meet the criteria for a major rule and a Regulatory Impact Analysis is not required.

The benefits of the final rule are the fatalities, injuries, and illnesses that will be prevented by more timely compliance with existing Federal health and safety standards. MSHA believes that one fatality can be prevented annually in coal mines and one fatality can be prevented every 2 years in metal and nonmetal mines. MSHA also believes that 216 lost workday injuries and 84 nonlost workday injuries can be prevented annually in coal mines and 132 lost workday injuries and 64 nonlost workday injuries can be prevented annually in metal and nonmetal mines. These benefit estimates do not include the potential benefits resulting from improved safety at mines that do not receive a pattern notice. They also do not include any quantitative measure of the potential health benefits.

MSHA estimates that about 100 coal mines (about 2 percent of all coal mines) and 80 metal and nonmetal mines (less than 1 percent of all metal and nonmetal mines) will be affected by this rule. These estimates represent the mines that would be identified by initial screening. The number of mines actually issued a pattern of violations notice would be less.

MSHA estimates that the annual cost of compliance will be about $854,300. All of the costs of this rule are associated with § 104.4, issuance of notice. This section has five distinct areas of costs to the mine operator as follows: (1) Reviewing the pattern notice, (2) requesting a conference with the MSHA District Manager, (3) instituting a corrective program, (4) losing production and profits due to a mine closure, and (5) additional citation litigation. Coal mines will incur $649,100 of the total amount, which averages about $6,500 per affected mine. Metal and nonmetal mines will incur $205,200 of the total amount, which averages about $2,550. Mines actually placed on a pattern would incur costs well above the average, largely due to lost production revenue.

The Regulatory Flexibility Act requires that agencies evaluate and include, wherever possible, compliance alternatives that minimize any adverse impact on small businesses. For purposes of the Regulatory Flexibility Act, MSHA has defined small business entities as mines with fewer than 20 employees. In this final rule, MSHA has not exempted small mines from any provision. The rule will likely affect small mines to a lesser degree than large mines because small mines, on average, are likely to have fewer safety and health hazards per mine to correct than large mines. Should an entire section of a small mine be forced to close temporarily, however, its compliance cost on a per-mine basis would be higher than the costs to close temporarily a section of a large mine because the large mines can more easily shift employees to other tasks than can a small mine.

MSHA estimated that of the $649,100 incurred by coal mines, $460,500 will be spent by large coal mines, about $6,600 per affected mine, and $188,600 will be spent by small coal mines, about $6,300 per affected mine. Of the $205,200 incurred by metal and nonmetal mines, $158,400 will be spent by large metal and nonmetal mines, or about $2,650 per affected mine, and $46,800 will be spent by small metal and nonmetal mines, or about $2,350 per affected mine.

IV. Paperwork Reduction Act

This final rule contains no information collection requirements subject to the Paperwork Reduction Act of 1980.

List of Subjects in 30 CFR Part 104

Mine safety and health, Pattern of violations.

Dated: July 25, 1990.

William J. Tattersall,

Assistant Secretary for Mine Safety and Health.

Accordingly, a new part 104 in a new subchapter Q in chapter I, title 30 of the Code of Federal Regulations is added to read as follows:

SUBCHAPTER Q—PATTERN OF VIOLATIONS

PART 104—PATTERN OF VIOLATIONS

Sec.

104.1 Purpose and scope.
104.2 Initial screening.
104.3 Pattern criteria.
104.4 Issuance of notice.
104.5 Termination of notice.

Authority: 30 U.S.C. 814(e), 957.

§ 104.1 Purpose and scope.

This part establishes the criteria and procedures for determining whether a mine operator has established a pattern of significant and substantial (S&S) violations at a mine. It implements section 104(e) of the Federal Mine Safety and Health Act of 1977 (Act) by addressing mines with an inspection history of recurrent S&S violations of mandatory safety or health standards that demonstrate a mine operator's disregard for the health and safety of miners. The purpose of the procedures in this part is the restoration of effective safe and healthful conditions at such mines.

§ 104.2 Initial screening.

At least once each year, MSHA shall review the compliance records of mines. MSHA's review shall include an examination of the following:

(a) The mine's history of—

(1) Significant and substantial violations;

(2) Section 104(b) of the Act closure orders resulting from significant and substantial violations; and

(3) Section 107(a) of the Act imminent danger orders.

(b) In addition to the compliance records listed in paragraph (a) of this section, the following shall also be considered as part of the initial screening:

(1) Enforcement measures, other than section 104(e) of the Act, which have been applied at the mine.

(2) Evidence of the mine operator's lack of good faith in correcting the problem that results in repeated S&S violations.

(3) An accident, injury, or illness record that demonstrates a serious safety or health management problem at the mine.

(4) Any mitigating circumstances.

(c) Only citations and orders issued after October 1, 1990, shall be considered as part of the initial screening.

§ 104.3 Pattern criteria.

(a) The criteria of this section shall be used to identify those mines with a potential pattern of violations. These criteria shall be applied only after initial screening conducted in accordance with § 104.2 of this part reveals that the operator may habitually allow the recurrence of violations of mandatory safety standards or health standards which significantly and substantially contribute to the cause and effect of mine safety or health hazards. These criteria are—

(1) A history of repeated significant and substantial violations of a particular standard;

(2) A history of repeated significant and substantial violations of standards related to the same hazard; or

(3) A history of repeated significant and substantial violations caused by unwarrantable failure to comply.

(b) Only citations and orders issued after October 1, 1990, and that have become final shall be used to identify mines with a potential pattern of violations under this section.

§ 104.4 Issuance of notice.

(a) When a potential pattern of violations is identified, the District Manager shall notify the mine operator in writing. A copy of the notification shall be provided to the representative of miners at the mine. The notification shall specify the basis for identifying the mine as having a potential pattern of violations and give the mine operator a reasonable opportunity, not to exceed 20 days from the date of notification, to take the following steps:

(1) Review all documents upon which the pattern of violations evaluation is based.

(2) Provide additional information.

(3) Submit a written request for a conference with the District Manager. The District Manager shall hold any such conference within 10 days of a request. The representative of miners at the mine shall be provided an opportunity to participate in the conference.

(4) Institute a program to avoid repeated significant and substantial violations at the mine. The District Manager may allow an additional period, not to exceed 90 days, for determining whether the program effectively reduces the occurrence of significant and substantial violations at the mine. The representative of miners shall be provided an opportunity to discuss the program with the District Manager.

(b) If the District Manager continues to believe that a potential pattern of violations exists at the mine, a report of the evaluation made under this part shall be sent to the appropriate MSHA Administrator. This report shall be submitted no more than 120 days from the notification to the operator and miners' representative under paragraph (a) of this section. Alternatively, in cases where no program to reduce S&S violations has been implemented at the mine, the report shall be submitted no more than 60 days from such notification. A copy of the report shall be provided to the mine operator and the miners' representative 10 days before the report is sent to the Administrator. Both parties will have 10 days from receipt of the report to submit written comments to the Administrator.

(c) Within 30 days of receipt of a report from a District Manager, the Administrator shall issue a decision as to whether the mine is to be issued a notice of a pattern of violations. A copy of the decision shall be provided to the mine operator and the representative of the miners.

(d) The mine operator shall post all notifications issued under this part at the mine. A notice of a pattern of violations shall remain posted at the mine until such notice is terminated under § 104.5 of this part.

§ 104.5 Termination of notice.

(a) Termination of a section 104(e)(1) of the Act pattern of violations notice shall occur when an inspection of the entire mine by MSHA finds no significant and substantial violations or if no withdrawal order is issued by MSHA in accordance with section 104(e)(1) of the Act within 90 days of the issuance of the pattern notice.

(b) The mine operator may request an inspection of the entire mine or portion of the mine. No advance notice of the inspection shall be provided, and the scope of inspection shall be determined by MSHA. Partial mine inspections covering the entire mine within 90 days shall constitute an inspection of the entire mine for the purposes of this part.

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Part III

Environmental Protection Agency

Ciba-Geigy Corp., et al., Petitioners; Remand Decision; Notice

ENVIRONMENTAL PROTECTION AGENCY

[FIFRA Docket Nos. 562 et al.; FRL-3793-9]

In the Matter of: Ciba-Geigy Corporation, et al., Petitioners; Remand Decision

On March 29, 1988, the Agency cancelled registrations for the pesticide diazinon unless amended to prohibit use on golf courses and sod farms.[1] Applying Section 6(b) of the Federal Insecticide, Fungicide, and Rodenticide Act ("FIFRA"), 7 U.S.C. §136d(b), the Agency determined that diazinon use on golf courses and sod farms poses an unreasonable risk to birds. On petition for review, the United States Court of Appeals for the Fifth Circuit set aside that order and remanded the case to the Agency for a determination of whether these uses cause an unreasonable risk "commonly" or "with considerable frequency."[2] Today's decision responds to that remand. For the reasons set forth below, diazinon use on golf courses and sod farms causes an unreasonable risk to birds commonly and with considerable frequency. Moreover, the record fails to show that regulatory alternatives short of cancellation would reduce risk to reasonable levels.

I. BACKGROUND

This case is the first proceeding in which Respondent, the Agency's Assistant Administrator for Pesticides and Toxic Substances,[3] has advocated the cancellation of pesticide registrations based on risks posed solely to birds. Ciba-Geigy Corporation, diazinon's major producer, is the lead party advocating continued registration. The procedural history is set forth in the Agency's 1988 Decision and need not be repeated here. That decision analyzes the avian risks posed by diazinon as historically used, as well as the risks that would be posed if diazinon were used under the so-called "2+2" label previously proposed by Ciba-Geigy. This 2+2 proposal specified a maximum application rate of two pounds of active ingredient per acre (ai/A), to be followed in seven days by a second two-pound treatment for certain pests. The 2+2 label also required, among other things, that diazinon be applied by a certified applicator (as the ALJ had recommended in his Initial Decision), that most applications be followed by irrigation, and that certain seasonal and geographic restrictions be observed to protect Atlantic brant and wigeon. After analyzing the massive record generated at the hearing, the Agency concluded that Respondent had presented a prima facie case that diazinon use on golf courses and sod farms poses a "widespread and continuous hazard," that the benefits of continued use at these sites would be "negligible," and that "Ciba-Geigy has failed to meet its burden of showing that the benefits of continued use under its proposed [2+2] label justify the avian risk involved." 53 Fed. Reg. at 11130 (col. 1).

In discussing the legal standard for cancellation under FIFRA, the 1988 Decision briefly analyzed the meaning of FIFRA §6(b), which provides for cancellation if the pesticide, "when used in accordance with widespread and commonly recognized practice, generally causes unreasonable adverse effects on the environment * * *." 7 U.S.C. §136d(b). Ciba-Geigy had argued in its post-trial briefs that the word "generally" in this provision means "most of the time," and that the Agency may cancel diazinon registrations only if diazinon results in bird kills more often than not.[4] The Agency, however, interpreted the word "generally" as meaning "with regard to the overall picture," an alternative reading that Ciba-Geigy itself had proposed, and one that the Agency viewed as consistent with its obligation to consider a broad range of factors when determining whether a risk is unreasonable.[5]

On petition for review, the Fifth Circuit rejected the Agency's interpretation, stating that EPA "improperly read the word 'generally' out of FIFRA §6(b)." 874 F.2d at 280. It held that "generally" means "commonly" or "with considerable frequency," though not necessarily 51 percent of the time. Id. at 279. Because FIFRA §2(bb) defines "unreasonable adverse effects" to include not only harmful consequences but also "unreasonable risk," the Court recognized that diazinon use on golf courses and sod farms need not generally cause actual bird kills to warrant cancellation. Id. at 279-80. Instead, prohibiting diazinon use at these sites is justified if it generally causes an unreasonable risk of bird kills:

> [A] significant risk of bird kills, even if birds are actually killed infrequently, may justify the Administrator's decision to ban or restrict diazinon use. [Id.]

The Court noted that in applying the proper standard, the Agency should pay particular attention to whether any cancellation is sufficiently tailored to reflect distinctions in risk frequency among different kinds of uses. Id. at 280. By way of illustration, the Court stated:

> If the use of diazinon creates an unreasonable risk of killing birds on only 10% of the golf courses on which it is used, for example, the Administrator should define the class of golf courses on which its use is to be prohibited more narrowly.

Id. The Court also rejected Ciba-Geigy's argument that a risk is unreasonable only if it endangers bird populations, stating:

> FIFRA gives the Administrator sufficient discretion to determine that recurring bird kills, even if they do not significantly reduce bird population, are themselves an unreasonable environmental effect.

Id. The Court remanded the proceeding to the Agency "for application of the correct legal standard" and to consider whether the prohibited application has been defined "sufficiently narrowly." Id.[6]

Shortly after the Fifth Circuit's decision, Ciba-Geigy proposed a series of additional label amendments further restricting diazinon use on golf courses and sod farms. These new proposals include a seasonal restriction intended to protect migratory waterfowl; a ban on use within 100 yards of any body of water; a ban on use within 100 yards of any turf area used by waterfowl for feeding or loafing; and a ban on the use of diazinon's granular formulation, intended primarily to protect songbirds.[7] Ciba-Geigy no longer defends the 2+2 label standing alone, and its current proposals are intended to supplement (not replace) the restrictions in the 2+2 label. See CG Bf. at 11. For the first time

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[1] See In re Ciba-Geigy Corp., 53 Fed. Reg. 11119 (April 5, 1988) ("1988 Decision").

[2] Ciba-Geigy Corp., v. EPA, 874 F.29 277, 279 (5th Cir. 1989).

[3] Consistent with the ALJ's Initial Decision and the parties' post-trial briefs, the 1988 Decision refers to Respondent as "the Agency" or "EPA." Under the rules that govern this proceeding, Respondent is actually the Agency's Assistant Administrator for Pesticides and Toxic Substances. For the sake of clarity, the terms "EPA" and "Agency" will be used herein for reference to the Administrator or EPA as a whole. The record will be cited as described in the 1988 Decision. See 53 Fed. Reg. at 11120 n.1; Initial Decision at 4-5. Unless otherwise noted, citations to the parties' briefs refer to their briefs on remand. Citations to the record are intended to be illustrative, not comprehensive.

[4] See 53 Fed. Reg. at 11122 (col. 1); CG Post-Tr. Bf. at 16-17.

[5] 53 Fed. Reg. at 11122 (col. 1). In arguments before the Fifth Circuit, Ciba-Geigy evidently modified its interpretation of "generally" from "more often than not" to "for the most part." See Motion for Setting a Briefing Schedule, at 2 n.1 (July 7, 1989).

[6] Ciba-Geigy represents that even though the Fifth Circuit vacated the 1988 cancellation order, it has not subsequently sold diazinon for use on golf courses and sod farms.

[7] See CG Reply (Appendix). Ciba-Geigy states that it would agree to minor wording changes to its proposals where necessary to clarify ambiguities. Today's decision does not turn on any deficiencies that could be readily cured through such changes.

in its Reply Brief (p. 14), Ciba-Geigy also suggests that, if necessary, diazinon could be banned on golf courses and sod farms having resident waterfowl.

Before filing their substantive briefs on remand, the parties submitted numerous procedural motions, including a request by Ciba-Geigy that the case be referred to an ALJ for further hearings. These motions were addressed by orders of the Chief Judicial Officer and Acting Chief Judicial Officer dated August 1 and 31, 1989, respectively. The orders reiterate the Agency's responsibility to consider label refinements proposed by Ciba-Geigy as an alternative to cancellation, but they hold that such proposals must be considered based on the existing record. For the reasons stated in those orders, they are hereby adopted and incorporated herein.[8]

II. DISCUSSION

Although the Fifth Circuit rejected the Agency's reading of "generally" in FIFRA §6(b), the guiding principles provided by the Court for consideration on remand are not foreign to those traditionally used by the Agency under FIFRA. The 1988 Decision expressly recognizes the Agency's obligation to consider Ciba Geigy's proposed label amendments as an alternative to cancellation, as well as whether additional tailoring of those proposals might be a workable solution.[9] Measures short of cancellation have been considered at virtually every stage of this proceeding. The limitation of this case to golf courses and sod farms — which account for only eight percent of total diazinon use (RX 4 (p. I-3)) — likewise reflects Respondent's recognition of the Agency's obligation to tailor its regulatory actions under FIFRA.

At the outset, the scope of this remand proceeding must be defined. As noted above, Ciba-Geigy no longer defends diazinon use under the 2+2 label as previously proposed, and it argues that the only issue on remand is the acceptability of its most recent label proposals. It asserts that all diazinon labels have been amended to prohibit use on golf courses and sod farms, that to its knowledge there is no existing diazinon stock without such labels, and that it would agree to a stop-use order for any such stocks. Because no party advocates diazinon use under prior labels or under the previous 2+2 proposal, Ciba-Geigy argues that there is no case or controversy regarding such use and that issues relating thereto are moot. Respondent questions the factual basis for Ciba-Geigy's assertions about existing stocks, and notes that Ciba-Geigy's commitment to comply with a stop-use order does not bind other diazinon registrants or users. It also contends that the Agency has a duty to the public to decide the primary issues litigated at the hearing, namely whether diazinon use on golf courses and sod farms under historical labels and under the previous 2+2 proposal generally poses an unreasonable risk to birds.

Respondent's concerns about existing stocks are legitimate. A binding stop-use order for remaining stocks should be based on a determination that use of those stocks under their existing labels generally poses an unreasonable risk. Moreover, a brief analysis of diazinon as used historically and as proposed under the 2+2 label provides a logical point of departure for analyzing Ciba-Geigy's most recent proposals. This analysis will also help to ensure that the burdens of production and persuasion are properly allocated. The Agency must first determine whether Respondent has presented an affirmative case for cancellation under the standards enunciated by the Fifth Circuit (40 CFR 164.80(a)), and then whether Ciba-Geigy has either rebutted that prima facie case or demonstrated by a preponderance of the evidence that use under an alternative label would not generally pose an unreasonable risk to birds.[10] Ciba-Geigy retains the ultimate burden of proof, i.e., the risk of non-persuasion, on all issues.[11]

Because no party defends diazinon as used historically or under the 2+2 label, an abbreviated analysis of these uses will suffice.[12]

A. Diazinon as Used Historically and as Proposed Under the 2+2 Label

In its 1988 Decision, the Agency determined that Respondent had established a "prima facie case of a widespread and continuous hazard based on laboratory data and reported bird kills." 53 Fed. Reg. at 11130 (col. 1). Respondent's showing includes data regarding diazinon's comparative toxicity; data on diazinon turf residues under various application rates; testimony regarding avian feeding ecology and avian exposure to diazinon residues on golf courses and sod farms; a risk assessment model showing waterfowl exposure to lethal diazinon residues; and evidence of the extensive history of reported bird kills associated with diazinon.[13]

Essentially, Respondent established that diazinon is extremely toxic to a wide variety of bird species. Diazinon, like other organophosphates, disrupts the normal transmission of signals by the central nervous system, and can result in lack of motor control, ataxia, coma, and death (usually by asphyxiation).[14] Based on LD_{50} values, the single dose that causes mortality in 50 percent of adult birds, diazinon is classified by Respondent as "very highly toxic," the most toxic of Respondent's five classifications.[15] Diazinon residues from a one-pound ai/A application is estimated to be 53 ppm (a lowest worst case value).[16] Using published LD_{50}

[8] The Agency's rules require that a motion to reopen a hearing set forth "good reason" for why any newly proffered evidence was not previously adduced. 40 CFR 164.110(b). The intervening Fifth Circuit decision in this case does not alter this requirement. The court ordered a remand "to the Administrator for application of the correct legal standard" (874 F.2d at 280), nowhere suggesting that additional evidentiary hearings would be necessary or appropriate. Although the Fifth Circuit's remand has given Ciba-Geigy a unique opportunity to respond to the concerns set forth in the now-vacated 1988 Decision, Ciba-Geigy had ample prior notice of these concerns. It had every opportunity to defend any label restriction necessary to reduce risk to reasonable levels. Its litigation strategy to defend the 2+2 label does not constitute "good reason" for not previously adducing evidence regarding the feasibility of its most recent proposals.

[9] See 53 Fed. Reg. at 11120-21, 11130 (cols. 2 and 3).

[10] Although the Fifth Circuit emphasized the Agency's obligation to consider regulatory alternatives short of cancellation, it did not address issues relating to the burden of establishing the viability of such alternatives. As this case demonstrates, the number of potential label amendments short of outright prohibition is limited only by the imagination of those defending continued registration. It would be impossible for Respondent to anticipate and affirmatively disprove the viability of each potential alternative. Once Respondent presents a prima facie case that a pesticide, when used in accordance with widespread and commonly recognized practice, generally poses an unreasonable risk, the burden shifts to the registrant to prove that an alternative short of cancellation would reduce risk to reasonable levels.

[11] See 40 CFR §164.80(b); Environmental Defense Fund, Inc. (EDF) v. EPA, 548 F.2d 998, 1015-16 (D.C. Cir. 1976), *cert. denied*, 431 U.S. 925 (1977); EDF v. EPA, 510 F.2d 1292, 1297 (D.C. Cir. 1975).

[12] The issues on remand have been fully briefed. Oral argument would not aid in the disposition of these issues, and Ciba Geigy's request for oral argument is therefore denied. To the extent consistent with today's decision and the Fifth Circuit's remand order, the findings and conclusions set forth in the Agency's 1988 Decision are adopted and incorporated herein.

[13] The benefits portion of Respondent's affirmative case for cancellation is discussed at page 15 below.

[14] See EPA W-2 (pp. 15-16); EPA W-20 (pp. 6-7).

[15] A substance's LD_{50} is expressed as a ratio of milligrams of substance per kilogram of bird body weight (mg/kg). Most published LD_{50} values for diazinon are below 10 mg/kg. levels which are categorized as "very highly toxic." 53 Fed. Reg. at 11122 (col. 3).

[16] See 53 Fed. Reg. at 11123 (Section III.C); EPA W-4.

values and the 53-ppm residue estimate, Respondent presented a risk-assessment model showing that mallards and Canada geese grazing on diazinon-treated turf would reach their respective LD_{50}s in a relatively short period of time.[17] Testimony regarding avian feeding ecology shows that both migrating and non-migrating waterfowl are directly exposed to diazinon residues on golf courses and sod farms.[18] Waterfowl use of these sites can be expected to increase in the future as wetlands and other natural feeding habitats diminish.[19] Songbirds are also exposed to diazinon on invertebrates, puddles, and seeds, and by the direct ingestion of diazinon granules.[20]

The extensive history of more than fifty reported bird kills associated with diazinon use verifies the avian hazard reflected in the lab data and risk-assessment model. Kills have occurred in every area of the country and during every month of the year, and have ranged from one to more than 800 birds per incident.[21] Reported kills occurred at both high and low application rates, and involved many different waterfowl and non-waterfowl species.[22] Due to the widespread failure to observe, report, investigate, and diagnose bird kills, reported kills represent only "the tip of the iceberg" of total actual kills.[23] The number and frequency of actual kills that have occurred cannot be precisely quantified.[24]

Taken together, the lab toxicity data, exposure evidence, risk-assessment model, and reported bird kills demonstrate that diazinon, when used in accordance with widespread and commonly recognized practice, generally poses a very serious risk to birds. Ciba-Geigy attempted to rebut this showing through five field studies focusing on diazinon use under its then-recently proposed 2+2 label.[25] Due to a variety of defects, however, these studies are insufficient to rebut Respondent's prima facie case on risk. The two primary flaws are (1) the failure to account adequately for off-site mortality[26]; and (2) the small number of studies, which undermines any conclusion that use under the 2+2 label would materially reduce adverse effects.[27] These two overarching deficiencies were exacerbated by additional problems associated with each of the field studies individually.[28]

In addition to its field studies, Ciba-Geigy offered supporting testimony from several avian experts. Their collective opinion shows that diazinon use under the 2+2 label would probably not adversely affect overall bird populations, but it does not rebut Respondent's prima facie case of a general risk of regularly repeated bird kills.[29]

On the benefits side of the equation, there are effective, less toxic alternatives to diazinon, and cancellation would result in only a negligible cost increase for golf courses and sod farms.[30] The record does not support Ciba-Geigy's contention that other benefits of continued diazinon use would include continued enhancement of price competition, avoidance of significant turf damage or pest resistance, or significant comparative safety to humans or wildlife.[31]

This brief review of the record thus reveals that: (1) Respondent presented a strong prima facie case of a widespread and continuous risk to a wide variety of bird species; (2) Ciba Geigy failed to rebut this case or to show that avian risk under the 2+2 label would be low; and (3) the benefits of continued use would be minimal. As noted above, the

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[17] For a four-pound application rate, time to LD_{50} for mallards ranges from 15 to 24 minutes, and for Canada geese from 25 to 40 minutes. At a two-pound rate, time to LD_{50} for mallards ranges from 30 to 47 minutes, and for Canada geese from 50 to 80 minutes. 53 Fed. Reg. at 11123 (col. 3). Despite certain criticisms leveled by witnesses for Ciba-Geigy, the risk assessment model was favorably peer-reviewed by scientists inside and outside EPA, and both the ALJ and the Agency found the model to be a reliable and valid indicator of the risk posed by diazinon to grazing waterfowl. Id. at 11123-24.

[18] 53 Fed. Reg. at 11122-23; Initial Decision at 25-26; EPA W-3 (pp.7-9). The term "waterfowl" generally refers to all species of ducks, geese, and swans, and sometimes to coots. See EPA W-3 (p.2). Geese, swans, and dabbling ducks are known to use golf courses, sod farms, parks, and similar grassland environments for feeding. Id. at 3.

[19] See, e.g, 53 Fed. Reg. at 11123; EPA W-3 (pp. 7-9, 13); RX 244; TR 289-90, 3391.

[20] 53 Fed. Reg. at 11123 (col. 1); Initial Decision at 17, 24 25; EPA W-3 (p. 4); EPA W-13 (p. 25); EPA W-22 (p. 14). Songbirds exposed to diazinon include bluejays, robins, common grackles, red-winged blackbirds, brown-headed cowbirds, house sparrows, and magpies. See EPA W-3 (p. 4). These and other songbird species feed on seeds, invertebrates, and insects found on golf courses and sod farms.

[21] 53 Fed. Reg. at 11124 (Section III.E).

[22] See EPA W-5 (pp. 5-6, 15-17).

[23] 53 Fed. Reg. at 11124 (col. 2) (citing TR 1514); see also EPA W-5 (pp. 13-14); TR 677.

[24] Due to the nature of the factors that affect the relationship between actual and reported kills, this relationship is subject to only adjectival characterization (e.g., "tip of the iceberg"). Ciba-Geigy expert Dr. Klem applied a factor of 100 to the 1,000 reported bird mortalities in 1972 to provide an "extreme," worst-case estimate that diazinon as historically used resulted in 100,000 bird mortalities annually. CG Ex. 104 (pp. 8-10); TR 3785-86. Although this figure was derived for purposes of comparison to other causes of avian mortality and should be viewed as such, it provides a reasonable, worst-case upper bound on the number of annual diazinon-related bird kills.

[25] All five studies were "level-one" studies, i.e., screening studies to determine whether adverse effects would occur under the 2+2 label. Four were conducted on golf courses and focused on waterfowl. The fifth study was conducted on home and commercial lawn sites and focused on nonwaterfowl species. 53 Fed. Reg. at 11124 (col. 3).

[26] 53 Fed. Reg. at 11125 (col. 1). In a recently conducted study using radiotelemetry, birds exposed to organophosphates like diazinon left the exposure site to die elsewhere. Id. (citing EPA W-20 (p. 9)); cf. CG Ex. 125 (p. 46).

[27] To show the absence of an adverse effect to twenty percent of an exposed population, at least fourteen studies are recommended to obtain a reasonable level of statistical confidence. EPA W-19 (pp. 14-15). Where the studies involve worst-case scenarios, as few as eight might be sufficient. Id. These figures are set forth in a 1986 draft Guidance Document (CG Ex. 1B (pp. 13-16)), which was reviewed by EPA's FIFRA Science Advisory Panel (CG Ex. 1A). Here, there were only four studies that focused on waterfowl and only a single study that focused on non-waterfowl species. As noted in the 1988 decision, it might have been difficult to complete an adequate number of studies relating to the 2+2 label prior to trial, but Ciba-Geigy bears the ultimate burden of persuasion, and the lack of field experience under its 2+2 label cuts against its efforts to vindicate that proposal.

[28] See 53 Fed. Reg. at 11125 n.35; EPA W-12; EPA W-20 (pp. 10-12). Ciba-Geigy's own expert, Dr. Louis Best, testified that "some" of the limitations of the studies included inadequate search efficiency trials, incomplete carcass removal experiments, lack of contemporary untreated controls, and "unreplicated treatments thus limiting the statistical inferences that can be drawn from the study." CG Ex. 125 (pp. 37-38). Due to these and other defects in the field studies, Dr. Best could make only a single definitive finding supporting Ciba-Geigy's case, namely that "in general" mortality to Canada geese and mallards would be "minor" under the 2+2 label. Id. (p. 38). Even this narrow conclusion of "minor" mortality — limited to only two of the 200 bird species that feed on golf courses (TR 1102) — appears to refer not to individual mallards and Canada geese, but instead to their populations, which was his primary concern. CG Ex. 125 (pp. 34, 47); TR 4359-60, 4424, 4466-67, 4470. Dr. Best's only other definitive finding was that diazinon poses an unacceptable risk to exposed wigeon at any effective application rate. Id. at 38. His other findings were less than definitive and of marginal significance. CG Ex. 125 (pp. 38-39). Respondent's experts were considerably less generous in their evaluation of the field studies. See, e.g., EPA W-12; EPA W-20 (pp. 10-12).

[29] See 53 Fed. Reg. at 11125-26. For several reasons, little weight can be give to the policy judgment offered by Ciba-Geigy's experts that the avian risk under the 2+2 label would be reasonable or acceptable. First, the primary focus of Ciba Geigy's experts was on risk to bird populations, not individual birds. See 53 Fed. Reg. at 11125 n. 38. Second, Ciba-Geigy's experts were evidently unfamiliar with the respective burdens of production and persuasion under FIFRA, and some of them proposed that diazinon be used under the 2+2 label until sufficient testing could be conducted to determine whether it is a viable alternative. See, e.g., CG Ex. 125 (pp. 33-34, 47). Because the program established a prima facie case for cancellation, however, it is Ciba-Geigy's burden to demonstrate the viability of any alternative proposal before it will be accepted. Third, their conclusion that the avian risk posed by the 2+2 label is "reasonable" fails to reflect a balancing of the risks against any benefits of continued diazinon use as required by FIFRA.

[30] 53 Fed. Reg. at 11126 (col. 3); Initial Decision at 71-74; EPA W-16 (p. 17 & Table 20); EPA W-17 (p. 17).

[31] 53 Fed. Reg. at 11126-30.

number and frequency of actual bird kills that have occurred, or that could be expected in the future, cannot be precisely quantified. Nonetheless, continued diazinon use under historical labels and the 2+2 proposal would generally pose a serious risk of regularly repeated bird kills, a risk that the Agency unquestionably views as unreasonable in light of the safer alternatives to diazinon for effective turf pest control, the negligible benefits of continued diazinon use, and the absence of any economic dislocations that would attend cancellation.

B. Ciba-Geigy's Most Recently Proposed Label Amendments

As discussed above, diazinon as historically used has resulted in a disturbing, and sometimes shocking, record of bird mortalities, and generally poses a very serious, widespread avian risk, a risk that the Agency views as unreasonable in light of diazinon's limited benefits. While the Agency must consider regulatory alternatives to cancellation in such situations, a party defending the pesticide has the burden of showing that any proposed alternative will in fact satisfy the statutory standard for continued registration. This burden may be satisfied through expert testimony, field studies, and the like, but with the recognition that the burden might be particularly difficult to meet where the alternative proposal involves a wholesale label revision under which there is little (if any) application experience. The Agency will draw upon its expertise in evaluating any alternative proposal, but it will not accept regulatory alternatives based on speculation, or supported only by indirect evidentiary shreds, or where critical questions remain unanswered regarding compliance and enforcement.

With respect to Ciba-Geigy's previously proposed alternative to cancellation (the 2+2 label), the record shows that use thereunder would not pose a long-term, adverse effect on overall bird populations. Ciba-Geigy failed, however, to show by a preponderance of the evidence that the avian risk under the 2+2 label would be reduced to reasonable levels. As discussed in more detail below, its most recent proposals suffer from a similar, and perhaps even more pervasive and debilitating, failure of proof.

In contrast to earlier proposals to reduce application rates and require irrigation — which attempted to reduce diazinon's toxicity — Ciba-Geigy's most recent proposals are aimed at reducing exposure. In analyzing the new proposals, it must be kept in mind that Ciba-Geigy has made no specific showing of the economic benefits of continued diazinon use under these restrictions. Instead, it argues that its newest proposals would reduce avian risk to de minimis levels, and that therefore the benefits should be presumed to outweigh the risks. CG Bf. at 16. Each of the most recent proposals is analyzed separately in Sections II.B.1 through B.4 below, and then their cumulative impact is discussed in Section II.B.5.

The Seasonal Restriction. To protect migrating waterfowl, Ciba-Geigy proposes that diazinon use on golf courses and sod farms be allowed only during the late spring and summer months. Specifically, Ciba-Geigy proposes that diazinon be banned on golf courses and sod farms from September 1 to May 15 in specified northern states, and from October 1 to April 30 in southern states. This proposal is based on the principal migratory seasons for four kinds of waterfowl reported in a 1976 treatise entitled "Ducks, Geese and Swans in North America" by Frank C. Bellrose.[32]

Although limiting diazinon use to a four or five-month period might appear to be a rather significant restriction, this proposal would not dramatically alter historical use patterns. About 80 percent of diazinon applications have traditionally occurred from May through September. CG Ex. 125 (p. 46); TR 3657. Although Ciba-Geigy contends (Bf. at 8) that this proposal would provide "almost complete protection for migratory waterfowl," the record does not support this assertion. The Bellrose treatise indicates that in August up to 15 percent of certain migratory waterfowl populations are in several broad geographic areas of the United States[33], and that large numbers of migratory waterfowl remain in certain areas in May.[34]

The record also shows that migratory seasons can fluctuate significantly from year to year due to changes in temperature, food availability, and other factors.[35] Although additional protection could be provided by manipulating the specific dates of the seasonal restriction, diazinon residues can remain lethal long after application, with one reported kill occurring a full month after application at a relatively low rate.[36] Thus, diazinon applications within the proposed use period might well continue to pose lethal risk to waterfowl that subsequently migrate down from Canada. Moreover, the cited portions of the Bellrose treatise cover only four waterfowl species and thus provide little up-to-date guidance as to whether other migrating waterfowl would be substantially protected. Perhaps most importantly, the seasonal restriction would provide no protection to non-migrating or sedentary waterfowl. As Ciba-Geigy recognizes (Bf. at 8), sedentary waterfowl constitute a substantial portion of the waterfowl that forage on golf courses and sod farms.[37] Ciba-Geigy has identified no geographic area without significant numbers of waterfowl that would remain at risk during the summer months.[38]

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[32] See CG Bf. at 7; RXs 110, 112, 114, 115. Ciba-Geigy proposes (Reply at 8 n.4) to retain additional seasonal restrictions in certain locations to provide a few extra days of protection for migrating wigeon and Atlantic brant.

[33] For example, the Bellrose charts show that on September 1, the first day of the proposed ban in northern states, significant portions of the wigeon population are in the Upper Mississippi, the Northern Plains, and the Northwest Basin (RX 110), and significant portions of the mallard population are in the Great Lakes area, the Northern Plains, and the Western Plains (RX 112). These populations continue to decline through the autumn and winter months and thus presumably consist, at least in part, of waterfowl that subsequently migrate further south. Elsewhere, Bellrose states that wigeons begin to move south into adjacent states from their major Canadian breeding areas as early as mid August. RX 110 (p. 202).

[34] As of April 30, significant portions of the wigeon, Canada goose, and mallard populations exist in several broad regions listed on the Bellrose Charts. See RX 110, 112, 114. The cited portions of the record do not give population figures for these areas as of May 15, the last day of the proposed seasonal restriction in northern states. Bellrose indicates, however, that in the summer about 400,000 wigeons (13 percent of the population) remain in the contiguous United States to breed. RX 110 (p. 199). The mallard breeding range includes the northern one-third of the U.S. (RX 112 (p. 231), and certain Canada geese populations also remain in the continental U.S. during the summer to breed. See RX 114 (p. 152). Summertime waterfowl populations in the U.S. include many species. TR 282-85.

[35] Compare EPA W-13 (pp. 62-68) (migratory seasons can vary by "many months") with CG Ex. 125 (p. 31) ("bird migration may vary 2-3 weeks from year to year").

[36] See Initial Decision at 42 n.106.

[37] Non-migrating mallards and Canada geese are found across the country. TR 283-85. Of the 768 golf courses interviewed in a telephone survey conducted for Ciba-Geigy, 75 percent responded that they have waterfowl present at some time during the year (CG Ex. 95 (Table 003)), a figure that might underestimate the actual percentage due to the manner in which the survey was conducted. Of the golf courses with waterfowl, 58 percent (44 percent of the total) reported that waterfowl are "always" or "usually" present. Id. (Table 018).

[38] Many of the reported bird kills reflected in the record, including several large-scale kills, occurred during Ciba-Geigy's proposed use period. See, e.g., EPA W-5 (Appendix: No.3 (4 Canada geese, Ore. 8/86); No.5 (3 mallards, upstate N.Y. 5/19/86); No.9 (4 Canada geese, N.Y. 6/7/85); No.10 (3 Canada geese, Cal. 6/5/85); No.13 (68-70 mallards, Tex. 9/12/84); No.15 (2 mallards, Mich. 8/28/84); No.16 (12 mallards, Minn. 7/84 8/84); No.17 (6 Canada geese, Mich. 5/19/84); No.24 (28 Canada geese, Colo. 8/83); No.26 (11 mallards, Ky. 8/82); No.27 (4 Canada geese, 5 mallards, and 3 blackbirds, Mich. 7/82);

Continued

2. *The Water Restriction.* To provide additional protection to both migratory and non-migrating waterfowl present during its proposed use season, Ciba-Geigy proposes to prohibit diazinon use within 100 yards of any body of water. It argues that waterfowl "generally focus their feeding activity near ponds or other water sources." CG Bf. at 11. To support this contention, Ciba-Geigy quotes the following assertion from the testimony of Dr. Kenneth Abraham, a wildlife biologist called as a witness by Respondent:

> The presence of water areas is a key element, because waterfowl need open expanses of sheltered water for night roosts safe from predators and many grazers feed in close approximity to water. EPA W-3 (p. 9).

The quoted testimony, however, serves merely to support Dr. Abraham's more general conclusion that golf courses and sod farms are attractive feeding habitats for waterfowl within their respective flyways. Id. at 8-9. Nothing in this discussion shows that waterfowl feed only in those portions of a golf course or sod farm near water. Without reference to surface water location, Dr. Abraham testified elsewhere that grazing waterfowl are attracted to areas that are highly cultivated through mowing, fertilizing, and irrigation. Id. at 9-10. He nowhere suggests that his use of the phrase "in close proximity to water" can be reasonably quantified and translated into a 100-yard buffer zone. Elsewhere he describes certain feeding areas for brant as "in close proximity" to their historical habitats (EPA W-3 (p. 8)), a use that reflects the obvious fact that for birds, "in close proximity" can refer to a considerable distance. In fact, Dr. Abraham submitted exhibits indicating that certain waterfowl regularly make daily flights of up to 15 kilometers, and occasionally up to 30 kilometers, from roost to feeding area. RX 118 (p. 90). The minimum distance noted from roost to feeding areas for geese is "a few kilometers." Id. Certain mallards frequently fly 25 miles one way to cultivated feeding areas and at times up to 40 miles when the occasion demands. RX 112 (p. 243). Even urban mallards can make significant flights for a variety of reasons, including a desire to feed. RX 113 (p. 13, 14). Read in this context, Dr. Abraham's assertion that waterfowl feed "in close proximity" to water cannot be used to show that a 100-yard buffer zone around water would provide any appreciable protection.

In its reply brief (p. 12), Ciba-Geigy relies on the testimony of Mark Jaber as additional support for its water restriction. The cited page, however, demonstrates only that on a single golf course in Connecticut, the "principal areas" of geese activity were near two ponds. TR 2508. Jaber's report also shows that portions of these "principal" activity areas were further than 100 yards away from either pond. See CG Ex. 45 (Figure 3). Indeed, another Ciba-Geigy expert, Dr. Klem, stated that waterfowl move toward water at night for protection from predators, but that during daytime feeding "they can skip around on the golf course throughout the day." TR 3778.[39] Jaber's testimony is inadequate to show that a 100-yard buffer zone around surface water would reduce avian risk on a general basis.

Ciba-Geigy evidently recognizes the deficiencies in its proposed water restriction, stating that it "is not intended to stand by itself." CG Reply at 12. It also acknowledges that its seasonal ban would not protect non-migratory waterfowl or migratory waterfowl present outside the period of the ban. In view of these limitations, the seasonal ban and the water restriction together would not reduce avian risk to de minimis or reasonable levels. Diazinon use under the 2+2 proposal, even with these two restrictions, would generally pose an unreasonable risk to waterfowl. It is thus fair to say that the key label revision suggested by Ciba-Geigy to protect waterfowl is its proposed feeding-area restriction.

3. *The Feeding-Area Restriction.* Ciba-Geigy proposes that diazinon not be applied "within 100 yards of any turf area (including any golf course fairway, rough, tee, or green) where waterfowl feed or loaf." This critical proposal rests upon two assumptions: (1) that waterfowl do not use all areas of a golf course or sod farm, but instead establish feeding patterns in particular locations on these sites; and (2) that turf managers are familiar enough with such established patterns that they could and would avoid treating turf areas that might be used by waterfowl for feeding. Neither proposition withstands scrutiny.

Waterfowl feeding ecology: Ciba-Geigy again relies on testimony from Respondent's witness, Dr. Abraham, to argue that waterfowl develop patterns of feeding locations within a season. CG Bf. at 9 (citing EPA W-3 (pp. 11-12)). Although some waterfowl do establish feeding patterns, Dr. Abraham made clear that any such patterns are subject to shifts and modifications depending on food abundance, weather, tidal rhythms, time of day, and other factors. See EPA W-3 (pp. 9-10); see also EPA W-12 (p. 5) ("Birds can be quite variable in where they fly and feed."). Fertilization and other turf cultivation activities common to golf courses and sod farms also effect feeding patterns by drawing waterfowl to recently cultivated areas.[40] The central thrust of Dr. Abraham's testimony is that the unique character istics of avian feeding ecology "make it difficult to dissuade [waterfowl] from using areas of chemical application." EPA W-3 (p. 11). Nowhere does he suggest that specific portions of a golf course or sod farm are unlikely to be used by waterfowl and thus may be safely treated with diazinon.

Ciba-Geigy relies on testimony by Mark Jaber, discussed above, that certain fairways observed during the Connecticut study were the "principal" areas of goose activity on that course. TR 2508-09. As noted by Respondent, however, this field study undercuts the argument that there are "safe" areas for diazinon treatment. The average number of geese in the "principal" activity area dropped dramatically from more than 220 during the site-selection period (TR 2509), to a daily average of 23 during the study period. CG Ex. 45 (p. 20). On five of the 21 study days, the daily number of geese in this "principal" activity area was zero. Id. It is unknown why these numbers fluctuated so widely, but it shows that the geese might well have been using other portions of the course for feeding. Ciba-Geigy insists (Reply at 5) that there is no record evidence of waterfowl feeding outside the treated areas, but Jaber's investigation made no systematic observations of untreated portions of the golf course. TR 2502.

No.28 (Canada goose, Va. 8/81); No.31 (81 Canada geese, N.Y. 8/27/80); No.33 (10 Canada geese, N.Y. 8/79); No.34 (25 Canada geese, Mich. 6/79); No.37 (4 mallards, Ky. 9/77); No.38 (Canada geese, N.J. 7/77); No.49 (35 Canada geese, N.Y. 6/74); No.50 (31 Canada geese, Conn. 8/73)). Although Ciba-Geigy might argue that some of these kills would have been prevented by other portions of its proposed label, they all bear upon the efficacy of its proposed seasonal restriction in reducing exposure.

[39] Ciba-Geigy argues (Reply Bf. at 13) that the size of the buffer zone need not be based on record evidence, but may instead reflect a common sense judgment. In this regard, it refers to a 100-foot buffer zone around a golf course pond proposed by a representative of the U.S. Fish and Wildlife Service to protect the San Francisco garter snake, an endangered species potentially threatened by diazinon. This analogy is strained, if not absurd. Garter snakes occupy and feed in the fringe area around the edge of the pond. TR 1656. The 100-foot buffer zone reflects the Service's professional judgment as to the protection necessary for this relatively immobile creature (id.), a judgment that coincides with common sense. The record regarding waterfowl mobility and feeding ecology undercuts any suggestion that a similar 100-yard buffer zone for birds would provide any significant protection.

[40] See TR 1233-34 (fertilization of certain turf areas had the "very remarkable effect" of drawing birds for feeding); EPA W-3 (pp. 9-10) (turf cultivation attracts waterfowl for feeding).

Because geese are known to spend a large proportion of each day feeding[41] it is fair to assume that the geese were feeding somewhere on the days they were absent from the "principal" activity area. A crucial component of Ciba-Geigy's reliance on this study is thus missing, namely evidence that geese were not feeding on other portions of the course. Jaber had no reason to compile such data because the purpose of his study was to observe geese feeding on treated turf. TR 2502. The absence of evidence regarding whether there was feeding on untreated areas — now of critical relevance to Ciba-Geigy's most recent proposals — underscores the difficulties in litigating the merits of one proposal and then defending a very different set of restrictions after trial.

Ciba-Geigy also relies on testimony by Lindsey Taliaferro, who conducted a field study on a golf course in Virginia to examine goose exposure under the 2+2 label. CG Bf. at 9 (citing TR 2833, 2903-06). Based on discussions with golf course personnel, he specified certain areas where geese "historically" congregate. TR 2833. Again, however, his primary aim was to observe goose exposure to treated turf, not to identify "safe" areas for diazinon application. He made only one reference to areas where geese might not go: "heavily wooded areas that are narrow," which might reduce their ability to escape from predators. TR 2905. His testimony, if credited, might theoretically support a label restricting diazinon use to "narrow, heavily wooded areas" (which would be fraught with compliance- and enforcement-related deficiencies), but it does not show that waterfowl feed exclusively within identifiable areas.[42]

Turf manager compliance: Assuming arguendo that waterfowl limit their feeding to specific portions of golf courses and sod farms, the second key assumption that underlies the feeding-area restriction — that turf managers can identify and avoid treating such feeding areas — is even more tenuous. Ciba-Geigy recognizes that "there is only limited evidence" in the record supporting this proposition, and that additional evidence would be "essential" to the Agency's ability to determine the sufficiency of the feeding-area restriction.[43] It is Ciba Geigy, however, that bears the risk of non-persuasion regarding the feasibility of its proposals. Ciba-Geigy had every opportunity to defend any label it chose to propose at trial, and its failure to submit evidence "essential" to its current proposal plainly undercuts its case. Its reliance on evidence that birds sometimes leave indications of their presence, e.g., feathers and droppings (TR 2509), is wholly inadequate to establish that turf managers can identify and avoid areas that might be used by waterfowl. Although turf on golf courses and sod farms is regularly maintained and cultivated,[44] and although turf managers undoubtedly observe waterfowl on occasion during such operations, the record fails to show that turf managers are capable of identifying and avoiding, with any degree of confidence or reliability, areas used by waterfowl.[45]

4. *The Ban of Granular Diazinon*. To reduce risk to songbirds, Ciba-Geigy proposes that the Agency prohibit the use of diazinon's granular formulation on golf courses and sod farms. Ciba-Geigy recognizes that songbirds are exposed to diazinon residues through invertebrates, insects, puddles, and seeds, but suggests (Bf. at 3, 12) that the only serious risk to songbirds identified by the Agency's 1988 Decision is from direct ingestion of diazinon granules.

Ciba-Geigy misreads the 1988 Decision. In the ultimate risk findings in that Decision, the Agency stressed the risk posed to songbirds by diazinon granules, but this discussion assumed arguendo that Ciba-Geigy's field studies were "perfectly sound" and "flawless." 53 Fed. Reg. at 11126 (cols. 1 and 2). In other words, assuming for the sake of argument that the field studies demonstrate that the 2+2 proposal would reduce the overall avian risk, the Agency concluded that a serious risk of songbird kills from granule ingestion would still remain.[46] The field studies, however, were far from flawless. Due to their deficiencies, the Agency found that the risk to individual birds under the 2+2 label would still be widespread and continuous.[47] This determination was

[41] Dr. Abraham testified that waterfowl have simple digestive systems and quickly process large quantities of food. EPA W-3 (pp. 9-10). Some consume more than 40 percent of their body weight in fresh grass every day. Id. The proportion of time spent feeding during daylight hours for certain waterfowl ranges from 74 to 90 percent. Id.

[42] Ironically, at trial the parties' respective positions on this issue of waterfowl feeding ecology appear to be almost the reverse of where they now stand. To establish the possibility of repeated exposure to a treated area, Respondent attempted to establish through Ciba-Geigy expert Dr. Dickson that waterfowl tend to feed in certain areas on a regular basis. TR 4066-68. Although Dr. Dickson agreed with this as a general proposition, he made the obvious point that "birds in the wild are not penned into a particular area," and he testified that the probability that birds "would not browse around the course * * * is pretty low." TR 4066. Although waterfowl tend to return to a particular area on a course, and although they tend to use bodies of water as activity centers, Dr. Dickson made clear that birds do roam and "will not tend to stay in one particular area constantly." TR 4068. This testimony suggests that while the chances of repeated exposure to a particular treated area might be low, at the same time there appears to be no "safe" area on the course that could be treated with diazinon without potential for exposure. Because Ciba-Geigy chose not to propose its feeding-area restriction prior to trial, no witness directly testified as to whether such a restriction would significantly reduce exposure due to waterfowl feeding patterns. Given the limited and somewhat confused state of the record on this issue, there is insufficient evidence to conclude that the feeding-area restriction would sufficiently protect waterfowl that use golf courses and sod farms for feeding.

[43] Motion for Reconsideration of Order Denying Referral to ALJ to Take Further Evidence, at 4 (Aug. 21, 1989).

[44] EPA W-14 (pp. 15-16).

[45] The feeding-area restriction might well be meaningless at a new golf course or sod farm, or new portions of existing sites. In certain situations, turf managers would also lack economic incentive to adhere to the feeding-area restriction, particularly where an area in need of treatment becomes subject to waterfowl feeding after diazinon is purchased, or after the first of the two treatments under the 2+2 label. The record also demonstrates that waterfowl can sometimes be a nuisance to turf managers (see CG Ex. 63 (p. 232)), a factor that further undercuts the Agency's ability to rely on turf managers to make largely discretionary determinations regarding waterfowl feeding patterns.

To strengthen its proposed feeding-area restriction, Ciba Geigy suggests (Bf. at 10) that diazinon use be prohibited where the applicator is uncertain whether an area is used by waterfowl for feeding or loafing. Essentially, this proposal would allow for use only where the applicator is certain that the area to be treated has not been used by waterfowl. This approach raises serious enforcement concerns, however, such as the difficulty in establishing lack of subjective certitude by an alleged violator. Moreover, as discussed above the record fails to show that there are any turf areas at golf courses and sod farms for which an applicator could be certain that they are not subject to waterfowl use.

In its reply brief (p. 14), Ciba-Geigy proposes for the first time that diazinon be prohibited on golf courses and sod farms having resident waterfowl. It is not clear whether "resident waterfowl" refers only to non-migrating waterfowl, or whether it would include migrating waterfowl that spend the summer breeding period in the United States. It is also unclear whether it includes only waterfowl that actually roost or nest at the site, or extends to waterfowl that roost elsewhere but use the site for feeding. Apart from these ambiguities, and apart from concerns regarding surprise and lack of notice to Respondent, Ciba-Geigy fails altogether to cite record evidence or to otherwise show that applicators could adhere to the proposal, or that it could be adequately enforced, or that it would effectively reduce avian risk to reasonable levels. Although the Agency's expertise, as well as common sense, may be employed to supplement the record in analyzing regulatory alternatives, the "resident-waterfowl" restriction presents too many issues regarding compliance, enforcement, and efficacy to allow for confident reliance on this proposal in the absence of record support.

[46] Specifically, the Agency determined that "[b]ecause only a few granules might cause mortality, the proposed 2+2 application rate would not significantly reduce this risk." 53 Fed. Reg. at 11126 (col. 2).

[47] At one point, the Agency stated that avian risk "might well" remain widespread and continuous under the 2+2 label (53 Fed. Reg. at 11126 (col. 1)), but it concluded its ultimate risk findings by stating "that Ciba-Geigy has failed to show that the avian

Continued

made without regard to specific diazinon formulations and essentially reaffirmed the vast bulk of Respondent's prima facie case of risk to both waterfowl and non-waterfowl species from all formulations. A re-examination of the record bears out this determination with respect to songbird risk from liquid diazinon.

The Agency previously found, and it is virtually undisputed, that songbirds would continue to be exposed to non-granular formulations of diazinon through residues on seeds, invertebrates such as earthworms, and in puddles. Id. at 11123 (col. 1). The question then becomes whether such exposure could be lethal. As for residues on seeds, Ciba-Geigy correctly notes (Bf. at 13) that Respondent itself has determined such residues would be at non-lethal levels.[48] The record shows, however, that other diazinon residues from the liquid formulation can be lethal to non-waterfowl species. For example, a field study commissioned by Ciba-Geigy resulted in earthworm residues of 15.8 ppm. Dr. Margaret Rostker, an EPA wildlife biologist, testified unequivocally that these levels would pose a lethal risk to small birds such as robins. EPA W-13 (p. 24). Pierre Mineau, a pesticide evaluator with the Canadian Wildlife Service, supported this conclusion, stating that residues of 15.8 ppm in earthworms are "high enough to be of concern." EPA W-4 (p. 27). Ciba-Geigy argues (Bf. at 14) that Dr. Rostker offered no exposure model for songbirds (as she did with waterfowl), but she was not required to do so. As an expert witness, she was entitled simply to state her opinion on the matter. It was Ciba-Geigy's responsibility to question her as to the data underlying this opinion, but it evidently failed to do so.

Reported kills of non-waterfowl species associated with spray diazinon bear out these concerns. See EPA W-5 (Appendix: Nos. 14, 27, 43). Although Ciba-Geigy describes these incidents as "questionable and essentially unconfirmed" (Bf. at 15), the record supports the ALJ's finding that for these, and most other reported incidents, diazinon "was the most likely cause" of death.[49] Ciba-Geigy (Bf. at 15-16) also relies on its field studies as evidence that non-granular diazinon poses no significant risk to songbirds, but only one of its five studies focused on songbirds, and this was so flawed as to have "very little to contribute to the assessment of the risks of diazinon."EPA W-12 (p. 24); see also id (pp. 25-26). Some songbird exposure occurred in the other studies[50], but even Ciba-Geigy's experts could draw only tentative conclusions relating to songbird populations.[51]

Dr. Best, a Professor of Avian Ecology, testified:

> With the exception of one field study and one survey, little attention has been paid to the effects of diazinon use on songbirds and other non-waterfowl species. Most studies, and their protocols, have focused on waterfowl species. Nongame birds also use golf courses regularly, and the extent of diazinon-related mortality that these smaller, less conspicuous birds have suffered has not been adequately assessed.

CG Ex. 125 at 44. Although Dr. Best addressed the specific risk to songbirds posed by granular diazinon, his concern was not limited to this formulation. Given the limitations that undermine Ciba-Geigy's field studies, Dr. Best could conclude only that "mortality of non-waterfowl birds *may* be low" under the 2+2 label (id. at 38 (emphasis added)), a speculative assertion at best. It is unnecessary in this case to decide whether the risk posed to non-waterfowl by liquid diazinon standing alone is unreasonable, but that risk is certainly cognizable and should be considered in determining whether the overall avian risk under the newly proposed restrictions would be de minimis.

5. *Conclusions Regarding the Most Recent Proposals.* As noted above (see pp. 8-9 & n. 10), Ciba-Geigy has the burden of establishing the viability of its most recent label proposals. The record does not support Ciba-Geigy's contention that its most recent proposals would reduce avian risk to de minimis or otherwise reasonable levels. In a case based upon ecological hazard, the risk analysis necessarily differs dramatically from cases involving human health risks. On the other hand, the Agency's concern for wildlife is not limited to long-term adverse effects on populations. Absent some countervailing benefit of continued use, as a matter of policy an unnecessary risk of regularly repeated bird kills will not be tolerated.

The number of bird mortalities resulting from continued diazinon use at golf courses and sod farms cannot be precisely predicted, just as the exact number of past kills is unknown (see note 24, above). It is not, however, reasonable to conclude that continued use would result in only a few bird kills per year. Although the most recent label proposals would undoubtedly reduce avian risk below that posed by diazinon as historically used, both waterfowl and songbirds would continue to be generally exposed to lethal levels of diazinon residues, and individual kills would likely be repeated on a fairly consistent basis.

Indeed, the serious risk of even large-scale waterfowl kills would continue to

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risk would be anything other than widespread and continuous due to the defects in its field studies." Id. (col. 2).

[48] See CG Ex. 119 (pp. II-5 to II-8) (Diazinon Support Document).

[49] Initial Decision at 41. The ALJ gave no credit to three other reported kills for which diagnoses and cholinesterase results were missing. Id. at 41 n.103. Without deciding the propriety of discrediting these incidents, it is abundantly clear that the ALJ properly credited the three incidents of songbird kills by non-granular diazinon. Incident 14, a kill of 24 cowbirds after diazinon application, was confirmed by residues in the birds' gizzards, intestines, livers, and hearts. Samples were tested for residues of other pesticides, but only diazinon residues were reported. EPA W-5 (Appendix: No.14). Although the diazinon residues were relatively low, there is no evidence that the carcasses were discovered and frozen soon after the kill, and the reduced diazinon levels can thus be explained by continued dissipation after the kill. See EPA W-5 (Appendix: No. 35).

Incident 27 involved a kill of four Canada geese, 5 mallards, and 3 red-winged blackbirds found "shortly" after diazinon treatment. EPA W-5 (Appendix: No.27). Ciba-Geigy argues (Bf. at 14) that no residues or cholinesterase inhibition were reported for the blackbirds. It fails to note, however, that diazinon residues were reported in the esophagus contents of the geese and mallards. The presence of nine dead waterfowl whose deaths were confirmed as diazinon-related, together with the timing of the application, establishes by a preponderance that the blackbirds were also killed by diazinon.

In Incident 43, 15 sparrows were found on a lawn just hours after diazinon application. EPA W-5 (Appendix: No.43). Some distressed sparrows were euthanized, and the incident was reported to the Agency as a diazinon-related mortality. Again, the preponderance of the evidence points to diazinon as the cause of mortality.

[50] One or two dead passerines were found in four of the five field studies conducted by Ciba-Geigy. See EPA W-12; CG Ex. 125 (Appendix). Although none of these mortalities was confirmed as diazinon-related, diazinon could not be ruled out conclusively as the cause of death. Id. In the fifth field study, abnormal behavior, possibly caused by diazinon intoxication, was noted in two robins. Id.

[51] For example, Dr. Ronald Kendall predicted that there might be "some" but not "widespread" mortality among passerines (TR 1072-74), a conclusion not specifically limited to the granular formulation. When pressed on cross-examination, Dr. Kendall stated that it is inappropriate to draw conclusions regarding any bird species which were not observed during his studies to be feeding on treated turf. TR 1136-37; see also TR 1184 (small number of robins observed in field study was "getting to a point where you might have too few observations to make any kind of useful conclusion."); TR 1078 ("We didn't focus the study on [passerines]. Therefore, I can't say that we wouldn't have any mortality."). Mr. Jaber stated that the carcass searches in the Connecticut field study were sufficient to detect only "an extreme number" of songbird kills, i.e., one with a population effect — but he was much less confident that they would have detected a smaller number of passerine deaths. TR 2557. He recommended additional research regarding diazinon's risk to songbirds. TR 2472.

loom large. The avian risk in this case, even under the most recent label proposals, is far from de minimis, and it cannot be presumed that the benefits of continued diazinon use would outweigh that risk as Ciba-Geigy contends.

Ciba-Geigy's evidentiary failure should not be surprising. From its opening statement[52], to its expert testimony[53], through its Fifth Circuit appeal[54], the central thesis of Ciba Geigy's case has been that cancellation is warranted only if diazinon poses an unreasonable effect on bird populations, a position inconsistent with this Agency's commitment to eliminate unreasonable risks generally posed to individual birds, regardless of the effect on bird populations.[55] Although the proposed seasonal restriction and granular ban are fairly straightforward, the water and feeding-area restrictions are far removed from the issues litigated at the hearing. Not a single witness was called to defend these proposals, and the trial transcript (5700+ pages) contains no testimony directly and specifically discussing their feasibility. Simply put, Ciba Geigy never made any serious effort at trial to demonstrate that unreasonable risks to individual birds could be eliminated by reducing exposure. Although alternatives to cancellation must be considered under FIFRA, where (as here) the Agency has determined that historical, registered use patterns commonly pose an unreasonable risk, caution must be exercised to ensure that use under a proposed alternative label would not also commonly pose an unreasonable risk. It would not be responsible stewardship of our natural resources to adopt and rely on restrictions, such as those proposed here, that are based on unfocused, fragmentary scraps of evidence, much of it from witnesses who, based on the overall thrust of their testimony, would have probably opposed such proposals had they been given an opportunity to do so.[56]

In its opening statement at trial, Respondent described Ciba-Geigy's various label proposals as "an everchanging kaleidoscope of regulatory fixes." TR 15. This kaleidoscopic label has since undergone several additional transformations.[57] Ciba-Geigy would undoubtedly argue that these many restrictions simply exhibit its willingness to reduce risk, but they are also a function of three basic facts: that diazinon, even at the 2+2 rate, kills birds; that many birds at risk are present across the country at all times of the year; and that birds are highly mobile creatures, rendering futile any effort to eliminate exposure. Indeed, it is no exaggeration to say that virtually every time diazinon is used on golf courses and sod farms, there is a risk of avian exposure to toxic residues. Given the mobility and virtual ubiquity of waterfowl and non-waterfowl species, as well as the absence of sufficient record evidence to support the efficacy of the new proposals, the only way to preclude diazinon from generally posing an unreasonable avian risk is to prohibit its use on golf courses and sod farms altogether.[58]

For the reasons set forth above and in Respondent's submissions on remand, diazinon use on golf courses and sod farms poses an unreasonable risk with considerable frequency, and Ciba Geigy has failed to establish the adequacy of any proposal short of a complete prohibition of diazinon use at these sites.

FINAL ORDER

1. The registrations at issue in this proceeding are hereby cancelled, unless they are already amended as described below or unless the registrant submits a timely application to amend the registration to prohibit use on golf courses and sod farms. To be timely, an application must be submitted within 30 days of receipt of this Order or its publication in the Federal Register, whichever is later. The application shall propose to amend the registration of the product to include the following statement on top of the front panel of the label (or on supplemental labeling):

This product must not be used on golf courses and sod farms.

2. The Assistant Administrator for Pesticides and Toxic Substances may require or disallow such other language as she considers appropriate. She is directed to monitor efforts to comply with this Order and, if appropriate, to suggest modifications relating to the treatment of existing stocks.

3. Distribution and sale of any diazinon product at issue in this proceeding is prohibited unless the product bears a new label (or supplemental labeling) approved by the Assistant Administrator for Pesticides and Toxic Substances.

4. Use of diazinon products on golf courses or sod farms is prohibited.

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[52] See TR 19 ("The question presented is whether, under the normal conditions of use of diazinon on golf courses and sod farms, it will have a significant effect on bird populations."); TR 20; (same); TR 22 (same).

[53] See 53 Fed. Reg. at 11125 n. 38.

[54] See 874 F.2d at 280 ("Ciba-Geigy asserts that the Administrator cannot find that the risk of adverse effects of diazinon on birds is unreasonable unless use of the chemical not only kills birds but also endangers overall population.").

[55] Although our society tolerates the hunting of waterfowl, hunters have been largely responsible for federal and state programs to restore and preserve wetlands for waterfowl (RX 109 (p. 44)), one of the most important factors in waterfowl conservation. Id. at 42. In contrast, diazinon use plays no similarly beneficial role. (Any turf damage prevented by diazinon can be prevented by using less toxic, equally effective alternatives.) Hunting, together with other significant human sources of avian mortality — window and vehicle collisions (CG Ex. 104 (p. 8)) — involve a risk-benefit balance so different from that at issue here as to provide no meaningful comparison.

[56] Ciba-Geigy suggests that it could not have anticipated the specific concerns discussed in the Agency's 1988 Decision, and that the Fifth Circuit's remand provided its first chance to do so. Although that remand has given Ciba-Geigy a unique opportunity to propose additional label refinements, it does not excuse any failure at trial to offer evidentiary support for such refinements. The basic concerns addressed by the water and feeding-area restrictions — risk to waterfowl exposed to treated turf — have been at the core of this proceeding since its inception. Ciba-Geigy could have readily advocated and defended its current proposals at the hearing, but it chose instead to defend the less restrictive 2+2 label. This strategic choice does not require the Agency to reopen the hearing for evidence on Ciba-Geigy's most recent proposals simply because their efficacy is not supported by the record. See note 8, supra.

[57] Ciba-Geigy itself has at times been confused as to which restrictions protect which birds. In its brief (p. 8), Ciba-Geigy asserts that its seasonal restriction is adequate, despite variations in migration seasons, because migratory waterfowl that are present during diazinon use will be protected by the feeding area ban. In its reply brief (p. 6), however, it argues that the feeding-area ban is adequate, despite unpredictability in feeding patterns, because such unpredictability relates solely to migratory birds. One is left to wonder exactly how migratory birds present during the proposed use season would be protected.

[58] It is unnecessary in this case to determine the exact point at which an avian risk posed by a pesticide becomes de minimis, or so negligible that any benefits of continued use should be presumed to outweigh the risk. Here, the record shows that diazinon use on golf courses and sod farms generally poses an unreasonable risk, and this risk will undoubtedly increase in magnitude, scope, and frequency as natural feeding habitats continue to dwindle and waterfowl use of golf courses and sod farms thereby increases. Ciba-Geigy's most recent proposals, aimed at reducing exposure, are based on assumptions that are either unsupported or contradicted by the record. If in the future Ciba-Geigy develops substantial new evidence to support its proposals that meets the requirements of 40 CFR Part 164, Subpart D, it may seek modification of today's Order.

5. Any pending applications for diazinon products for use on golf courses and sod farms are hereby denied.

6. This Order applies to all diazinon products covered by the Notice of Intent to Cancel, 51 Fed. Reg. 35034 (October 1, 1986), as amended by 52 Fed. Reg. 5656 (February 25, 1987).

7. This Order shall become effective at the date and time it is filed with the Hearing Clerk.

Dated: July 12, 1990.

William K. Reilly
Administrator

[FR Doc. 90–17737 Filed 7–30–90; 8:45 am]
BILLING CODE 6560-50-F

federal register

Tuesday
July 31, 1990

Part IV

Department of Education

Proposed Funding Priorities—Fiscal Year 1991; Notice

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services

Proposed Funding Priorities—Fiscal Year 1991

AGENCY: Department of Education.

ACTION: Notice of proposed funding priorities.

SUMMARY: The Secretary proposes funding priorities for fiscal year 1991 for the following:

Handicapped Children's Early Education Program, 84.024
Educational Media Research, Production, Distribution, and Training Program, 84.026
Training Personnel for the Education of the Handicapped, 84.029
Postsecondary Education Programs for Handicapped Persons, 84.078
Program for Severely Handicapped Children, 84.086
Secondary Education and Transitional Services for Handicapped Youth Program, 84.158

These six programs are administered by the Office of Special Education Programs. To ensure wide and effective use of program funds, the Secretary proposes to select from among these program priorities in order to fund the areas of greatest need for fiscal year 1991. A separate competition will be established for each priority that is selected.

The Secretary has determined that it is more appropriate to use the term "children with disabilities" in place of "handicapped children." The term "children with disabilities" is commonly accepted. The Secretary anticipates that this term will replace the term "handicapped children" when the Education of the Handicapped Act (EHA) is reauthorized this year. The term "children with disabilities" is to be read as having the same meaning as "handicapped children" which is defined in section 602 of the EHA.

DATES: Comments must be received on or before August 30, 1990.

ADDRESSES: Comments should be addressed to the following individuals at the Office of Special Education Programs, Department of Education, 400 Maryland Avenue SW. (Switzer Building, Room 3095–M/S 2313), Washington, DC 20202. Joseph Clair for 84.024, 84.026, 84.078, 84.086, and 84.158; and Angele Thomas for 84.029.

FOR FURTHER INFORMATION CONTACT: Individuals listed above at the following phone numbers : Joseph Clair, (202) 732–4503; and Angele Thomas, (202) 732–1110

SUPPLEMENTARY INFORMATION: This notice represents a consolidated notice of fiscal year (FY) 1991 proposed priorities for certain discretionary grant programs administered by the Office of Special Education Programs. The legislation authorizing these programs is currently being revised by Congress. These revisions may take effect for FY 1991 and may require changes in these priorities. Further, no funds have yet been appropriated for FY 1991. Publication of these priorities does not preclude the Secretary from changing these priorities, or publishing additional priorities, nor is there any limitation for the Secretary to fund only these priorities. Closing dates for all fiscal year 1991 competitions will be announced with publication of the final priorities.

Title of Program—Handicapped Children's Early Education Program CFDA No. 84.024

Purpose: To provide Federal support for a variety of activities designed to address the special problems of infants, toddlers and children with handicaps, from birth through age eight and their families, and to assist State and local entities in expanding and improving programs and services for those children and their families. Activities include demonstration, outreach, experimental, research and training projects, and research institutes.

Proposed Priorities: The Secretary proposes to establish the following funding priorities for the Handicapped Children's Early Education Program, CFDA No. 84.024. In accordance with the Education Department General Administrative Regulations (EDGAR) in 34 CFR 75.105(c)(3), the Secretary proposes to give an absolute preference under this program to applications that respond to the following priorities; that is, the Secretary proposes to select for funding only those applications proposing projects that meet these priorities.

Priority 1: Nondirected Model Demonstration Projects (CFDA 84.024)

This priority supports model demonstration projects that develop, implement, evaluate, and disseminate new or improved approaches for serving young children with disabilities (infants, toddlers, and preschoolers, ages birth through eight), that lead to young children with disabilities achieving their optimal functioning level within normalized, nonsegregated environments. Except for models developed for use in homes or in hospitals (such as in neonatal intensive care units), models developed under this priority must, to the extent appropriate, provide services in the types of settings in which young children without disabilities would participate.

Projects supported under this priority are a major contributor of models and components of models proposed for replication by applicants under the Handicapped Children's Early Education Outreach program. Therefore, projects must produce models that have been rigorously evaluated (1) at the original model development site with positive results, and (2) at other site locations to determine whether the model can be installed at other sites and yield similar positive results. As described under Period of Award (below), projects supported under this priority will be reviewed during the third year of their project period to examine, among other factors, the degree to which the evaluation findings at the original site are promising and the quality of the evaluation design proposed to test the model at other sites during years four and five. Should the project be continued after year three, the project must have secured other funding to support the operation of the model at the original site so that all or most of the grant funds during years four and five may be used to support the installation and evaluation of the model at other sites.

Projects must (1) address a specific service problem or issue; (2) address specific components or procedures of the model and the rationale, based on theory, research, or practice evaluation, supporting the likelihood of the model producing improved outcomes for young children with disabilities; (3) include specific types of young children (i.e., by age, disability or diagnosis, level of functioning); and (4) carry out an evaluation that measures functional outcomes for the young children with disabilities and their families who participate in the proposed interventions. Project information must be disseminated to research institutes, clearinghouses, and technical assistance providers.

The Secretary particularly invites applications for demonstration projects that develop multi-agency models for providing services for young children with disabilities born with HIV infection, drug addiction, or those with disabilities born to teen-age mothers. The Secretary also particularly invites applications for demonstration projects that develop models for young children with disabilities who are from culturally or racially diverse groups. These invitational priorities respond to the growing number of young children for

whom an array of effective intervention models does not exist. However, in accordance with EDGAR at 34 CFR 75.105(c)(1), an application that meets one or more of these invitational priorities receives no competitive or absolute preference over other applications for demonstration projects that develop, implement, evaluate, and disseminate new or improved approaches for serving young children with disabilities (ages birth through eight).

Period of Award. The Secretary will approve projects with a project period of 60 months subject to the requirements of 34 CFR 75.253(a) for continuation awards. In determining whether to continue a project for the last two years of the project period, in addition to considering factors in 34 CFR 75.253(a), the Secretary will also consider the recommendation of a review team consisting of three experts selected by the Secretary. The services of the review team, including a two-day visit to the project, are to be performed during the project's third year, and will replace that year's annual evaluation that the grantee is required to perform under 34 CFR 75.590. Costs associated with the services to be performed by the three review team members (estimated to be approximately $3000 total) must be paid for with project funds. In developing its recommendation the review team will consider, among other factors, the following:

(1) The degree to which the project's model is, or will be by the end of year three, designed soundly, replicable by other agencies, and providing state-of-the art interventions for the target population;

(2) The extent to which dissemination of the model will meet a significant or unique service need in other geographic locations;

(3) The degree to which the project's evaluation has initially produced compelling, quantifiable evidence of the effectiveness of the model as implemented at the original development site;

(4) Whether funding from sources other than the Handicapped Children's Early Education Program is available to support the operation of the model at the original development site during years four and five;

(5) The extent to which the project has received other agencies' commitment to adopt the model and participate in its evaluation during years four and five of the project period, and

(6) The quality and extent to which the project will replicate and evaluate the model in adoption sites during years four and five of the project period.

Priority 2: Outreach Projects (CFDA 84.024)

This priority supports projects that build the capacity of educational and other agencies through the implementation of proven infant, toddler, or early childhood models (including inservice training of personnel models), or selected components of those models. Projects must:

(1) Coordinate their dissemination and replication activities with the lead agency for Part H of the Education of the Handicapped Act for early intervention services or the State educational agency for special education and related services for preschool services;

(2) Disseminate and replicate proven models or proven components of models that provide or improve services needed to assist young children, aged eight and below, to achieve their optimal functioning. Models or components of models, at a minimum, must include:

(a) Approaches relevant to programming in least restrictive environments, including provision for skills necessary to function, if appropriate, in integrated educational settings;

(b) Effective involvement of families in the planning and delivery of services; and

(c) Interagency coordination when multiple agencies are involved in the provision of services to young children; and

(3) Evaluate the dissemination, replication, and training activities to determine their effectiveness, including their impact on the provision of services to young children with handicaps.

The models or components of models must be state-of-the-art, providing procedures and information that are not readily available to program sites within the geographic area where outreach is planned. The models or components of models must have recent unambiguous evaluation information demonstrating their effectiveness. In addition, the models or components of models must be consistent with part B or part H of the Education of the Handicapped Act. Outreach activities may include, but need not be limited to: Public awareness, product development and dissemination, site development, training and technical assistance. Projects may work with major early childhood associations, provider groups or agencies in disseminating and replicating the proven models or components of models. The models or components of models selected for outreach need not have been developed through the Handicapped Children's Early Education Program. Projects may disseminate and replicate multiple models or components of models that were not developed by the project. Project information must be disseminated to research institutes, clearinghouses, and technical assistance providers.

The Secretary particularly invites applications for:

(1) Projects that will address the objectives of one or more States in establishing or improving statewide systems of services for young children with disabilities; and

(2) Projects that address underserved groups, including young children born with HIV infection, those born drug addicted, and those who are members of minority groups. However, in accordance with EDGAR at 34 CFR 75.105(c)(1), an application that meets one or both of these invitational priorities receives no competitive or absolute preference over other applications for outreach projects that serve young children with disabilities aged birth to eight.

Priority 3: Model Inservice Training Projects (CFDA 84.024)

This priority supports capacity building projects that develop, demonstrate, evaluate and disseminate inservice training models (and accompanying materials) that will prepare early intervention and preschool personnel to provide, coordinate, or enhance early intervention, special education and related services to infants, toddlers, preschool aged children with disabilities and their families. Model projects must provide inservice training for professionals and paraprofessionals who are already, or could be, engaged in the provision of services but who have not been trained to serve infants, toddlers or preschoolers with disabilities. Projects must generate support of existing infant, toddler or preschool programs that will serve as training sites. The model may target service providers in the corporate or private-for-profit sector as well as in the not-for-profit public or private sector. The model developed by the project must be based on a conceptual framework that identifies the existing roles and responsibilities of the individuals to be trained, the changes required in those roles to serve infants, toddlers, or preschool children with disabilities, and the skills needed to implement the new roles. The model must directly train personnel to provide, coordinate, or enhance early intervention, special education, or

related services to infants, toddlers, or preschool children in the least restrictive environment (which may include hospital, home or center-based programs). Inservice training procedures and materials must address the importance of coordinating early intervention, special education and related services with other service providers as well as with the family. In addition to initial training, the model must include an array of follow-up and support activities that ensures that personnel participating in the training master and implement services to meet the needs of infants, toddlers, and preschool children with disabilities. Projects must evaluate the inservice training model through direct assessment of participant skills following the training and after a period of time. At least some measures must be based on direct observation of trainees in the service setting using standardized observational rating techniques. Models must be consistent with personnel standards, certification, or licensing requirements in their States.

The Secretary will give competitive preference (by awarding up to 10 additional points) to applicants that meet all of the following conditions:

(1) Project collaboration with relevant State agencies responsible for the Comprehensive System of Personnel Development under part H or part B of the Education of the Handicapped Act;

(2) Assurance that inservice trainees will gain credit from the training and that credit will apply toward a degree, certification, or licensure; and

(3) Assurance through supplemental funding from State or other sources that the inservice model, if proven effective, will become the basis for, or will be incorporated into, an ongoing system of professional development for personnel serving young children with disabilities.

The Secretary particularly invites applications that design inservice training models to meet the special needs of children who are members of minority groups. However, in accordance with EDGAR at 34 CFR 75.105(c)(1), an application that meet this invitational priority receives no competitive or absolute preference over applications that meet the general priority described in this notice.

Priority 4: Early Childhood Research Institute-Service Implementation and Capacity for Providing Early Intervention Services (CFDA 84.024)

This priority establishes an Early Childhood Research Institute to identify service patterns and gaps for children at risk and children with disabilities ages birth through five years in several States. States selected must serve all three groups identified under the part H program for Infants and Toddlers, which are children experiencing developmental delays, children having a diagnosed physical or mental condition which have a high probability of developmental delays and children who are at risk of having developmental delays, and all children with disabilities aged three through five.

Eligibility criteria, identification instruments and procedures, funding sources for service programs, interagency collaboration, and service delivery patterns must be studied in depth in multiple sites in several States; sites in several other States may also be included for identifying State-to-State variations and for replicating certain study findings. The institute must study children at risk for developmental delay under the part H program who are subsequently found ineligible at three years of age for services under the EHA Part B and chapter 1 State administered program for handicapped children. The research program must consider (1) the consequences of using different eligibility criteria and identification instruments and procedures on the number and characteristics of children who are served and unserved under the part H, part B, and chapter 1 Handicapped Programs; (2) the funding sources that are used to complement part H and section 619 funds for eligible children, and the availability of other funds to provide services for children who are ineligible for part B or chapter 1 Handicapped services at age three who have continuing learning problems; (3) the effect of different interagency collaborative arrangements at the State and local levels on the availability and quality of services; (4) the patterns of service delivery that are associated with variations in eligibility criteria, funding sources, and interagency collaborative arrangements; and (5) other factors (such as the number of available qualified personnel, the number of service placement options for children, State and local demographic characteristics) that promote or hinder the delivery of services to all eligible children within the sites being studied.

The program of research must provide information that can be used by policy-makers and administrators at Federal, State, and local levels to identify factors that facilitate or interfere with service implementation, to identify solutions to service delivery problems that are useful to State and local service providers, and to examine the impact of variations in eligibility criteria, funding sources, interagency collaborative arrangements, and service delivery on children with disabilities and their families. To accomplish its research mission, the institute must conduct both descriptive and explanatory studies, test hypotheses and propositions derived from previous research or initial institute findings, and use a combination of research methodologies, including survey research, case studies, replicated case studies, document analysis, and direct observation. The major unit of analysis for the research must be the child (and the services provided), with descriptive and explanatory information collected at local and State levels to explain variations observed in the availability and provision of services to individual children in different communities.

The institute must conduct the program of research within a conceptual framework that identifies the characteristics of eligible and ineligible children (and their probable service needs), the State and local factors that potentially affect the availability and provision of services, and a rationale (based on theory or research) for the potentially explanatory variables that are included in the research.

In carrying out its research activities, the institute must provide research training and experience for at least 10 graduate students annually.

Project reports and other information must be disseminated to other research institutes, clearinghouses, and technical assistance providers.

Period of Award. The Secretary will approve one cooperative agreement with a project period of up to 60 months subject to the requirements of 34 CFR 75.253(a) for continuation awards. In determining whether to continue the institute for the last two years of the project period, in addition to considering the factors in 34 CFR 75.253(a), the Secretary will consider the recommendation of a review team consisting of three external experts selected by the Secretary and designated Federal program officials. The services of the review team are to be performed during the last half of the institute's second year, and will replace that year's annual evaluation that the recipient is required to perform under 34 CFR 75.590. During all other years of the project, the recipient must comply with 34 CFR 75.590. Costs associated with the services to be performed by the three external members of the review team must be paid for with project funds. In developing its recommendation, the review team will consider, among other factors, the following:

(1) The timeliness and the effectiveness with which all requirements of the negotiated

cooperative agreement have been or are being met by the institute; and

(2) The degree to which the institute's research designs and methodological procedures demonstrate the potential for producing significant new knowledge and products.

Priority 5: Early Childhood Research Institute—Substance Abuse (CFDA 84.024)

This priority establishes an Early Childhood Research Institute to develop, field test, and disseminate new or improved collaborative interventions for infants, toddlers and preschool aged children who are developmentally delayed, at risk for developmental delay, or handicapped because of maternal use of alcohol or drugs, especially crack cocaine and other street drugs. The institute's purpose is to conduct a program of research and development designed to produce information and materials that can be used in concert with the provision of health care and other services, and that promote the developmental progress of these two groups of children. The institute's research and development activities must produce information and materials that can be used for children throughout the age range of birth through five years, but with major emphasis given to interventions for children within the birth through two year age range. The research and development activities must consist of two major areas of inquiry.

First, the institute must conduct a program of research that produces new or improved interventions that will promote child development while children are receiving care and services in hospital settings, natural or foster home settings, early intervention and preschool programs (including day or home care programs), and in other service delivery settings. Areas of inquiry must include, but need not be limited to: (1) The need for new interventions that address the unique characteristics of children born with fetal alcohol syndrome and children prenatally exposed to drugs; (2) the need for adaptations of existing intervention strategies (developed for children with other kinds of disabling conditions) that will address the needs of the target populations; and (3) the relative effectiveness of new or adapted interventions as compared with other interventions that differ in kind, intensity or duration. Both longitudinal (multiyear) and cross-sectional studies of interventions must be carried out for birth through two year olds and three through five year olds. However, in carrying out these studies, children may be followed through eight years of age or beyond to determine the effects of the interventions.

Second, the institute must conduct a program of research that produces interventions that can be used to improve home and other caregiving environments for these children, including strategies to improve postnatal care by parents (biological, adoptive, or foster), friends, extended family members, and professionals who provide early intervention services, special education and related services. Areas of inquiry must include, but need not be limited to:

(1) Strategies to improve the coordination and continuity of services and care provided by professionals and non-professionals (including those identified above); and

(2) Methods of ensuring the effective delivery of the new or improved interventions developed by this institute, including research to identify the most effective ways to disseminate the intervention information and materials to professionals and non-professionals.

In carrying out its research program, the institute must address the array of developmental and environmental factors that compromise children born with fetal alcohol syndrome and children born prenatally exposed to drugs. This array of factors includes different levels of central nervous system damage and their developmental consequences, parental neglect or abandonment, inadequate or unstable home environments, inadequate or inappropriate services, and other deleterious events or circumstances that commonly accompany these children. It is anticipated that in conducting this research and development effort, a consortium of hospitals, agencies and schools will participate in order to permit the research objectives to be met, and to determine the effectiveness of the interventions and the utility of the information and materials.

The institute must conduct the program of research and development within a conceptual framework that identifies characteristics and environments that are unique to each of the two target populations, potentially effective interventions designed to improve their developmental outcomes, and a rationale (based on theory or research) for the interventions that are studied in the research program.

In carrying out its research activities, the institute must provide research training and experience for at least 10 graduate students annually.

Project information must be disseminated to research institutes, clearinghouses, technical assistance providers, and relevant demonstration projects and personnel.

The Secretary particularly invites applications from entities that are already conducting research related to this priority, especially entities that are investigating methods of improving and increasing prenatal care by substance abusing parents. This invitational priority responds to the need for a comprehensive program of research that addresses both prenatal and postnatal problems related to substance abusing parents. However, in accordance with EDGAR at 34 CFR 75.105(c)(1), an application that meets this invitational priority receives no competitive or absolute preference over other applications for an early childhood research institute on substance abuse.

Period of Award. The Secretary will approve one cooperative agreement with a project period of up to 60 months subject to the requirements of 34 CFR 75.253(a) for continuation awards. In determining whether to continue the institute for the last two years of the project period, in addition to considering the factors in 34 CFR 75.253(a), the Secretary will consider the recommendation of a review team consisting of three external experts selected by the Secretary and designated Federal program officials. The services of the review team are to be performed during the last half of the institute's second year, and will replace that year's annual evaluation that the recipient is required to perform under 34 CFR 75.590. During all other years of the project, the recipient must comply with 34 CFR 75.590. Costs associated with the services to be performed by the three external members of the review team must be paid from project funds. In developing its recommendation, the review team will consider, among other factors, the following:

(1) The timeliness and the effectiveness with which all requirements of the negotiated cooperative agreement have been or are being met by the institute; and

(2) The degree to which the institute's research designs and methodological procedures demonstrate the potential for producing significant new knowledge and products.

Invitation to Comment: Interested persons are invited to submit comments and recommendations regarding the proposed priorities to the address in this notice.

All comments submitted in response to these proposed priorities will be

available for public inspection during and after the comment period in room 4092, Switzer Building, 330 C Street SW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Monday through Friday of each week except Federal holidays.

Address: Comments should be addressed to: Joseph Clair, Division of Educational Services, Office of Special Education Programs, Department of Education, 400 Maryland Avenue SW. (Switzer Building, Room 3094—M/S 2313), Washington, DC 20202.

Contact: James Hamilton, telephone: (202) 732–1084 or Joseph Clair, telephone: (202) 732–4503.

Program Authority: 20 U.S.C. 1424.

Title of Program: Educational Media Research, Production, Distribution and Training Program CFDA No. 84.026

Purpose: To promote the educational advancement of persons with handicaps by providing assistance for:

(a) Conducting research in the use of educational media for persons with handicaps;

(b) Producing and distributing educational media for the use of persons with handicaps, their parents, their actual or potential employers, and other persons directly involved in work for the advancement of persons with handicaps; and

(c) Training persons in the use of educational media for the instructions of persons with handicaps.

Proposed Priorities: The Secretary proposes to establish the following priorities for the Educational Media, Production, Distribution, and Training Program, CFDA No. 84.026. In accordance with the Education Department General Administrative Regulations (EDGAR) at 34 CFR 75.105(C)(3), the Secretary proposes to give an absolute preference under this program to applications that respond to the following priorities; that is, the Secretary proposes to select for funding only those applications proposing projects that meet these priorities.

Priority 1: Closed-Captioned Local and Regional Programming (CFDA No. 84.026)

This priority supports projects for the closed-captioning of local and regional television news or public affairs programs which, at the end of this three year award, will be maintained and continued without additional Federal funding. Projects must:

(1) Develop criteria for selecting programs for captioning;

(2) Determine the number of television hours (first time and repeat) to be captioned and a specific method to be used for each hour, *i.e.*, realtime, offline, computer-assisted, teleprompting, etc.;

(3) Determine the type and use of back-up systems that will ensure successful, timely captioning services;

(4) Obtain financial commitments for project continuation at the end of the third year; and

(5) Have agreement from at least one television station of agreement to permit captioning of its programs.

Priority 2: Closed-Captioned Sports Programs (CFDA No. 84.026)

This priority supports one or more cooperative agreements for the close-captioning of network sports programs broadcast nationally, so that persons who are deaf or hard of hearing will have access to sports commentaries and other audio information during televised sports events. This project will offer persons with hearing impairments access to shared cultural experiences in which sports play a large part. Projects must:

(1) Develop criteria for selecting programs for captioning, taking into account the projected distribution of rights to prime sporting events across the networks;

(2) Determine the number of television hours to be captioned, using funds from this program and the number of hours projected to be captioned using funds from other sources including matching or in-kind contributions, and a specific method to be used for each hour, i.e., realtime, off-line, computer-assisted, teleprompting, etc.;

(3) Determine the type and use of back-up systems that will ensure successful, timely captioning services; and

(4) Have agreement from major networks to permit captioning of their programs.

Priority 3: Special Research, Development and Evaluation Projects (CDFA No. 84.026)

This priority supports projects to expand the effective uses of captioning to enhance the reading skills of individuals who are deaf or hard of hearing, to enhance the literacy skills of individuals with disabilities, to explore captioning features that make captioning a more effective tool in extending general television programming to persons with disabilities, and to expand the range of experiences available to individuals who are hearing impaired through adapted media and technology. Projects supported by this priority cover four categories:

(A) Projects that explore and test uses of captioning to determine those that are effective in developing or improving reading skills of individuals who are deaf or hard of hearing;

(B) Projects that explore and test uses of captioned television and to videos to determine those that are effective in improving literacy skills of a broad range of individuals with disabilities, particularly those who are deaf, learning disabled, or have limited proficiency in English;

(C) Projects that compare and contrast captioning features such as verbatim captioning versus edited captioning, location of captions, highlighting of captions, variable fonts, variable captioning rates, for extending captioned television to a broad range of viewers with disabilities and to a broad range of purposes; including, but not limited to, persons with hearing impairments; and

(D) Projects that adapt and test the effectiveness of a range of media and technologies including captioned educational television, adapted computer software, adapted video discs for improving the range of educational experiences, options, and environments for individuals who are deaf or hard of hearing.

The Secretary may fund one or more applications in each of these four categories. Projects must:

(1) Focus on one of the four categories listed above;

(2) Conduct investigations using methodological procedures that will produce unambiguous findings regarding the impact and relative effectiveness of various captioning efforts, educational media, and advanced technologies;

(3) Include dissemination activities designed to facilitate the extension of improved captioning services and uses to consumers with disabilities including, but not limited to, persons with hearing impairments and under category D, improve the range of educational experiences and options; and

(4) Evaluate the dissemination activities to determine their effectiveness in reaching and impacting on the intended target populations.

Projects must (1) address a specific problem or issue; (2) select specific activities or technologies to test, compare, or adapt based on previous research or evaluations; (3) target a particular population of individuals with disabilities; and (4) carry out an evaluation of the effectiveness of the selected activities or technologies. Project information must be disseminated to relevant clearinghouses and technical assistance organizations.

Priority 4: Descriptive Video (CFDA No. 84.026)

This priority supports cooperative agreements for the establishment and delivery of descriptive video services for individuals who are visually impaired. The purpose of descriptive video services (DVS) is to make media more accessible to individuals with visual impairments. The projects funded under this priority must:

(1) Identify, select, and implement effective methods and technologies for providing DVS programs or movies. These must include methods and technologies for recording, transmission, and reception of DVS and must be specific as to the activities and equipment that will be required;

(2) Develop criteria for selecting programs to be video described and made available;

(3) Determine the number of hours of DVS programs or movies made available over public, cable, or commercial television or through home video during each year of the three-year period;

(4) Obtain agreement from participating producers and distributors to permit video description and transmission;

(5) Implement a comprehensive outreach effort to inform intended consumers of the service and steps necessary to access it, and other activities necessary to sustain the service such as educating stations and producers and promoting their participation and contributions; and

(6) Evaluate the effectiveness of the methods and technologies used in providing DVS as well as barriers encountered and the impact on the intended target populations.

Invitation to Comment: Interested persons are invited to submit comments and recommendations regarding the proposed priorities to the address in this notice.

All comments submitted in response to these proposed priorities will be available for public inspection during and after the comment period, in room 4092, Switzer Building, 330 C Street, SW., Washington, DC between the hours of 8:30 a.m. and 4 p.m., Monday through Friday of each week except Federal holidays.

Address: Comments should be addressed to: Joseph Clair, Division of Educational Services, Office of Special Education Programs, Department of Education, 400 Maryland Avenue, SW., (Switzer Building, room 3094 M/S 3409), Washington, DC 20202.

Contact: Ernest E. Hairston, telephone (202) 732–1177, or Joseph Clair, telephone (202) 732–4503.

Program Authority: 20 U.S.C. 1451, 1452.

Title of Program: Training Personnel for the Education of Children with Handicaps CFDA No.: 84.029

Purpose: The purpose of this program is to increase the quantity and improve the quality of personnel available to serve infants, toddlers, children, and youth with disabilities through the provision of awards to support the preservice training of personnel for careers in special education and early intervention in special education teaching, related services, supervision and administration, research, and personnel training; and through support of special projects designed to develop and demonstrate new approaches for preservice and inservice training. The program also includes separate components for support of parent training and information projects and training by State educational agencies.

Proposed Priorities: The Secretary proposes to establish the following priorities for the Training Personnel for the Education of the Handicapped Program, CFDA No. 84.029. In accordance with the Education Department General Administrative Regulations (EDGAR, 34 CFR 75.105(c) (2) and (3)), the Secretary proposes to establish both absolute and competitive priorities under this program. Under an absolute priority, the Secretary selects for funding only those applications proposing projects that meet the absolute priority. Within each competition created by an absolute priority, the Secretary may give a competitive preference to certain applications either by awarding extra points in the evaluation process to applications that meet a competitive priority in a particularly effective way, or by selecting applications that meet the priority over other applications of comparable merit that do not meet the priority. The Secretary proposes to establish both absolute and competitive preferences under this program in order to direct program resources to especially critical national needs in serving children with disabilities.

Absolute Priorities: The Secretary proposes to establish two absolute priorities, creating separate competitions to address each of the principal types of training activities, special education and early intervention personnel, and related services personnel, appropriate under the authorizing legislation.

Absolute Priority 1: Preparation of Personnel for Careers in Special Education and Early Intervention (CFDA 84.029)

This absolute priority supports preservice preparation of personnel for careers in special education and early intervention, or supervisors of those personnel. Preservice training includes additional training for currently employed teachers seeking additional degrees, certifications, or endorsements. Training at the baccalaureate, masters, or specialist level is appropriate. This priority includes special education teachers, speech-language pathologists, audiologists, adapted physical education teachers, vocational educators, and infant intervention specialists. Training of administrators and supervisors at the baccalaureate and masters level is also appropriate under this priority. Projects must be consistent with the needs for personnel training identified by the special education and early intervention comprehensive personnel development systems of the State or States typically employing program graduates. Projects must either represent new program activities of the applicant agency, or be designed to significantly improve ongoing programs.

Projects funded under this priority must assure that the training program devotes significant attention, as appropriate, to:

(1) Training techniques and procedures designed to foster collaboration between special teachers and regular teachers, administrators, related service personnel, and parents.

(2) Training techniques, procedures, and practica designed to foster integration of children with disabilities into regular education settings to the maximum extent feasible.

(3) Interdisciplinary preparation in all areas where this is relevant.

(4) Special recruitment efforts directed toward minority personnel.

Within this competition, the Secretary proposes to give a preference to projects addressing one or more of the following competitive priorities:

(1) Utilizing innovative recruitment and retention strategies,

(2) Promoting full qualifications for personnel serving children with disabilities,

(3) Training personnel to serve children with low incidence disabilities,

(4) Training personnel to serve infants, toddlers, and preschoolers,

(5) Training personnel to work in rural areas,

(6) Training personnel to serve racial, ethnic, and language minority children with disabilities, and

(7) Training personnel to provide transition services.

These competitive priorities are described more fully in a later section of this notice.

Absolute Priority 2: Preparation of Related Services Personnel (84.029)

Related services funding supports preservice preparation of individuals to provide developmental, corrective, and other supportive services that assist infants, toddlers, children, and youth with disabilities to benefit from special education. These include by regulatory and legislative definition—paraprofessional personnel, therapeutic recreation specialists, health service providers, physical therapists, occupational therapists, school psychologists, school social workers, counselors, and other related services personnel. In the past the "other" category has provided support for training of assistive technologists, interpreters, orientation and mobility specialists, respite care providers, art therapists, volunteers, and, to the limited degree specified the law and implementing regulations, physicians. Projects to train personnel identified as special education personnel are not appropriate, even if those personnel may be considered related services personnel in other settings. Projects must be consistent with the needs for personnel identified by the special education comprehensive personnel development system of the State or States typically employing program graduates.

This program is not designed for general training in related disciplines. Projects must include inducements and preparation to increase the probability that graduates will direct their efforts toward supportive services to special education. For example, a project in occupational therapy (OT) might support a special strand on pediatric or juvenile psychiatric OT, support those students whose career goal is OT in the schools, or provide for practica and internships in school settings.

Projects funded under this priority must assure that the training program devotes sufficient attention to:

(1) Training techniques and procedures designed to foster collaboration between related services personnel and special teachers, regular teachers, administrators, and parents.

(2) Training techniques, procedures, and practica designed to foster integration of children with disabilities into regular education settings to the extent feasible.

(3) Interdisciplinary preparation in all areas where this is relevant.

(4) Special recruitment efforts directed toward minority personnel.

Within this competition, the Secretary proposes to give a preference to projects addressing the following competitive priorities:

(1) Utilizing innovative recruitment and retention strategies;

(2) Promoting full qualifications for personnel serving children with disabilities;

(3) Training personnel to serve children with low incidence disabilities;

(4) Training personnel to serve infants, toddlers, and preschoolers;

(5) Training personnel to work in rural areas;

(6) Training personnel to serve racial, ethnic, and language minority children with disabilities;

(7) Training personnel to provide transition services; and

(8) Preparation of paraprofessionals.

These competitive priorities are described more fully in a later section of this notice.

Competitive Priorities: Within each of the above absolute priorities, the Secretary proposes to establish competitive priorities, either to award additional points to applications that meet the priority in a particularly effective way, or to select an application that meets a priority over an application of comparable merit that does not meet the priority.

Competitive Priority 1: Utilizing Innovative Recruitment and Retention Strategies

Various data suggest imminent shortages of special education, early intervention, and related services personnel ranging up to as much as 50 percent. This priority will provide support to explore emerging and creative sources of supply of personnel with degrees and certification in special education, early intervention, and related service disciplines, and innovative strategies related to recruitment and retention of personnel. Any recruitment or retention strategies that can be replicated can be explored within this competitive priority.

Projects may include but are not limited to:

- Special recruitment efforts directed toward minority special education teachers.
- Stipends and other financial support for high school students who agree to attend in-State special education training program and who agree to spend a fixed period in special education within the State where training was provided and supported.
- Strategies such as a Speakers Bureau, development of recruitment materials, and support of Future Educators of America clubs for the purpose of motivating high school students during their junior and senior year to pursue careers in special education prior to the award of scholarships or traineeships.
- Scholarships or traineeships for classroom aides who have been in the local community; i.e., persons who have been in the community for a substantial period of time and are likely to remain in the community for the foreseeable future because of family ties, family business, job of spouse, etc. Studies have indicated that these persons are likely to have low attrition rates in that they are committed to staying in the community.
- Financial support (stipends or scholarships) for military retirees to attend in-State special education training programs in preparation for second careers.
- Training and financial support for volunteers who have experience working with children with disabilities. Training leading to a college degree in special education could be provided while working.
- Scholarships and stipends for persons with disabilities who are interested in special education as a first or second career.
- Paid apprenticeships as well as scholarships for persons who are teaching in general education or serving as classroom aides. Special education coursework could be taken while person is working.
- Paid extension courses for Indians living on reservations with college credit leading toward a degree in special education.
- Business/education partnerships providing supplemental income for a fixed period of time for selected persons who agree to work in the State where training was provided for 2–4 years. Participants in this program could be chosen from interested persons working in business with coursework taken at night, weekends, or within flexible work schedules.
- Recruitment through the U.S. Immigration and Naturalization Service to identify potential minority special education teachers.
- Recruitment from junior college graduates.
- Recruitment and retraining of teachers not currently in the special education workforce.

• Recruitment and financial support provided for persons recruited from depressed industries.

Under 34 CFR 75.105(c)(2)(i), the Secretary proposes to award up to 10 points to an application that meets this priority in a particularly effective way. These points are in addition to any points the application earns under the selection criteria for the program.

Competitive Priority 2: Promoting Full Qualifications for Personnel Serving Children with Disabilities

Recent data suggest that as much as 30 percent of the current teaching force is working with less than full, appropriate credentials. Therefore, a competitive preference is given to projects designed specifically to train personnel who are working with less than full certification or outside their field of specialization, to assist them in becoming fully qualified. Student incentives; extension, summer, and evening programs; internships; alternative certification plans; and other innovative practices are appropriate under this competitive priority.

Under 34 CFR 75.105(c)(2)(ii), the Secretary selects an application that meets this priority over an application of comparable merit that does not meet the priority.

Competitive Priority 3: Training Personnel To Serve Low Incidence Disabilities

Various data on personnel shortages suggest that needs are especially critical for personnel serving low incidence disabilities. This problem is exacerbated by the relative lack of training programs due to their expensive nature. Therefore, the Secretary gives a competitive preference to projects to train personnel who serve children with severe emotional disabilities, visual disabilities, orthopedic and other health impairments, and severe and multiple disabilities.

Under 34 CFR 75.105(c)(2)(ii), the Secretary selects an application that meets this priority over an application of comparable merit that does not meet the priority.

Competitive Priority 4: Training Personnel to Serve Infants, Toddlers, and Preschoolers

The Secretary gives a competitive preference to projects that are designed to provide preservice preparation of personnel who serve infants, toddlers, and preschool children with disabilities (or who are at high risk of becoming handicapped), and their families. Personnel may be prepared to provide short-term services or long-term services that extend into a child's preschool program. To receive a competitive preference the proposed training program must have a clear and limited focus on the special needs of children from birth through five, and must include consideration of family involvement in early intervention and preschool education. Training programs under this priority must have a significant interdisciplinary focus.

Under 34 CFR 75.105(c)(2)(ii), the Secretary selects an application that meets this priority over an application of comparable merit that does not meet the priority.

Competitive Priority 5: Training Personnel to Work in Rural Areas

Available data suggest that in many States personnel shortages are two to three times as severe in rural areas as in general. Therefore, the Secretary gives a competitive preference to training personnel, who will serve infants, toddlers, children, and youth with disabilities in rural areas. Projects, including curricula, procedures, practica, and innovative use of technology, must be designed to provide training to assist personnel to work with parents, teachers, and administrators in this special environment. Special strategies designed to recruit personnel from rural areas who will most likely return to these areas are especially appropriate.

Under 34 CFR 75.105(c)(2)(ii), the Secretary selects an application that meets this priority over an application of comparable merit that does not meet the priority.

Competitive Priority 6: Training Personnel to Serve Racial, Ethnic, and Language Minority Children with Disabilities

Minorities are over-represented among children with disabilities. To address this issue, the Secretary proposes to give a competitive preference to projects that support the preservice preparation of early intervention, special education, and related services personnel who will serve minority populations of infants, toddlers, children, and youth with disabilities who, because of minority status, require professional competencies in addition to those needed to serve other infants, toddlers, children, and youth with similar disabilities. Projects funded under this priority must be aimed at specific minority populations, must determine the additional competencies that are needed by professionals serving those populations, and must determine how the training program will result in the attainment of those competencies.

Under 34 CFR 75.105(c)(2)(ii), the Secretary selects an application that meets this priority over an application of comparable merit that does not meet the priority.

Competitive Priority 7: Training Personnel to Provide Transition Service

Personnel shortages are particularly severe at the upper end of the age range of special education; and transition from schools to higher education, careers, and community living is extremely difficult. Therefore, the Secretary gives a competitive preference for preparation of personnel who assist youth with disabilities in their transition from school to adult roles. Personnel may be prepared to provide short-term transitional services, long-term structured employment services, or instruction in community and school settings with secondary school students.

Under 34 CFR 75.105(c)(2)(ii), the Secretary selects an application that meets this priority over an application of comparable merit that does not meet the priority.

Competitive Priority 8: Preparation of Paraprofessionals

Emerging data suggest that paraprofessionals are being increasingly involved in programs for children with disabilities, especially at the early childhood and transition levels. There is also evidence of schools having particular difficulties in recruiting educational interpreters for the deaf. Therefore, the Secretary gives a competitive preference for preparation of paraprofessional personnel to meet these needs.

Under 34 CFR 75.105(c)(2)(ii), the Secretary selects an application that meets this priority over an application of comparable merit that does not meet the priority.

Invitation to Comment: Interested persons are invited to submit comments and recommendations regarding the proposed priorities to the address in this notice.

All comments submitted in response to these proposed priorities will be available for public inspection during and after the comment period, in room 4092, Switzer Building, 330 C Street SW., Washington, DC between the hours of 8:30 a.m. and 4 p.m., Monday through Friday of each week except Federal holidays.

Address: Comments should be addressed to: Max Mueller, Division of Personnel Preparation, Office of Special Education Programs, Department of Education, 400 Maryland Avenue SW.,

(Switzer Building, room 3094 M/S 3409), Washington, DC 20202.

Contact: Max Mueller, telephone (202) 732–1554.

Program Authority: 20 U.S.C. 1431.

Title of Program: Postsecondary Education Programs for Handicapped Persons, CFDA No.: 84.078.

Purpose: To develop, operate, and disseminate specially designed model programs of postsecondary, vocational, technical, continuing or adult education for individuals with handicapping conditions.

Proposed Priority: The Secretary proposes to establish the following funding priority for the Postsecondary Education Programs for Handicapped Persons, CFDA 84.078. In accordance with the Education Department General Administrative Regulations (EDGAR) at 34 CFR 75.105(c)(3), the Secretary proposes to give an absolute preference under this program to applications that respond to the following priority; that is, the Secretary will select for funding only those applications proposing projects that meet this priority.

Priority 1: Career Placement Opportunities for Students with Disabilities in Postsecondary Programs (CFDA 84.078)

This priority supports projects that enhance the role and capacity of career placement offices to provide pre-employment and employment opportunities for students with disabilities in community and four-year colleges, universities, technical and vocational institutes, and adult and continuing educational programs. Projects must create and facilitate the cooperative efforts of those who help bring about successful vocational outcomes for people with disabilities. Projects must be models of continuing and enhanced career placement office activities and capacities and must include:

(1) Developing or adopting inservice training and orientation programs (including curriculum, syllabus and associated informational materials) for faculty, staff, and career placement office personnel that focus on the awareness and provision of support services and accommodations needed by students with disabilities, not only at the postsecondary educational program but also at various potential work sites; and further, insuring that this training becomes a part of the institution orientation for new faculty and staff members who replace those who previously had benefitted from this training;

(2) Obtaining the involvement of employers by placement officers in campus-based career opportunities, such as specific individual pre-employment interviews or group meetings with representatives of industry (such as members of private industry councils, local Chambers of Commerce, and Governor's and Mayor's Committees on Employment of Persons with Disabilities);

(3) Increasing placement percentages for students with disabilities by the formation and continuation of formal memoranda of understanding, cooperative agreements or similar documents among disabled student service offices, career placement offices, vocational rehabilitation offices, and local, State or regional coalitions of representatives of business and industry;

(4) Enhancing the career experiences of students with disabilities by facilitating opportunities for needed work experiences, work-study program participation, internships, and summer placements, that will enable students to be more equitably competitive with their nondisabled peers upon entering the job market; and

(5) Providing technical assistance and information on program/work accessibility and accommodations to administrators, faculty, and staff of postsecondary educational programs; secondary school administrators, counselors and teachers; parents; and persons with disabilities.

Projects funded under this priority must evaluate project outcomes to determine how effective the strategies are. Project information under this priority must be disseminated to relevant clearinghouses and technical assistance organizations.

Invitation to Comment: Interested persons are invited to submit comments and recommendations regarding the proposed priority to the address in this notice.

All comments submitted in response to this proposed priority will be available for public inspection during and after the comment period, in room 4092, Switzer Building, 330 C Street SW., Washington, DC between the hours of 8:30 a.m. and 4 p.m., Monday through Friday of each week except Federal holidays.

Address: Comments should be addressed to: Joseph Clair, Division of Educational Services, Office of Special Education Programs, Department of Education, 400 Maryland Avenue SW., (Switzer Building, room 3094 M/S 3409), Washington, DC 20202.

For Further Information Contact: Dr. Joseph Rosenstein; Telephone: (202) 732–1176.

Program Authority: 20 U.S.C. 1424A.

TITLE OF PROGRAM: Program for Severely Handicapped Children CFDA No. 84.086

Purpose: To provide Federal financial assistance for demonstration or development, research, training, and dissemination activities for severely handicapped, including deaf-blind, children and youth.

Proposed Priorities: The Secretary proposes to establish the following funding priorities for the Program for Severely Handicapped Children, CFDA No. 84.086. In accordance with the Education Department General Administrative Regulations (EDGAR) at 34 CFR 75.105(c)(3), the Secretary proposes to give an absolute preference under this program to applications that respond to the following priorities; that is, the Secretary will select for funding only those applications proposing projects that meet these priorities.

Priority 1: Innovations for Educating Children with Severe Disabilities in General Education Settings (CFDA 84.086)

This priority supports research projects to develop and test in-depth, innovative approaches for improving the education of students with severe disabilities who are already receiving services in general education settings. Projects must consider the nature of integration activities present within the school and community settings where project activities will be implemented and the degree of physical integration and social interaction occurring between students with severe disabilities and students without disabilities. Projects must ensure that the proposed educational setting has the following prerequisite components:

(1) An established system of community-based training;

(2) A systematic, data-based educational program; and

(3) An established functional curriculum.

Projects must build upon previous research and development activities in the field and include a thoughtful synthesis and extension of such work. Projects funded under this priority must:

(1) Address an educational issue or research question that the project will address;

(2) Develop a proposed intervention that can be expected to address the issue or question; and

(3) Be based on research design that includes functional outcome measures for children and youth with severe disabilities who participate in the proposed innovative interventions.

Project information must be disseminated to research projects, clearinghouses, technical assistance providers, and relevant demonstration projects and personnel.

The Secretary particularly invites applications that propose innovative approaches which address the following topics:

(1) Evaluating the efficacy of innovative approaches to increase meaningful participation in social and educational experiences for children and youth with severe disabilities and their nondisabled age-peers in general education settings and neighborhood settings; or

(2) Developing building-based policies and procedures to increase the capacity of neighborhood schools to provide appropriate educational services to children and youth with severe disabilities.

However, in accordance with EDGAR at 34 CFR 75.105(c)(1), an application that meets these invitational priorities receives no competitive or absolute preference over applications that meet the general priority described in this notice.

Priority 2: Utilization of Best Educational Practices for Students with Severe Disabilities (CFDA 84.086)

This priority supports project activities which enhance the capacity of education agencies to serve students with severe disabilities through the adoption and utilization of practices which have demonstrated effectiveness in the provision of educational and related services for students with severe disabilities. Projects support technical assistance activities including inservice training, program replication, utilization of assistive devices, and other educational activities that enhance the capacity of education agencies to address the needs of children and youth with severe disabilities and result in their inclusion in integrated school and/or community settings.

Projects must (1) address a specific problem or issue in educating students with severe disabilities; (2) select specific, proven models, practices or techniques to alleviate that problem or issue; (3) select appropriate technical assistance activities including follow-up assistance to assure adoption and use of the proven models, practices, or techniques; and (4) carry out an evaluation of the effectiveness of the technical assistance provided.

Project information must be disseminated to appropriate research institutes, clearinghouses, and technical assistance providers.

The Secretary particularly invites applications that propose utilization strategies for the adoption and dissemination of best practices related to:

(1) Movement to least restrictive educational environments for children and youth with severe disabilities such as those that:

(a) Focus on returning students served in special schools to age-appropriate general education settings within normalized home-community environments;

(b) Address methods for implementing policies and procedures that increase the capacity of neighborhood schools to provide appropriate educational, health, and related services to children and youth with severe disabilities; and

(c) Implement strategies for establishing meaningful participation in social and educational experiences for children and youth with severe disabilities and their nondisabled age-peers in general education settings; or

(2) Improving the functional communication skills of school-aged children and youth with severe disabilities to increase their positive interaction and meaningful participation with nondisabled peers, parents and family members, and their effective integration into educational and community environments.

However, in accordance with EDGAR at 34 CFR 75.105(c)(1), an application that meets one of these invitational priorities receives no competitive or absolute preference over applications that meet the general priority described in this notice.

Priority 3: State-wide Systems Change (CFDA 84.086)

This priority supports projects that enhance the capacity of States to serve students with severe disabilities (including deaf-blindness) through all of the following:

(a) Developing, in conjunction with the part B State plan, activities to improve the quality of special education and related services in the State for severely disabled (including deaf-blind) children and youth, birth through 21 years of age, and to change the delivery of these services from segregated to integrated environments;

(b) Significantly increasing the number of severely disabled, including deaf-blind, children in the State who are served in regular school settings alongside their same-aged nondisabled peers;

(c) Evaluating the effectiveness of these activities, including tracking the number of children with severe disabilities including deaf-blindness, in the State in each type of educational setting and showing changes from previous years; and,

(d) Evaluating and disseminating information about the project's outcomes.

Projects under this priority must:

(1) Determine resources available in the State to provide the needed services to children and youth who are severely disabled, including deaf-blind, as well as financial resources available through other agencies or parties;

(2) Coordinate activities with the Deaf-Blind State and Multi-State project;

(3) Establish services needed to assist these children and youth to achieve their most realistic functioning level in normalized, nonsegregated least restrictive environments. These services must include at a minimum:

(i) Delivery of integrated educational services that include providing severely disabled (including deaf-blind) children who are currently being served in segregated environments, with special educational and related services in programs at facilities with nondisabled children;

(ii) Movement of participating children and youth to and integration into less segregated environments, with the objective of facilitating the placement of these children in appropriate regular school settings;

(iii) Delivery of curricula relevant to education in integrated settings including the teaching of social integration skills, community references skills, and employment skills;

(iv) Activities to promote acceptance of severely disabled, including deaf-blind, children and youth by the general public through increasing both the quality and frequency of meaningful interactions of these children and youth with disabled and nondisabled peers and adults;

(v) Delivery of services to meet the unique needs of severely disabled, including deaf-blind, children and youth; and

(vi) Effective involvement of families in the planning and delivery of services to their severely disabled children and youth;

(4) Early in the first year of operation, the project must establish a project advisory board having representation of parents of project children and youth, including parents of deaf-blind children and youth, providers of services to this population, and State and professional organizations, that is responsible for

providing significant input on project management procedures; and

(5) As a part of first year activities, the project must formulate and implement formal, written policies and procedures with relevant State, local, and professional organizations for coordinating services provided to the target population of severely disabled, including deaf-blind, children and youth including the elimination of overlapping and redundant services.

Priority 4: Symposium—Children and Youth with Severe Disabilities: Effective Communication (CFDA 84.086)

This priority supports one cooperative agreement for a two and half day symposium to identify critical issues and best practices, and recommend future directions for the acquisition and enhancement of effective communication by children and youth with severe disabilities, including deaf blindness. One focus of the symposium would be effective practices for developing communication skills that allow these children and youth to participate in integrated school and community settings. The symposium would be held in Washington, DC.

The symposium must include presentations of at least ten commissioned, topical papers by professionals and parents which address identified critical issues pertaining to the identification and development of options for providing quality communication services for children and youth with severe disabilities, including deaf-blindness. The topical papers must include the following:

(a) A synthesis of the related research,

(b) An assessment of the state of practice or implementation, and

(c) Recommendations for the future directions for knowledge development activities and implementation of educational practices.

Approximately 80 symposium participants, who represent a cross section of parents and professionals involved with children and youth with severe disabilities must be selected to review the critical issue papers. Following the symposium, the commissioned authors must refine the critical issue papers based on a synthesis of the symposium discussion, and submit their revised material to the project for final editing and submission to the OSEP project officer for approval. The symposium document must be published and distributed by the project by the end of the 14th project month to symposium participants, State Directors of Special Education, selected personnel preparation programs, and appropriate agencies and institutes.

A planning committee composed of individuals with expertise and broadly-based experience in the development of effective communication options for children and youth with severe disabilities, including deaf-blindness, must identify the critical issues to be addressed; nominate the individuals to prepare the topical issue papers; and recommend criteria for selection of the 80 symposium participants.

The planning committee must be composed of seven members—an adult with a severe disabling condition, a parent of a child or youth with a severe disability, a State department of education consultant for language and speech services, a local school district supervisor of services for children and youth with communication disabilities, a university-based teacher trainer of personnel for this population, and a representative of a national professional organization which focuses upon the provision of communication interventions for children and youth with severe disabilities. A designated official of the funding office must be an ex-officio member of this committee and must be the individual to whom recommendations of the planning committee, criteria for selection of symposium participants, and the nominations of these participants are presented for ultimate approval of the Director, Office of Special Education Programs.

Priority 5: Innovations for Educating Children with Deaf-Blindness in General Education Settings (CFDA 84.086)

This priority supports research projects to develop and test in-depth, innovative approaches for improving the education of students with deaf-blindness in general educational settings. Projects must clearly determine the nature of integration activities present within the school and community setting where project activities will be implemented and the degree of physical integration and social interaction occurring between students with deaf-blindness and students without disabilities. Projects must ensure that the proposed educational setting has the following prerequisite components:

(1) An established system of community-based training;

(2) A systematic, data-based educational program; and

(3) An established functional curriculum.

In the implementation of activities, projects must build upon previous research and development activities in the field, and synthesize and extend that work. Projects funded under this priority must:

(1) Address an educational issue or research question;

(2) Develop a proposed intervention that can be expected to address the issue or question; and

(3) Use functional outcome measures for children and youth with deaf-blindness who participate in the proposed innovative interventions.

Project information must be disseminated to research projects, clearinghouses, technical assistance providers, and relevant demonstration projects and personnel.

The Secretary particularly invites applications that address one of the following topics:

(1) Evaluating the efficacy of innovative approaches to increase meaningful participation in social and educational experiences for children and youth with deaf-blindness and their nonhandicapped age-peers in general education settings and neighborhood settings; or

(2) Developing building-based policies and procedures to increase the capacity of neighborhood schools to provide appropriate educational services to children and youth with deaf-blindness.

However, in accordance with EDGAR at 34 CFR 75.105(c)(1), an application that addresses one of these invitational priorities receives no competitive or absolute preference over applications that meet the general priority described in this notice.

Priority 6: Utilization of Best Educational Practices for Students with Deaf-Blindness (CFDA 84.086)

This priority supports project activities which enhance the capacity of education agencies to serve students with deaf-blindness through the adoption and utilization of practices which have demonstrated effectiveness in the provision of educational and related services for students with deaf-blindness. Projects funded under this priority support technical assistance activities including inservice training, program replication, utilization of assistive devices, and other educational activities that enhance the capacity of education agencies to address the needs of children and youth with deaf-blindness and result in their inclusion in integrated school and community settings.

Projects must (1) address a specific problem or issue in educating students with deaf-blindness; (2) select specific, proven models, practices or techniques to alleviate that problem or issue; (3)

select appropriate technical assistance activities including follow-up assistance to assure adoption and use of the proven models, practices, or techniques; and (4) carry out an evaluation of the effectiveness of the technical assistance provided.

Final report information must be disseminated to appropriate research institutes, clearinghouses, and technical assistance providers.

The Secretary particularly invites applications that propose utilizations related to adoption and dissemination of practices related to:

(1) Transition of youth with deaf-blindness from secondary school programs to integrated, community-based post-school working and living environments. Projects might (a) promote interagency coordination with adult service agencies including State and local vocational education agencies, developmental disabilities councils, rehabilitative service agencies, health agencies, and private consumer service organizations; (b) promote interagency responsibility for follow-up and follow-along activities with these young adults beginning with age 22 years; and (c) establish procedures to ensure continued cooperation and on-going fiscal support of this project following the provision of funding under this priority, by adult service providing agencies, or

(2) Communication skills development for school-aged youth with deaf-blindness in community-based educational, working and living environments. These projects might stimulate the implementation of best practices identified in research and demonstration projects addressing this skill area: Attend to a wide variation in the abilities of these youth to make their needs and interests known; promote effective functioning of these youth in varied learning, working and living environments; and promote the acceptance of deaf-blind youth by employers and the general public and the integration of these youth into community based work situations and leisure/recreational activities.

However, in accordance with EDGAR at 34 CFR 75.105(c)(1) an application that meets these invitational priorities receives no competitive or absolute preference over applications that meet the general priorities described in this notice.

Priority 7: Symposium on Provision of Educational and Related Services to Children and Youth with Deaf-Blindness (CFDA 84.086)

This priority supports one cooperative agreement for a two and a half day symposium to identify critical issues, best practices, and recommended future directions in the provision of educational and related services to children and youth with deaf-blindness. One focus of the symposium would be services provided in settings that integrate individuals with multiple disabilities that include deafness-blindness with nondisabled peers. The symposium would be held in Washington, DC.

The symposium must include presentations of at least ten commissioned, topical papers by professionals and parents addressing selected critical issues pertaining to the provision of educational and related services to this population, responses at the symposium by selected peers, and discussions by and suggestions for revisions from approximately 60 selected participants who represent a cross section of disciplines and services to children and youth with deaf-blindness. Following the symposium, the commissioned authors must refine their papers, reflecting input received at the symposium by the peer-reviewers and other symposium attendees, and submit their revised material to the project for final editing and submission to the OSEP project officer for approval. The symposium document must be published and distributed by the project by the end of the 14th project month to symposium participants, directors and coordinators of State and multi-State Deaf-Blind projects, directors of research and demonstration projects supported by the Services for Deaf-Blind Children and Youth Program, Programs for Severely Handicapped Children, and directors of State special education, rehabilitation, and developmental disabilities programs, and national clearinghouses for the handicapped.

A planning committee composed of seven individuals who are professionals and parents with expertise and broadly-based experience in providing educational and or related services to children and youth with deaf-blindness and severe handicaps must be selected to plan the topical areas to be addressed; nominate the individuals to prepare the topical issues papers; and recommend criteria for selecting the 60 symposium participants.

A designated official of the funding office must be an ex-officio member of this committee and is the individual to whom recommendations of the planning committee, criteria for selection of symposium participants, and the nominations of these participants are presented for ultimate approval of the director, Office of Special Education Programs.

Invitation to Comment: Interested persons are invited to submit comments and recommendations regarding the proposed priorities to the address in this notice.

All comments submitted in response to these proposed priorities will be available for public inspection during and after the comment period, in room 4026, Switzer Building, 330 C Street SW., Washington, DC, between the hours of 8 a.m. and 4 p.m., Monday through Friday of each week, except Federal holidays.

Addresses: Comments should be addressed to: Joseph Clair, Division of Educational Services, Office of Special Education Programs, Department of Education, 400 Maryland Avenue SW, (Switzer Building, Room 3094—M/S 2313), Washington, DC 20202.

Contact: Charles Freeman, Telephone: (202) 732–1165; or Joseph Clair, (202) 732–4503.

Program Authority: 20 U.S.C. 1424.

Title of Program: Secondary Education and Transitional Services for Handicapped Youth Program CFDA No.: 84.158

Purpose: To assist handicapped youth in the transition from secondary school to postsecondary environments such as competitive or supported employment and to ensure that secondary special education and transitional services result in competitive or supported employment for handicapped youth.

Proposed Priorities: The Secretary proposes to establish the following funding priorities for the Secondary Education and Transitional Services for Handicapped Youth Program, CFDA No. 84.158. In accordance with the Education Department General Administrative Regulations (EDGAR) at 34 CFR 75.105(c)(3), the Secretary proposes to give an absolute preference under this program to applications that respond to the following priorities; that is, the Secretary will select for funding only those applications proposing projects that meet these priorities.

Priority 1: *Research Projects on the Transition of Special Populations to Integrated Postsecondary Environments* (CFDA No. 84.158)

This priority supports research projects on effective strategies to provide transitional services to youth with disabilities, 16 through 21 who belong to one or more of the special populations described below. Such strategies must provide solutions to the problems associated with the transition from school to integrated postsecondary environments, such as competitive or supported employment, postsecondary

education, vocational training, continuing education, adult services, or to community-based living alternatives.

Projects must focus on at least one of the following special populations: adjudicated youth, youth with severe emotional disturbance, and youth with severe physical disabilities (including youth with traumatic head injury). Projects must provide transition services in integrated community activities. Therefore, projects are encouraged to use consortia or multi-site approaches to recruit a sufficient number of project participants. Particular attention should be placed on the needs of students who are transitioning from one setting to another or to a variety of settings including health settings. For example, the needs for adjudicated youth may require multiple transitions from one school to another school or an institution, from one institution to another institution, and from the institution to the work place.

(1) Projects supported under this priority must:

(i) Identify or develop and test strategies for transitional service programs which focus on individualized transition case management; vocational training; and recreational, leisure, or social skills;

(ii) Conduct demographic studies for the targeted population and design exemplary transitional services based on the findings;

(iii) Develop and test the feasibility of cooperative efforts between education agencies and adult service agencies to provide comprehensive transitional services to the target population; or

(iv) Identify or develop and test strategies for the transfer of technological devices (communication, adaptive, equipment, etc.) from the educational environment to employment or other community settings.

(2) Projects under this priority must:

(i) Provide follow-up and follow-along services and long-term support for those persons with disabilities placed in jobs and/or community residential settings by the project;

(ii) Determine strategies to be employed to ensure that project participants play a major role in project design, implementation, and evaluation; and

(iii) As appropriate involve parents and other family members in the transition process.

(iv) Identify or develop and test strategies for the transfer of technological devices (Communication, adaptive equipment, *etc.*) from the educational environment to employment or other community settings.

Outcome measures must be developed by the project to determine how effective the strategies are in preparing the targeted population to live and work in the community.

Project information must be disseminated to research projects, clearinghouses, technical assistance providers, and relevant demonstration projects and personnel.

Priority 2: Multi-District Outreach Projects (CFDA 84.158)

This priority supports projects that enhance the capacity of local educational agencies by promoting the implementation of proven transition service models, or selected components of these models in multiple school districts within a State based upon specific needs. Model implementation can be accomplished through training of staff, technical assistance, information sharing, and on-site observation of model programs. Projects and the target implementation sites must identify the proven models selected for replication based on the specific needs of the sites and generate written plans for implementation.

Projects supported under this priority must:

(1) Ensure the effectiveness of the models or components of models that will be disseminated or replicated;

(2) Disseminate and replicate proven models, or selected components of these models to establish or improve the quality of education and transition services to youth with disabilities, 16 through 21, in participating school districts and in at least one of the following areas:

(i) Vocational education/training;

(ii) Independent living;

(iii) Supported/competitive employment; and

(iv) Leisure/recreation.

(3) Coordinate with relevant State agencies;

(4) Provide services in community-based settings to allow project participants the opportunity to experience living, working, and leisure activities in the community prior to the students' exit from school, and to encourage interaction between project participants and their non-disabled peers;

(5) Establish or make use of existing formal cooperative relationships among and between schools, vocational rehabilitation agencies, adult service providers, and potential employers;

(6) Emphasize good practices of self-determination by including input from project participants and adults with disabilities in project design, implementation, and evaluation;

(7) Involve parents and other family members in the transition process;

(8) Evaluate the dissemination and replication activities to determine their effectiveness including their impact on the provision of transitional services to youth with handicaps; and

(9) Generate support from the SEA or other State agencies to further disseminate and assist in replication of effective models or components throughout the State.

The models or components of models must be state-of-the-art, providing procedures and information that are not readily available to program sites within States where outreach is planned. The models or components of models must have unambiguous evaluation information regarding effectiveness.

Project information must be disseminated to appropriate institutes, clearinghouses, and technical assistance organizations.

Priority 3: Demonstration Projects to Identify and Teach Skills Necessary for Self-Determination (CFDA 84.158)

This priority supports demonstration projects that identify the skills and characteristics necessary for self-determination, as well as the in-school and out-of-school experiences that lead to the development of self-determination. Self-determination refers to the attitudes and abilities that lead individuals to define goals for themselves and to take the initiative in achieving those goals. Some of the personal characteristics associated with self-determination are: assertiveness, creativity, and self-advocacy. Projects must involve youth with disabilities, their families, and adults with disabilities in investigating (1) the types of experiences and responsibilities that appear to be important in developing the skills and characteristic necessary for self-determination; and (2) the range of opportunities or potential opportunities in-school and out-of-school that could provide these experiences. Projects must then develop strategies to systemically involve youth with disabilities in the types of activities which foster assertiveness, creativity, self-advocacy, and other skills associated with self-determination. Projects must also develop and test strategies to assist families and service providers in understanding the importance of self-determination for students with disabilities and to accept and support changes in roles and responsibilities as youth with disabilities to exercise self-determination and related skills. Projects must involve adults with disabilities in the transition process as

information resources, role models, and advocates.

Projects funded under this priority must evaluate the success of the projects in developing self-determination skills among youth with disabilities. Objective measures must be included as well as the perceptions of the youth participants, their families, and adults with disabilities who have been involved in the project activities.

Project information must be disseminated to approprate institutes, clearinghouses, and technical assistance organizations.

Invitation to Comment: Interested persons are invited to submit comments and recommendations regarding the proposed priorities to the address in this notice.

All comments submitted in response to these proposed priorities will be available for public inspection during and after the comment period, in room 4092, Switzer Building, 330 C Street, SW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Monday through Friday of each week except Federal holidays.

Address: comments should be addressed to Joseph Clair, Division of Educational Services, Office of Special Education Programs, Department of Education, 400 Maryland Avenue, SW., (Switzer Building, room 3511 M/S 3409), Washington, DC 20202.

Contact: Michael Ward, telephone: (202) 732-1163 or Joseph Clair, (202) 732-4503.

Program Authority: 20 U.S.C. 1425.

Intergovernmental Review

These programs are 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 these programs.

(Catalog of Federal Domestic Assistance Numbers: Handicapped Children's Early Education Program, 84.024; Educational Media Research, Production Distribution, and Training Program, 84.026; Training Personnel for Education of the Handicapped Program, 84.029; Postsecondary Education Programs for Handicapped Persons, 84.078; Programs for Severely Handicapped, 84.086; Secondary Educational and Transitional Services for Handicapped Youth Program, 84.158)

Dated: June 14, 1990.

Lauro F. Cavazos,

Secretary of Education.

[FR Doc. 90–17773 Filed 7–30–90; 8:45 am]

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Tuesday
July 31, 1990

Part V

Environmental Protection Agency

Notice of Intent To Remove Certain Active Ingredients From Reregistration List B and to Cancel Pesticides Containing Those Ingredients

ENVIRONMENTAL PROTECTION AGENCY

[OPP-34008; FRL 3741-4]

Notice of Intent to Remove Certain Active Ingredients From Reregistration List B and to Cancel Pesticides Containing Those Ingredients

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Under the 1988 amendments to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), registrants of pesticide products containing specified active ingredients must comply with a number of new responsibilities to ensure that their products become reregistered. Among these responsibilities is submission of specific information and a commitment to support active ingredients contained in their products through reregistration during "Phase Two" of the five phases of reregistration. The Agency has now identified a number of active ingredients on Reregistration List B which no registrant has committed to support for reregistration. The Agency is providing notice of intent to remove unsupported active ingredients from List B and to cancel all registrations containing such ingredients.

DATE: Reports of commitments to support active ingredients must be received by October 1, 1990.

FOR FURTHER INFORMATION CONTACT: By mail: Bruce A. Sidwell, Special Review and Reregistration Division (H7508C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 1128, CM # 2, 1921 Jefferson Davis Highway South, Arlington, VA 22202, telephone: (800) 552-8879.

SUPPLEMENTARY INFORMATION: This notice announces EPA's intent to remove 82 pesticide active ingredients from Reregistration List B, and to cancel all registrations of products containing them unless someone assumes the burden of supporting them.

I. Introduction

Section 4(d) of FIFRA requires that registrants of pesticides containing active ingredients on Reregistration Lists B, C, or D comply with certain responsibilities during Phase Two of reregistration. These include informing EPA of their intent to seek or not to seek reregistration, identifying the data requirements that apply to their pesticide registrations, identifying the data requirements for which they have already submitted adequate data, and committing to replace missing or inadequate data concerning the active ingredient contained in their products. These actions were required of registrants of products containing ingredients on List B by August 24, 1989.

After reviewing Phase Two responses submitted by registrants for List B, the Agency has identified 82 active ingredients which no registrant has committed to support for reregistration; i.e, either no registrant has committed to seek reregistration of any product containing that active ingredient, or no registrant has committed to fulfill all generic data requirements for the active ingredient. Under section 4(d)(5) of FIFRA these active ingredients are candidates for removal from List B, and all registrations of products containing these active ingredients are candidates for cancellation.

These cancellation candidates include some product registrations for which registrants have reported their intent to seek reregistration and claimed a "generic data exemption". The exemption is from having to provide data concerning the pesticidal active ingredient which is already being provided by the registrant of the source of the active ingredient. Such an exemption can be granted only if the product uses a purchased, EPA-registered source of active ingredient. Since the registrant(s) of the identified source(s) did not commit to support the ingredient, no exemption is possible. Those registrants who claimed a generic data exemption who wish to prevent cancellation of their products on Table 2 must either commit to support the active ingredient for reregistration or persuade someone else to.

This notice announces the Agency's intent to remove unsupported active ingredients from List B for Reregistration, and to cancel all registrations of products containing these ingredients, unless the burden of supporting the ingredients through reregistration is assumed by a current registrant or another party who acquires the rights to a current registration containing them.

Once an active ingredient is removed from List B, any person wishing to bring the pesticide back on the market would need to apply to EPA for a "new chemical" registration. Such a registration generally would not be approved until all applicable data requirements are satisfied.

Other potential cancellations pursuant to Phase Two will be addressed in future notices. These will include cancellation of pesticides for which either no Phase Two response was received or for which voluntary cancellation was requested, but which contain active ingredients being supported for reregistration. Also potential candidates for cancellation are the registrations of products for which adequate responses were not received.

II. Intent to Remove Unsupported Ingredients Without Active Registrations From Reregistration List B

Of the 82 unsupported active ingredients on List B, 29 are not found in any currently registered products. These ingredients will be removed from List B effective 60 days after publication of this notice in the **Federal Register** and will not be considered further for reregistration. These 29 ingredients are listed in the following Table 1:

TABLE 1—UNSUPPORTED ACTIVE INGREDIENTS TO BE REMOVED FROM REREGISTRATION LIST B: INGREDIENTS WITH NO ACTIVE REGISTRATIONS

Case No.[1]	Chemical name	CAS Registry no.
2025*	Barban	101-27-9
2620	Bis(tributyltin) adipate	7437-35-6
2620	Bis(tributyltin) sulfosalicylate	4419-22-1
2020	Calcium arsenate	7778-44-1
2070	3,5-Dibromo-4-hydroxybenzonitrile butyrate	3861-41-4
2070	3,5-Dibromo-4-hydroxybenzonitrile heptanoate	NA[2]
2140*	Dichlorodiphenyl trichloroethane	50-29-3
2165*	4,6-Dichloro-2-phenylphenol	5335-24-0
2165*	4,6-Dichloro-2-phenylphenol, potassium salt	53404-30-1
2230*	2,3-Dichloro-4-(propylsulfonyl)-pyridine	85847-73-0

TABLE 1—UNSUPPORTED ACTIVE INGREDIENTS TO BE REMOVED FROM REREGISTRATION LIST B: INGREDIENTS WITH NO ACTIVE REGISTRATIONS—Continued

Case No.[1]	Chemical name	CAS Registry no.
2200	2,4-Dinitro-6-octylphenyl crotonate	49794-90-3
2225	Dodemorph	1593-77-7
2225	Dodemorph benzoate	59145-63-0
2825	2-Isovaleryl-1,3-indandione	83-28-3
2505	Pentachlorophenol, potassium salt	7978-73-6
2505	Pentachlorophenyl laurate	3772-94-9
2805	Phenylmercuric lactate	122-64-5
2805	Phenylmercuric nitrate	55-68-5
2565*	*n*-Propyl isome	83-59-0
2640*	Terbucarb	1918-11-2
2630*	1,2,4,5-Tetrachloro-3-nitrobenzene	117-18-0
2655*	Tetradifon (4-chlorophenyl 2,4,5-trichlorophenyl sulfone)	116-29-0
2795*	*N-m*-Tolylphthalamic acid	85-72-3
2620	Tributyltin acrylate	13331-52-7
2620	Tributyltin isopropyl succinate	53404-82-3
2620	Tributyltin linoleate	24124-25-2
2620	Tributyltin monopropylene glycol maleate	53466-85-6
2620	Tributyltin resinate	NA[2]
2815*	2,4,5-Trichlorophenol	95-95-4

[1]An asterisk beside the case number indicates that all chemicals in the case are unsupported. Where no asterisk appears, at least one other chemical in the case is being supported for reregistration.
[2]No assigned CAS No.

III. Intent to Remove Unsupported Ingredients From Reregistration List B, and to Cancel Active Registrations Containing These Ingredients

Fifty-three active ingredients not being supported for reregistration occur in 305 current registrations under section 3 or section 24(c) of FIFRA. These active ingredients and all associated registrations are listed in Table 2. The EPA-assigned company number for each registrant appears to the left of each product name entry as the first element in each section 3 registration number or as a separate entry preceding each section 24(c) registration number.

TABLE 2—UNSUPPORTED ACTIVE INGREDIENTS TO BE REMOVED FROM REREGISTRATION LIST B, AND REGISTRATIONS TO BE CANCELLED

Case no.[1]	Chemical name	CAS Registry no.	Registration no.	Product name
2575	Ammonium 2-phenylphenate	52704-98-0	005197-00051	Kem New Formula 7-11
2520*	*O,O*-Bis(*p*-chlorophenyl) acetimidoylphosphoramidothioate	4104-14-7	003125-00181	Gophacide 0.2% Bait (Rodenticide)
			003125-00182	Gophacide 0.1% Bait (Rodenticide)
			003125-00192	Gophacide Technical
2090*	Chlorfenvinphos	470-90-6	000059-00189	Dermaton Dust
			000059-00197	Dermaton Dog Collar
			000059-00203	Dermaton III
2785*	*O*-(2-Chloro-4-nitrophenyl) *O,O*-dimethyl phosphorothioate	2463-84-5	006720-00349	Superior Di-Cap (Ready To Use)
2110	2-(*m*-Chlorophenoxy)propionamide	5825-87-6	000264-00202	Fruitone CPA
2120*	Crotoxyphos	7700-17-6	000059-00131	Cooper Super Dairy & Stock Spray
			000059-00133	Cio-Rid Ciodrin Emulsifiable Liquid
			000070-00130	Kill-Ko Fly Spray For Dairy & Beef Cattle
			000070-00155	Kill-Ko Fly Spray Concentrate
			000099-00105	Watkins Quality Dual Purpose Fly Spray
			000150-00037	Anderson's Dairy Spray
			000226-00168	Tobacco States Brand Ciodrin Emuls. Concentrate
			000228-00081	Riverdale Ciodrin
			000228-00083	Riverdale Ciodrin With Vapona
			000407-00335	Imperial Livestock Spray & Ciodrin And Vapona
			000572-00119	Rockland Ciodrin Concentrate
			000572-00130	I B A Kill Concentrate
			000572-00150	Rockland Super Kleen Kow

TABLE 2—UNSUPPORTED ACTIVE INGREDIENTS TO BE REMOVED FROM REREGISTRATION LIST B, AND REGISTRATIONS TO BE CANCELLED—Continued

Case no.[1]	Chemical name	CAS Registry no.	Registration no.	Product name
			000572-00207	I B A Ciodrin Vapona For Automatic Spraying
			000572-00215	RKland Kleen Kow conc Dairy & LiveStk. Spry
			000572-00233	I B A Pasture Fly Spray With Ciodrin (New Formula)
			000572-00243	Backrubber Oil
			000602-00101	Purina Dairy Spray Concentrate contains Ciodrin
			000602-00178	Purina Lice & Fly Killer
			000602-00186	Purina Dairy Spray Special
			000606-00098	Corn King Cattle Spray
			000606-00104	Livestock Spray
			001381-00070	Vaporin Dairy Spray
			001386-00436	Stock Spray Concentrate
			001386-00440	Unico 1% Ciodrin Insecticide Back Rubber Solution
			001386-00551	Unico Dairy And Stock Fly Spray
			002217-00360	Ciodrin 150 Emulsifiable
			002217-00376	Gordons Dairy Spray
			002217-00412	Ciodrin 382 Insecticide Emulsible Concentrate
			002217-00436	2% Ciodrin Insecticide
			002217-00499	Gordon's Livestock Spray Concentrate
			002217-00592	Gordon's Dairy & Livestock Spray
			004758-00096	VIP Hookworm Spray Concentrate
			005481-00028	Alco Ciotox Concentrate with Ciodrin
			005481-00049	Alco Vapodrin Concentrate
			005481-00069	Nevada Scratch Animal Spray Solution
			005481-00146	Vapodrin RTU Insecticide
			005481-00339	Starbar Simax with Ciodrin and DDVP
			008590-00282	Agway Ciodrin Concentrate
			008590-00382	Agway Dual Stock Spray
			010370-00196	Baird's Ciodrin-Vapona Fly Spray
			028293-00002	Horse Fly Spray
			028293-00012	Unicorn Horse Fly Spray & Rub On
			028293-00079	Unicorn Siovap Insecticide Emulsifiable Dairy
			047000-00056	Livestock-Dairy Spray and Fog
2290*	(±)Cyano(3-phenoxy-phenyl)meth yl(+)-4-(difluoromethoxy)-alpha (1-methylethyl)ben zeneacetate	70124-77-5	000241-00271	Guardian Insecticide Cattle Ear Tags
			000241-00279	Aastar Soil and Systemic Insecticide
			000241-00280	Guardian Insecticide Swine Ear Tag
			000352-00510	Pay-Off Insecticide
			000352-00511	Pay-Off Technical Insecticide
			049854 MO-85-0001	AASTAR TM Soil & Systemic Insecticide
2775*	Cythioate (*O,O*-dimethyl *O*-*p*-sulfamoylphenyl phosphorothioate)	115-93-5	000241-00176	Proban Cythioate Oral Liquid 1.6%
			000241-00190	Proban Cythioate Tablets
2155*	Diamidafos (phenyl *N,N'*-dimethyl phosphorodiamidate)	1754-58-1	000464-00408	Nellite R 90 Nematicide
			000464-00466	Nellite WS Nematicide
			000464-00488	Nellite TG
2790*	*O,O*-Diethyl 1,3-dihydro-1,3-dioxo-2*H*-isoindol-2-yl)-phosphorothioate	5131-24-8	000464-00506	Plondrel 50W
2530*	*O,O*-Diethyl *O*-2-(diethylamino)-6-methyl-4-pyrimidinyl phosphorothioate	23505-41-1	010182-FL-76-0018	Primicid 4E
			010182-FL-85-0015	Primicid 2.5E
			030564-00001	ICI Primicid 5
			030564-00002	ICI Primicid 10
			030564-00003	ICI Primicid 50EC
2270*	Diethyl diphenyl dichloroethane and related compounds	72-56-0	000334-00395	Mothrid Moth-Proofer

TABLE 2—UNSUPPORTED ACTIVE INGREDIENTS TO BE REMOVED FROM REREGISTRATION LIST B, AND REGISTRATIONS TO BE CANCELLED—Continued

Case no.[1]	Chemical name	CAS Registry no.	Registration no.	Product name
2060*	Dimethyl 3-hydroxyglutaconate dimethyl phosphate	122-10-1	002393-00326	80% Bomyl Technical Concentrate
			002393-00327	Bomyl Technical
			002393-00343	Hopkins Fly Bait Grits
2370	*N*-(2,4-Dimethyl-5-(((trifluoromethyl) sulfonyl)amino)-phenyl)acetamide.	53780-34-0	000538-00200	Scotts Turf Manager
			002217-00760	Embark 4-S Plant Growth Regulator
2425*	4-(Dimethylamino)-3,5-dimethylphenyl methylcarbamate	315-18-4	000192-00105	Snail, Slug & Bug Spray Zectran 2E Insecticide
			000464-00634	Zectran 25W
			000464-00635	Zectran 2E Mexacarbate Insecticide
			000464-00636	Zectran FS 15 Insecticide
			000464-00637	Zectran FS 5 Insecticide
			000464-00638	Zectran 50 Insecticidal Concentrate
			000464-00639	Zectran (R) Snail And Slug Killer Meal
			000464-00640	DOW Zectran FS-015 Insecticide
			000464-00641	Zectran CF-24 Insecticide
			000464-00642	Zectran F
			005481-00157	Alco Snail And Slug Spray
			006720-00448	Pratt Z-2 Insect Spray
			010370-00035	Foam Spray Products Snail Slug And Bug Spray
2015*	4-(Dimethylamino)-3-methylphenyl methylcarbamate	2032-59-9	003125-00206	Matacil Technical
			003125-00327	Matacil 180 Flowable Insecticide
2185*	Dinitramine	29091-05-2	055947-00037	Dinitramine
2190	4,6-Dinitro-*o*-cresol	534-52-1	035134-00002	DNOC
2195*	2,4-Dinitrophenol	51-28-5	003008-00004	Osmose Wood Preserving Compound Osmoplastic
			003008-00048	Osmotox-Plus Wood Preserving Compound
			003008-00050	Osmoplastic - R Wood Preserving Compound
			007768-00004	Camello Mosquito Coils (Contains Allethrin)
			060061-00029	Koppoplastic Preservative Paste
2250*	Endrin	72-20-8	007579-00001	Rid-A-Bird Control Liquid Perch Solution
2800*	Ethyl *alpha*-((dimethoxyphosphino-thioyl) thio)benzene acetate	2597-03-7	039541-00009	Cidial Technical
2235*	Ethylene dibromide	106-93-4	005785-00029	Ethylene Dibromide
			000821-00003-	Tri-X Garment Fumigant
2300*	Fospirate (dimethyl 3,5,6-trichloro-2-pyridylphosphate)	5598-52-7	000464-00429	Dog Flea Collar
			000464-00430	Cat Flea Collar
			000464-00486	Fospirate-Plastic Strips
			000464-00487	Fospirate 98P
2305*	Furfural	98-01-1	051793-00066	Elite Aerosol Insect Repellent Spray
			051793-00070	Elite Insect Repellent Spray
2360*	Lead arsenate, basic	53404-12-9	051036-00029	FASCO Deflocculated Lead Arsenate Prod No 550
2380	2-Mercapto benzothiazole	149-30-4	001100-00012	Nuodex 84
2440*	1-(8-Methoxy-4,8-dimethylnonyl)-4-(1-methylethyl)benzene.	53905-38-7	010182-00246	Pro-Drone

TABLE 2—UNSUPPORTED ACTIVE INGREDIENTS TO BE REMOVED FROM REREGISTRATION LIST B, AND REGISTRATIONS TO BE CANCELLED—Continued

Case no.[1]	Chemical name	CAS Registry no.	Registration no.	Product name
2095*	Methyl 2-chloro-9-hydroxyfluorene-9-carboxylate 65-70%, methyl 9-hydroxyfluorene-9-carboxylate 11-1	2536-31-4	000239-02504	Weed-B-Gon For Southern Lawns
			000400 HI-83-0011	20 Mule Team Maintain CF 125
			000400 NV-85-0004	20 Mule Team Maintain CF 125
			000400-00395	Maintain CF125
			000400-00396	Maintain A Aerosol
			000400-00397	20 Mule Team Maintain A
			001148 AZ-86-0013	20 Mule Team Maintain CF 125
			001148 NV-85-0005	20 Mule Team Maintain CF 125
			008419-00020	Hybred Cide Break-Thru
			009198-00063	Andersons Weed And Feed 28-3-9
			009198-00069	The Andersons Broad Spectrum Weed And Feed 28-3-9
			011150 CA-82-0117	20 Mule Team Maintain CF 125
			021137-00007	Chloflurenol Ester (IT3456)
			025332 AZ-89-0008	Maintain CF125
			060226 PR-87-0003	Maintain CF125
2320	2,2'-Methylenebis(3,4,6-trichlorophenol)	70-30-4	000334-00212	Creme Cleanser Concentrate Liqui-Klenz
			000334-00226	Pik-up 20
			000334-00227	So-Clene 20
			001043-00014	En-viron D Concentrated Phenolic Disinfectant
			001452-00009	Hilo Cat Flea Powder
2515*	Phenothiazine	92-84-2	000602-00119	Purina Check-Fly And Wormer Block (Medicated)
			000602-00120	Purina Check-Fly And Worm Control
			000602-00286	Purina Check-Fly Block II
			006482-00002	Lone Star 28% Equivalent Super Hi-Pro-Fly
			006482-00003	Lone Star 14% Protein Bar-Fly Hi-Pro-Min
			007138-00011	Pasture Balancer Cattle Block
			007138-00013	Livestock Fly & Worm Mineral Medicated
			007627-00010	Stockade Kil-a-Pest No. 12 Fly Control Block
			007631-00013	Walnut Grove "4X4" Beef Shake 31 (F)
			009078-00001	CO-OP Pasture Balancer Medicated For Ruminants
			009374-00001	Ranch-O Bar-Fly Protein Supplement Block
			009374-00002	Ranch-O-Bar Fly #2 Hi Boot Mineral Supplement
			010461-00002	Pasture Aid Bar Fly Block #10
			010461-00009	V.M.S. Enproal Fly Control Supplement
2805	Phenylmercuric ammonium propionate	53404-68-5	006390-00020	Merkyl Map
2805	Phenylmercuric ammonium acetate	53404-67-4	006390-00021	Vikon PMA-30
2805	Phenylmercuritriethanol ammonium lactate	23319-66-6	006390-00008	Merkyl PM-TL
2575	*o*-Phenylphenol, potassium salt	13707-65-8	000211-00025	Pheno Cen Hospital Germicidal Detergent
			000211-00026	Cen O Phen Detergent Germicide
			000541-00223	Fortissimo Hospital Grade Detergent-Germicide
			000675-00037	New LF-10 Hospital Disinfectant Concentrate
			001043-00032	Staphene O
			001270-00193	ZEP Formula 165-A
			001553-00088	FEN-O-Cide
			001677-00039	Mikro-BAC
			002212-00005	Legphene Germicidal Cleaner
			004313-00051	OCide Hospital Cleaner-Disinfectant
			004822-00077	Johnson Crew Bathroom Power Cleanser
			004822-00109	Expose Phenolic Cleaner
			004829-00100	Biotech Disinfectant Cleaner Formulation P128
			006378-00022	Lab One Disinfectant Cleaner Deodorizer
			006962-00027	Steriloid Bacteriostat
			006962-00028	Sentry Mint
			009647-00004	Masury Columbia Cleanicide Phenolic Germicidal
			052779-00014	Magna-CP-1
			052779-00015	Magna Phen-100

TABLE 2—UNSUPPORTED ACTIVE INGREDIENTS TO BE REMOVED FROM REREGISTRATION LIST B, AND REGISTRATIONS TO BE CANCELLED—Continued

Case no.[1]	Chemical name	CAS Registry no.	Registration no.	Product name
2045	Potassium 2-benzyl-4-chlorophenate	35471-49-9	000211-00025	Pheno Cen Hospital Germicidal Detergent
			000211-00026	Cen O Phen Detergent Germicide
			000334-00132	Hy-Pine 7 Disinfectant
			000491-00121	Selig's Pinatol Disinfectant-Deodorant
			000675-00016	Premeasured Tergisyl Disinfectant Detergent
			000675-00037	New LF-10 Hospital Disinfectant Concentrate
			000861-00072	Wintergreen Mint Odor Germicide Coef. 5
			000861-00074	Duzitall Germicidal Cleaner
			001043-00032	Staphene O
			001270-00188	Zepopine-8
			001270-00193	ZEP Formula 165-A
			001553-00088	FEN-O-Cide
			001677-00039	Mikro-BAC
			001730-00051	Pine DET Pine Odor Disinfectant
			001757-00087	Wrico BGA
			001757-00088	Wrico CRA
			002212-00005	Legphene Germicidal Cleaner
			003696-00072	Texize Lemon Power Disinfectant Germicide
			004313-00003	Power Pine Odor Disinfectant
			004313-00041	Pine II Pine Odor Disinfectant
			004313-00051	Ocide Hospital Cleaner-Disinfectant
			004822-00109	Expose Phenolic Cleaner
			004829-00100	Biotech Disinfectant Cleaner Formulation P128
			006378-00022	Lab One Disinfectant Cleaner deodorizer
			006962-00027	Steriloid Bacteriostat
			006962-00028	Sentry Mint
			009647-00004	Masury Columbia Cleanicide Phenolic Germicidal
			010190-00003	PC-6 Germicidal Cleaner
			010693-00005	Pine Odor #10 Disinfectant
			052779-00014	Magna-CP-1
			052779-00015	Magna Phen-100
2580	Pyrethrin coils		003126-00002	Cocksec Brand Mosquito Spiral
			004822-00092	Raid Mosquito Repellent Coil
2580	Pyrethrum Powder Other Than Pyrethrins	8003-34-7	000655-00061	Prentox Pyrethrum Crude Extract
			00655-00407	Prentox Pyrethrum Crude Extract
			00655-00484	Prentox Pyrethrum Powder 0.3%
			003126-00002	Cocksec Brand Mosquito Spiral
			004713-00006	Superfine Pyrethrum Powder
			004822-00092	Raid Mosquito Repellent Coil
			004925-00003	King Special Mosquito Repellent
			006529-00002	Hata's Mosquito Coils (Formula Change)
			007602-00001	Leopard Mosquito Coils
			007768-00004	Camello Mosquito Coils (Contains Allethrin)
			008112-00001	Lion Mosquito Coils
2590*	Ronnel (*O,O*-dimethyl *O*-(2,4,5-trichlorophenyl) phosphorothioate)	299-84-3	006720-00334	P.C.E. Ronnel Formula 210
			006720-00350	Superior Redikor
			006720-00357	Superior Vetrinox
			008845-00015	Rid-A-Bug Brand Pre-Mix RO2
2595	*Ryania speciosa*, powdered stems of	15662-33-6	000690-00018	Perkerson's Blam Money Back Guar. Kill All
			047154-00001	50% Ryania
2815*	Sodium 2,4,5-trichlorophenate	136-32-3	009743-00001	Skasol Biocide No. 2
2045	Sodium 2-benzyl-4-chlorophenate	3184-65-4	000211-00036	Tri-Cen Germicidal Detergent
			000303-00026	Huntington San Pheno X Powerful Germicide
			000303-00087	Beaucoup Germicidal Detergent
			000334-00024	Victory Disinfectant 5
			000334-00132	Hy-Pine 7 Disinfectant
			000464-00607	Dow Liquid Disinfectant Formulation 3A
			001043-00026	1 Stroke Environ - H
			001421-00001	Pine Odor Disinfectant Phenol Coef

TABLE 2—UNSUPPORTED ACTIVE INGREDIENTS TO BE REMOVED FROM REREGISTRATION LIST B, AND REGISTRATIONS TO BE CANCELLED—Continued

Case no.[1]	Chemical name	CAS Registry no.	Registration no.	Product name
			001421-00040	Floor Cleaner And Sanitizer Coef. 5
			001421-00045	Pine Type Disinfectant Coef 5
			001421-00104	Mintex Mint Disinfectant Coef. 10
			002155-00012	Vita-Pine Coef. 5
			002155-00022	Combine
			002155-00071	Lemonene
			002296-00024	NAC-X Disinfectant Cleaner
			003635-00174	Oxford Bryte Foam
			003635-00210	Oxford 1220 Bactericidal Detergent
			003635-00211	Oxford 1217
			003696-00073	Fantastik Disinfectant Spray Cleaner
			003696-00078	Fantastik Bathroom Cleaner
			003696-00080	Texize Fiberglass Plus Disinfectant Bathroom
			003696-00081	Texize 4055 Bathroom Cleaner
			003862-00011	Pine Odor Disinfectant Coef. 5
			003931-00003	Anco Algaecide No. 1
			004029-00007	Pine Type Disinfectant "B" Coef. 5
			005576-00002	Pine Odor Disinfectant
			005736-00024	Dubois GSC
			005736-00046	BGC-3 Germicidal Synthetic Cleaner
			006390-00019	Vikol DS
			007701-00006	Chem-Spec Cresylic Acid Disinfectant
			007701-00014	Chem Spec Lemon Odor Disinfectant
			009143-00002	Formula 310 Super Conc Broad Spectrum Germicidal
			011724-00021	Intex 8311 Steritex Detergent Germicide
			034810-00006	WEX-CEL Concentrated Germicidal Detergent
			034810-00007	Super Wex-Cel Concentrated Germicidal Detergent
			034810-00016	Phenex - Cel
2685*	Toxaphene (Technical chlorinated camphene (67-69% chlorine))	8001-35-2	002935 ID-79-0023	Red Top Toxaphene 8 Spray
			002935 ND-80-0001	Red Top Toxaphene 8 Spray
			002935 NV-80-0001	Red Top Toxaphene 8 Spray
			002935 OR-80-0004	Red Top Toxaphene 8 Spray
			002935 WA-79-0055	Red Top Toxaphene 8 Spray
			003442-00751	Toxaphene/Lindane
			003442-00793	60% Toxaphene Dip Solution Concentrate
			041715-00014	DH 20% Toxaphene 2% Parathion Dust
			051036-00079	Toxaphene 8 EC
2385*	Tributyl phosphorotrithioite	150-50-5	005905-00064	Helena Brand Folex Cotton Defoliant Emulsifiable
			009779-00038	Riverside Merphos 6
2620	Tributyltin acetate	56-36-0	008186-00014	Viron Anti-fouling Mastic Base Anti-fouling
2620	Tributyltin chloride	1461-22-9	001124-00069	Blu-lite Germicidal Hospital Type Acid Cleaner
2620	Tributyltin chloride complex of ethylene oxide condensate of abietylamine	56573-85-4	001553-00057	Momar Solv-All
			001757-00052	Amerstat 295
			001757-00057	Biosperse 219
			058018-00001	Pro Way Brand Realclean Spray Concentrate
2620	Tributyltin maleate	14275-57-1	010466-00028	Ultrafresh DM-50
			010466-00031	Ultrafresh DM-50 CC
2620	Tributyltin neodecanoate	28801-69-6	005185-00168	Bio-Guard CWT 100 Algicide
			005185-00328	Bio-Guard CWT-50 Algicide
			005185-00334	Bio-Guard X-185
			009163-00001	K-White Bowl Cleaner
2230*	2,3,5-Trichloro-4- (*n*-propylsulfonyl) pyridine	85847-73-0	000464-00452	Dowicil A-40 Antimicrobial
2710	Triclopyr	55335-06-3	000239-02515	Ortho Poison Ivy And Poison Oak Control
			062719-00092	Confront Herbicide
2690*	Triphenyltin fluoride	379-52-2	010250-00014	Hempel's Antifouling Nautic 7680-1221 Gray
			010250-00023	Hempel's Antifouling Nautic HI-7695-5030 Red
			010250-00024	Hempel's Antifouling Nautic HI-7695-5111 Red

TABLE 2—UNSUPPORTED ACTIVE INGREDIENTS TO BE REMOVED FROM REREGISTRATION LIST B, AND REGISTRATIONS TO BE CANCELLED—Continued

Case no.[1]	Chemical name	CAS Registry no.	Registration no.	Product name
2750*	Zinc ethylene bis(dithiocarbamate)	12122-67-7	000192-00121	Dexol Tomato And Vegetable Dust
			000192-00146	Dexol Zineb Garden Fungicide
			000237-00009	MSCO NO. 15 X Mushroom Zineb Dust
			000554-00072	AGSCO Dustret A Potato Seed Piece Treatment
			000707-00002	Dithane Z-78 (Zineb)
			000707-00072	Dithane Z-78 Concentrate
			000746-00034	New M.F.A. Multi-Spray Wettable Powder
			000802-00474	Lilly/Miller Tomato/Vegetable Dust
			001386-00075	Unico Garden Spray Powder
			001386-00316	Unico Garden Dust
			002749-00068	Zineb 90
			002935 OR-81-0037	Red-Top Zineb 15 Dust
			002935 WA-82-0060	Wilbur-Ellis Zineb 10 Dust
			003772-00033	Earl May Zineb 75W Fungicide
			005481-00255	Dithane/Parathion Dust
			005481-00272	Royal Brand Zineb 75 W
			005481-00286	10% Dithane Dust For The Control of Tobacco Blue
			005481-00291	Apple Dust NO. 5
			006720-00108	X-Cel Zineb
			007401-00147	Ferti-lome Tomato And Vegetable Garden Dust
			007401-00159	Ferti-lome Tomato & Vegetable Dust
			007401-00322	HI-Yield (Zineb) Lawn And Garden Fungicide
			007401-00341	American Brand All Purpose Garden Dust
			008590-00492	Agway Zineb Garden Fungicide
			010370-00154	Rose And Floral Dust
			010370-00155	Tomato And Vegetable Dust
			019713-00058	Zineb Technical
			019713-00067	Drexel Zineb 75-W
			023486-00058	Tomato Dust
			033955-00456	ACME Tomato Vegetable Dust
			033955-00469	ACME Zineb 75W Fungicide
			034704-00626	Zineb 85%
			037686-00041	Master Brand Zineb Tomato Dust
			037686-00057	Master Brand Tomato Dust Z
			042057-00073	Morgro Soil And Bulb Dust Insecticide/Fungicide
			043981-00006	Zineb Technical
			051036 PA-87-0001	Fasco Zineb 75 WP
			051036 TN-87-0002	Fasco Zineb 75 WP
			051036 TX-87-0005	Fasco Zineb 75 WP
			051036-00023	Micro-Flo Sulphur-Zineb Fungi-Sperse
			051036-00025	Zineb 75 Wettable
			051036-00062	Fasco Zineb 75 WP
			051036-00063	Fasco Thiodan Zineb Dust 3-6
			051036-00148	Fasco Vegetable Dust 5-6
2180	Ziram (zinc dimethyl dithiocarbamate)/ cyclohexyl-amine complex	16509-79-8	001544-00068	Home Guard Dog & Cat Repellent
			002292-00075	Jinx Outdoor Dog & Cat Repellent

[1] An asterisk beside the case number indicates that all chemicals in the case are unsupported. Where no asterisk appears, at least one other chemical in the case is being supported for reregistration.

Sixty days after publication of this notice the ingredients in Table 2 will be removed from Reregistration List B, and all associated registrations will be cancelled, unless within that period someone takes advantage of the process set forth in section 4(d)(5) of FIFRA and described in Unit IV of this document for preserving these registrations. The names and addresses of these registrants, in order of company number, appear in the following Table 3:

TABLE 3—REGISTRANTS OF PRODUCTS CONTAINING ACTIVE INGREDIENTS TO BE REMOVED FROM REREGISTRATION LIST B

EPA Co. No.	Company name & address
000059	Coopers Animal Health, Inc., Box 419167, Kansas City, MO 64141.
000070	Wilbur-Ellis Co., Box 16458, Fresno, CA 93755.
000099	Watkins Inc., 150 Liberty St., Winona, MN 55987.
000150	Anderson Chemical Co., Box 1041, Litchfield, MN 55355.

TABLE 3—REGISTRANTS OF PRODUCTS CONTAINING ACTIVE INGREDIENTS TO BE REMOVED FROM REREGISTRATION LIST B—Continued

EPA Co. No.	Company name & address
000192	Dexol Industries, 1450 W. 228th St., Torrance, CA 90501.
000211	Central Solutions, Inc., Box 15276, Kansas City, KS 66115.
000226	Tobacco States Chemical Co., 130 Trafton St., Lexington, KY 40504.

TABLE 3—REGISTRANTS OF PRODUCTS CONTAINING ACTIVE INGREDIENTS TO BE REMOVED FROM REREGISTRATION LIST B—Continued

EPA Co. No.	Company name & address
000228	Riverdale Chemical Co., 425 W. 194th St., Glenwood, IL 60425.
000237	Mushroom Supply Co., Box 486, Toughkenamon, PA 19374.
000239	Chevron Chemical Co., 940 Hensley St., Richmond, CA 94804.
000241	American Cyanamid Co., Agricultural Research Div., Box 400, Princeton, NJ 08540.
000264	Rhone-Poulenc Ag Co., Box 12014, Research Triangle Park, NC 27709.
000303	Huntington Laboratories, Inc., 968-970 E. Tipton St., Huntington, IN 46750.
000334	Hysan Corp., (LARA Office), 4309 S. Morgan St., Chicago, IL 60609.
000352	E.I. Dupont de Nemours & Co., Inc., Agricultural Products Dept., Box 80038, Wilmington, DE 19880.
000400	Uniroyal Chemical Co., Inc., 74 Amity Rd., Bethany, CT 06525.
000407	Imperial Inc., Box 98, Shenandoah, IA 51601.
000464	Dow Chemical U.S.A., Agricultural Products Dept., Box 1706, Midland, MI 48641.
000491	Selig Chemical Industries, 840 Selig Dr. SW, Atlanta, GA 30378.
000538	O.M. Scott & Sons Co., 14310 Scottslawn Rd., Marysville, OH 43041.
000541	Puritan/Churchill Chemical Co., 916 Ashby St. NW, Atlanta, GA 30318.
000554	Agsco Inc., Box 458, Grand Forks, ND 58201.
000572	Rockland Chemical Co., Inc., 686 Passaic Ave., West Caldwell, NJ 07006.
000602	Purina Mills, Inc., Box 66812, St Louis, MO 63166.
000606	Prince Agricultural Products, Inc., One Prince Plaza, Quincy, IL 62301.
000655	Prentiss Drug & Chemical Co., Inc., 21 Vernon St., C.B. 2000, Floral Park, NY 11001.
000675	National Laboratories, Lehn & Fink Products Gp., 225 Summit Ave., Montvale, NJ 07645.
000690	Perk Products and Chemical Co., Inc., Box 100585, Nashville, TN 37210.
000707	Rohm & Haas Co., Agric. Chemicals Registration, Independence Mall West, Philadelphia, PA 19105,
000746	MFA Oil Co., c/o Imperial, Inc., Box 98, Shenandoah, IA 51601.
000802	Chas H. Lilly Co., 7737 NE Killingsworth, Portland, OR 97218.
000821	Haertel Company, 15151 Technology Drive, Eden Prairie, MN 55344.
000861	Uncle Sam Chemical Co., Inc., 575 W 131st St., New York, NY 10027.
001043	Calgon Vestal Laboratories, Regulatory and Trade Affairs Dept., Box 147, St Louis, MO 63166.
001100	Huls America, Inc., Box 365, Piscataway, NJ 08855.
001124	Purex Industrial, Turco Purex Industrial Corp., 7300 Bolsa Ave., Westminster, CA 92684.
001148	Leffingwell, c/o Uniroyal Chemical Co., Inc., 74 Amity Rd., Bethany, CT 06525.
001270	Zep Manufacturing Co., Box 2015, Atlanta, GA 30301.
001381	Cenex/Land O'Lakes Agronomy Co., Box 98, Shenandoah, IA 51601.
001386	Universal Cooperatives Inc., Box 460 7801 Metro Parkway, Minneapolis, MN 55440.
001421	Dettelbach Chemical Corp., 4309 S. Morgan St., Chicago, IL 60609.
001452	Roccorp, Inc., Box 2945, North Canton, OH 44720.
001544	Frank J. Curran Co., 8101 S. Lemont Rd., Downers Grove, IL 60515.
001553	Momar Inc., 1830 Ellsworth Industrial Dr., Atlanta, GA 30318.
001677	Ecolab Inc., 370 Wabasha St., Ecolab Ctr., St Paul, MN 55102.
001730	American Cyanamid Co., 697 Route 46, Clifton, NJ 07015.
001757	Drew Industrial Div., Ashland Chemical, Inc., Box 2219, Columbus, OH 43216.
002155	I. Schneid, Inc., 1429 Fairmont Ave. NW, Atlanta, GA 30381.
002212	Walter G. Legge Co., Inc., Box 591, Peekskill, NY 10566.
002217	PBI/Gordon Corp., 1217 W. 12th St., Box 4090, Kansas City, MO 64101.
002292	Petrokem Corp., Box 2155, Patterson, NJ 07509.
002296	National Chemical Laboratories of PA., Inc., 401 N. 10th St., Philadelphia, PA 19123.
002393	Haco, Inc., d/b/a Hopkins Agric. Chemical Co., Box 7190, Madison, WI 53707.
002749	Aceto Chemical Co., Inc., c/o John M. Wise, Box 301, Liberty, MO 64068.
002935	Wilbur-Ellis Co., 191 W. Shaw Ave., Suite 107, Fresno, CA 93704.
003008	Osmose Wood Preserving, Inc., 980 Ellicott St., Buffalo, NY 14209.
003125	Mobay Corp., Agric. Chemicals Div., Box 4913, Kansas City, MO 64120.
003126	Royal Trading Co., Ltd., Box 1551, Honolulu, HI 96806.
003442	LaRoche Industries, Inc., Perimeter 400, Center Two, 1100 Johnson Ferry Rd. NE, Atlanta, GA 30342.
003635	Oxford Chemicals, Box 80202, Atlanta, GA 30366.
003696	Dowbrands Inc., Box 368, Greenville, SC 29602.
003772	Earl May Seed & Nursery LP, 208 N. Elm St., Box 500, Shenandoah, IA 51603.
003862	ABC Compounding Co., Inc., PO Drawer 585, Morrow, GA 30260.
003931	Anderson Chemical Co., Inc., Box 4507, Macon, GA 31213.
004029	OSR Cleaning Specialties Co., Inc., 18 Bridge St., Brooklyn, NY 11201.
004313	Carroll Co., 2900 W. Kingsley Rd., Garland, TX 75041.
004713	Pyrethrum Board of Kenya, c/o Keane Associates, 2100 Lincoln Park West, Suite 10DN, Chicago, IL 60614.
004758	Pet Chemicals, Box 18993, Memphis, TN 38181.
004822	S.C. Johnson & Son, Inc., 1525 Howe St., Racine, WI 53403.
004829	Poolchem, Inc., d/b/a Coastal Industries, 225 Passaic St., Passaic, NJ 07055.
004925	King Chemicals Co., Ltd., c/o Insect Control & Research, Inc., 1300 Dillon Heights Ave., Baltimore, MD 21228.
005185	Bio-Labs, Inc., Box 1489, Decatur, GA 30031.
005197	Systems General, Inc., ox 152170, Irving, TX 75015.
005481	Amvac Chemical Corp., 4100 E. Washington Blvd.; Los Angeles, CA 90023.
005576	Regal Supply & Chemical, Box 1955, El Paso, TX 79950.

TABLE 3—REGISTRANTS OF PRODUCTS CONTAINING ACTIVE INGREDIENTS TO BE REMOVED FROM REREGISTRATION LIST B—Continued

EPA Co. No.	Company name & address
005736	Dubois Chemicals, Inc., c/o Joe D. Slone, 3630 E. Kemper Rd., Sharonville, OH 45241.
005785	Great Lakes Chemical Corp., Box 2200, West Lafayette, IN 47906.
005905	Helena Chemical Co., 5100 Popular Ave, Suite 3200, Memphis, TN 38137.
006378	Lab Automated Chemicals, Division of Systems General, Inc., Box 152170, Irving, TX 75015.
006390	Vikon Chemical Co., Inc., 514 E. Parker St., Graham, NC 27253.
006482	Texan Farm Products Co., Box 9, Nacogdoches, TX 75961.
006529	Y. Hata & Co., Ltd., Box 3770, Honolulu, HI 96812.
006720	Southern Mill Creek Products, 5414 N. 56th St., Tampa, FL 33610.
006962	Madison Bionics, Division of Systems General, Inc., 1630 E. Northgate, Irving, TX 75062.
007138	Southern States Cooperative, Inc., 6606 W. Broad St., Richmond, VA 23230.
007401	Voluntary Purchasing Group, Inc., Box 460, Bonham, TX 75418.
007579	Rid-A-Bird, Inc., Box 436, Wilton, IA 52778.
007602	Romano, H.J., Box 1901, Old San Juan Station, PR 00903.
007627	Harvest Brands, Inc., Country Club Rd. & 69 Bypass, Box 46, Pittsburg, KS 66762.
007631	Walnut Grove Products, 201 Linn St., Atlantic, IA 50022.
007701	Chemical Specialties, Inc., 149 W. Trigg Ave., Memphis, TN 38106.
007768	De Jesus Trading Co., Carpenter Rd. 745, Santurce, PR 00915.
008112	Lion Insecticide Co., Ltd., c/o Ryuzo Nanri, 10 Orchard Rd., Demarest, NJ 07627.
008186	Carboline Co., 350 Hanley Industrial Ct., St. Louis, MO 63144.
008419	The Andersons, Box 119, Maumee, OH 43537.
008590	Agway Inc., Crop Services, Box 4933, Syracuse, NY 13221.
008845	Spectrum Group, Division of United Industries, Box 15841, St. Louis, MO 63144.
009078	Tennessee Farmers Co-Op, Box 3003, Lavergne, TN 37086.
009143	Chemscope Corp., 3200 E. Randol Mill Rd., Arlington, TX 76011.
009163	Andrews Chemical Products Co., 7889 Broad St. SW, Pataskala, OH 43062.
009198	The Andersons Lawn Fertilizer Div., d/b/a Free Flow Fertilizer, Box 119, Maumee, OH 43537.
009374	Ragland Mills, Inc., Route 8, Box 168, Neosho, MO 64850.
009647	Masury Columbia, 1140 E. 103rd St., Chicago, IL 60628.
009779	Riverside/Terra Corp., Box 171376, Memphis, TN 38187.
010182	ICI Americas, Inc., New Murphy Road & Concord Pike, Wilmington, DE 19897.
010190	Penetone Corp., 74 Hudson Ave., Tenafly, NJ 07670.
010250	Hempel Coatings (USA), Inc., Foot of Curie Ave., Box 3279, Wallington, NJ 07057.
010370	Ford's Chemical & Service, Inc., 2739 Pasadena Blvd., Pasadena, TX 77502.
010461	V M S Inc., Box 406, Montgomery, AL 36101.
010466	Thomson Research Assoc., c/o Beveridge & Diamond, 1350 I St. NW, Suite 700, Washington, DC 20005.
010693	Flo-Kem, Inc., 19402 Susana Rd., Rancho Dominguez, CA 90221.
011150	Riverside County Agric. Commissioner, 4080 Lemon St., Room 19, Riverside, CA 92501.
011724	Intex Products, Inc., Box 6648, Greenville, SC 29606.
019713	Drexel Chemical Co., Box 9306, Memphis, TN 38109.
021137	EM Industries, Inc., Plant Protection Div., 5 Skyline Dr., Hawthorne, NY 10532.
023486	Inland Laboratories, Inc., 7210 Red Rd., Suite 212A, Miami, FL 33143.
025332	Leffingwell Chemical Co., c/o Uniroyal Chemical Co., Inc., 74 Amity Rd., Bethany, CT 06525.
028293	Unicorn Laboratories, 1000 118th Ave. North, St. Petersburg, FL 33716.
030564	Plant Protection Ltd., c/o ICI Americas, Inc., Wilmington, DE 19899.
033955	PBI Gordon Corp., Box 4090, Kansas City, MO 64101.
034704	Platte Chemical Co., 419 18th St., Box 667, Greeley, CO 80632.
034810	Wexford Labs, Inc., 325 Leffingwell Ave., Kirkwood, MO 63122.
035134	SNPE Inc., 103 Carnegie Ctr., Suite 213, Princeton, NJ 08540.
037686	Chem-Nut, Inc., Box 3706-1921 Ledo Rd., Albany, GA 31706.
039541	Montedison USA, Inc., 1114 Avenue of the Americas, New York, NY 10036.
041715	Riverside Chemical Co., Box 17199-871 Ridge Lake Blvd., Memphis, TN 38117.
042057	Morgro Chemical Co., Box 651048, Salt Lake City, UT 84165.
043981	Agrimont S.p.A., c/o John W. Kennedy Consultants, 9101 Cherry Lane, Suite 113, Laurel, MD 20708.
047000	Chem-Tech, Ltd., 4515 Fleur Dr., # 303, Des Moines, IA 50321.
047154	G.B. Enterprises, 1900 Elm Ave., Modesto, CA 95351.
049854	American Cyanamid Co., Chemical Gp., Toxicology & Product Safety Dept., W-3, 1 Cyanamid Plaza, Wayne, NJ 07470.
051036	Micro-Flo Co., Box 5948, Lakeland, FL 33807.
051793	Elite Chemical Corp., Inc., 6670-C Corners Industrial Ct., Box 1947, Norcross, GA 30091.
052779	Magna Technologies, Inc., 1400 Fox Hill Rd., State College, PA 16803.
055947	Sandoz Crop Protection Corp., 1300 E. Touhy Ave., Des Plaines, IL 60018.
058018	Professional Chemists, 1005 Hawkeye Dr., Box 217, Hiawatha, IA 52233.
060061	Kop-Coat, Inc., 436 7th Ave., Pittsburgh, PA 15219.
060226	Pedro J. Vivoni, Agro Serdizios, Box 393, San Juan, PR 00936.
062719	DowElanco, Agricultural Products Dept., 9008 Bldg. G, Box 1706, Midland, MI 48641.

IV. Procedures for Preserving Registrations of Unsupported Ingredients

Section 4(d)(5) of FIFRA defines a process for preventing the removal from the reregistration process of active

ingredients originally unsupported in Reregistration Phase Two, and for preserving the registration of products containing such ingredients. Anyone who wishes to support an active ingredient proposed for delisting in this notice must:

1. Within 60 days of publication of this notice, obtain the rights to a product listed in Table 2—i.e., with the agreement of the current registrant, submit to EPA in conformance with 40 CFR 152.135, an application for transfer of an existing active registration.

2. Within 60 days of publication of this notice, provide to EPA the information listed in FIFRA section 4(d)(2), entitled "Notice of Intent to Seek or Not to Seek Reregistration."

3. Within 120 days of publication of this notice, comply with the provisions of section 4(d)(3), entitled "Missing or Inadequate Data", and pay any fee prescribed by subsection 4(i).

EPA will extend this opportunity to current registrants as well as to transferees. Any current registrant who wishes to assume support of their active ingedient would follow the same procedure, omitting application for a transfer.

Anyone contemplating a commitment to support an ingredient listed in Table 2 should consider carefully the full range of responsibilities involved in supporting an ingredient through reregistration. In addition to the Phase Two commitment to provide all required supporting data and the reregistration fee, a full Phase Three response will be required within 9 months after publication of this notice, and eventually all gaps in the supporting data base must be filled, on a strict schedule and subject to EPA monitoring of progress. Failure to comply with the requirements to submit information and data to support reregistration may result in cancellation or suspension of products, as appropriate, under section 4 of FIFRA.

Guidance and forms for Phase Two responses and payments of the reregistration fees may be obtained from the EPA contact person listed near the beginning of this notice. Small businesses and certain other registrants may be eligible for partial waivers of reregistration fees, and should investigate this possibility. In general, because of the variability and potential complexity of the reregistration process, anyone considering supporting one of these ingredients is strongly advised to discuss the circumstances of the individual case with the Agency before making a formal commitment.

Sixty days after publication of this notice, any active ingredients listed in Table 2 for which the above procedure is not satisfactorily under way will be removed from Reregistration List B, and all registrations containing those ingredients will be cancelled by order and without hearing. If the requirements in Unit IV.1 and 2 of this procedure are satisfactorily met within 60 days, but, the requirement in Unit IV.3 of this procedure is not satisfied within 120 days, that ingredient will also be removed from Reregistration List B, and all registrations containing it will be cancelled.

V. Impact on Intrastate Registrations

The Agency has by regulation effectively exempted certain intrastate pesticide products from the general prohibition (contained in FIFRA sections 3(a) and 12(a)(1)(A)) against sale or distribution of pesticides not registered under FIFRA. EPA's regulations permit sale and distribution of pesticides registered under intrastate registrations provided that, among other things, the producer of the pesticide has submitted a timely application for federal registration and the Agency has not issued a notice of intent to cancel federally registered pesticide products containing the same active ingredient as the intrastate product (40 CFR 152.230(a)(4)). Once such a notice of intent to cancel is issued, the regulation no longer provides permission for the sale or distribution of the intrastate product, and the statutory prohibitions against sale or distribution of pesticides not registered under FIFRA apply with full force. On the date of publication of this Notice in the **Federal Register**, this exception will thus cease to apply to any intrastate products containing any of the active ingredients covered by this notice of intent to cancel. At that time, it will be unlawful under FIFRA for any person to sell or distribute any pesticide products under such intrastate registrations.

VI. Impact of Anticipated Cancellations

Removal of the 29 active ingredients in Table 1 from Reregistration List B is expected to have a negligible impact on users or any other group since there are no currently active registrations for these ingredients. The significance of the potential cancellations of the 53 ingredients in Table 2 is harder to assess. Thirteen of them have reported no production since 1986. Twenty have reported production of less than 100,000 pounds since 1986. Seventeen active ingredients have reported yearly production of greater than 100,000 pounds but less than 1 million pounds. Three have reported yearly production of between 1 and 4 million pounds. Of course, an ingredient may be important for minor uses even with very low production, but, information available to EPA does not permit reliable identification of ingredients of potential significance for minor uses. Finally, of the active ingredients with reported production, eight have structurally similar active ingredients in their reregistration case that are being supported for reregistration. In these cases it is likely that the related ingredient will substitute for the unsupported one.

The Agency is concerned about possible impacts on minor uses and hopes that by giving this opportunity to original or new registrants to commit to support pesticides, this notice will provide a way for users and others who might be affected by the loss of a product to protect themselves. The Agency is making a special effort to communicate this opportunity. In addition to publishing this notice in the **Federal Register**, copies are being sent to minor use organizations, to the States, to the U.S. Department of Agriculture, and to other parties who have previously expressed concern for minor uses.

When registrations disappear as a result of the action proposed in this notice, the cancellation orders will generally permit registrants to continue to sell and distribute existing stocks of the cancelled products for 1 year after the cancellation becomes effective, or approximately 14 months from the publication date of the **Federal Register** notice unless otherwise specified. Dealers and users will be allowed to sell or use such stocks until they are exhausted. These general provisions should serve in most cases to cushion the impact of these cancellations while the market adjusts.

Dated: July 5, 1990.

William K. Reilly,

Administrator.

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To improve the ability of the Secretary of the Interior to properly manage certain resources of the National Park System. (July 27, 1990; 104 Stat. 379; 3 pages) Price: $1.00