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federal register

Wednesday
October 10, 1984

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Environmental Protection Agency

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Immigration and Naturalization Service

Antibiotics
Food and Drug Administration

Chemicals
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Housing and Urban Development Department

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Presidential Documents

Title 3—

The President

Proclamation 5250 of October 5, 1984

National High-Tech Week, 1984

By the President of the United States of America

A Proclamation

Throughout this century, the United States has been the world's leader in high technology innovation and development. Because the economy of this Nation closely is tied to technological advances, maintenance of this leadership is a national priority. Americans must build on our unmatched body of technical knowledge and on our entrepreneurial spirit to bring new and competitive products to the market.

Our youth are the key to maintaining this leadership. Young Americans must receive the educational opportunities necessary to grow and develop in a high technology environment. By providing these opportunities, our national commitment to high technology development will be translated into real progress benefitting future generations.

To focus public attention on the importance of high technology development, the Congress by House Joint Resolution 453, has designated the week of September 30 through October 6, 1984, as "National High-Tech Week" and authorized and requested the President to issue a proclamation in observance of this week.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the week of September 30 through October 6, 1984, as National High-Tech Week, and I call upon the people of the United States to celebrate this week with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this fifth day of October, in the year of our Lord nineteen hundred and eighty-four, and of the Independence of the United States of America the two hundred and ninth.

Ronald Reagan

[FR Doc. 84-26806
Filed 10-5-84; 12:31 pm]
Billing code 3195-01-M

Presidential Documents

Proclamation 5251 of October 5, 1984

National Spina Bifida Month, 1984

By the President of the United States of America

A Proclamation

Spina bifida is among the most common birth defects. Between one and two of every 1,000 babies in the United States are born with this problem. Infants with spina bifida may have incompletely developed spinal cords and suffer varying degrees of muscle paralysis and spine and limb deformities. Most develop hydrocephalus—a potentially dangerous buildup of fluid and pressure within the brain.

Thirty years ago the majority of children with spina bifida died. Today, thanks to Federal and private programs of biomedical research, medical and surgical management of spina bifida has advanced to the point that nearly all children survive. But some of these survivors face various potential problems, including lack of mobility, incontinence, and learning difficulties. Once again, research has provided answers: early surgical closure of spinal defects to reduce the development of infection and hydrocephalus; improved neurosurgical techniques for relieving pressure on the brain; better antibiotics for treating life-threatening infections; lighter braces to aid in mobility; and new techniques to control bladder function.

Further improvements may be expected to result from research supported by the Federal government's National Institute of Neurological and Communicative Disorders and Stroke and the National Institute for Child Health and Human Development. Voluntary agencies including the Spina Bifida Association of America, the March of Dimes Birth Defects Foundation, and the National Easter Seal Society are also involved.

For the many investigators supported by these organizations, the greatest challenge is to find the cause of this crippling birth defect and develop ways to prevent it. Scientists working toward these goals are studying the formation of the spinal cord and factors that might influence its abnormal development.

In order to focus attention on the needs of spina bifida children for long-term care and on the emotional and financial difficulties faced by their parents, the Congress, by Senate Joint Resolution 275, has designated October 1984 as "National Spina Bifida Month" and authorized and requested the President to issue a proclamation in observance of the month.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim October 1984 as National Spina Bifida Month, and I call upon all government agencies, health organizations, and the people of the United States to observe this month with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this fifth day of October, in the year of our Lord nineteen hundred and eighty-four, and of the Independence of the United States of America the two hundred and ninth.

Ronald Reagan

[FR Doc. 84-26899
Filed 10-5-84; 4:33 pm]
Billing code 3195-01-M

Rules and Regulations

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 920

[Docket No. AO 83-1]

Kiwifruit Grown in California; Order Regulating Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule establishes a marketing agreement and order program to promote orderly marketing of California kiwifruit. The marketing order was favored by growers who produced more than the required two-thirds of the production represented in a referendum. The marketing agreement was signed by handlers representing more than the requisite 50 percent of total 1983–84 shipments. The program provides for a committee for local administration and authority for grade, size, quality, maturity, pack, and container regulations. The program would be financed by assessments levied on handlers of the commodity. The marketing order was considered at a public hearing in February 1984. The referendum was conducted by the Department by mail ballot August 31–September 10, 1984.

EFFECTIVE DATE: October 12, 1984.

FOR FURTHER INFORMATION CONTACT: William J. Doyle, Chief, Fruit Branch, F&V, AMS, USDA, Washington, D.C. 20250, telephone (202–447–5975).

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding: Notice of Hearing (hereinafter referred to as the "notice of hearing"), issued November 21, 1983, and published in the **Federal Register** (48 FR 54032) on November 30, 1983; Recommended Decision issued June 29, 1984, and published in the July 5, 1984, issue of the **Federal Register** (49 FR 27524), and a correction to the Recommended Decision which appeared in the July 12, 1984, issue of the **Federal Register** (49 FR 28408), and Secretary's Decision issued on August 21, 1984, and published in the August 24, 1984, issue of the **Federal Register** (49 FR 33670), and a correction published in the September 4, 1984, issue of the **Federal Register** (49 FR 35022).

This administrative action is governed by the provisions of Sections 556 and 557 of Title 5 of the United States Code and therefore is not subject to the requirements of Executive Order 12291.

List of Subjects in 7 CFR Part 920

Marketing agreement and orders, Kiwifruit, California.

Findings and Determinations

(a) *Findings upon the basis of the hearing record.* Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*) and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), a public hearing was held upon a proposed marketing agreement and a proposed order, regulating the handling of kiwifruit grown in California.

Upon the basis of the record, it is found that:

(1) The order, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the act;

(2) The order regulates the handling of kiwifruit grown in the production area in the same manner as, and is applicable only, to persons in the respective classes of commercial and industrial activity specified in, the marketing agreement and order upon which a hearing has been held;

(3) The order is limited in its application to the smallest regional production area which is practicable, consistent with carrying out the declared policy of the act, and the issuance of several orders applicable to subdivisions of the production area would not effectively carry out the declared policy of the act;

(4) There are no differences in the production and marketing of kiwifruit grown in the production area which make necessary different terms and provisions applicable to different parts of such area; and

(5) All handling of kiwifruit grown in the production area is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce.

(b) *Additional findings.* It is necessary in the public interest to make this order effective not later than October 12, 1984. Harvest is expected to begin in early October, and any appropriate regulations established under the marketing order should apply to a substantial portion of 1984 crop shipments. A prompt effective date is necessary in order to provide the opportunity for timely recommendations for regulations by the Kiwifruit Administrative Committee.

In view of the foregoing, it is hereby found and determined that good cause exists for making this order effective October 12, 1984, and that it would be contrary to the public interest to delay the effective date of this order for 30 days after its publication in the **Federal Register.**

(c) *Determinations.* It is hereby determined that:

(1) The Marketing Agreement Regulating the Handling of kiwifruit grown in California, upon which the aforesaid public hearing was held has been signed by handlers (excluding cooperative associations of producers who are not engaged in processing, distributing, or shipping kiwifruit covered by the proposed order) who during the period August 1, 1983, through July 31, 1984, handled not less than 50 percent of the volume of kiwifruit covered by this order, and

(2) The issuance of this order is favored or approved by producers who participated in a referendum on the question of its approval and who, during the period August 1, 1983, through July 31, 1984 (which has been deemed to be a representative period), have been engaged within the State of California in the production of kiwifruit for market and produced for market at least two-thirds of the volume of such commodity represented in the referendum.

Order Relative to Handling

It is therefore ordered, That on and after the effective date hereof, the handling of kiwifruit grown in California shall be in conformity to and in

compliance with the following terms and conditions:

Part 7 CFR 920 is added to read as follows:

PART 920—KIWIFRUIT GROWN IN CALIFORNIA

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

Definitions

§ § 920.1 Secretary.

"Secretary" means the Secretary of Agriculture of the United States, or any officer or employee of the Department of whom authority has heretofore been delegated, or to whom authority may hereafter be delegated.

§ 920.2 Act.

"Act" means Public Act No. 10, 73d Congress (May 12, 1933), as amended and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (48 Stat. 31, as amended; 7 U.S.C. 601 *et seq.*).

§ 920.3 Person.

"Person" means an individual, partnership, corporation, association or any other business unit.

§ 920.4 Production area.

"Production area" means the State of California.

§ 920.5 Kiwifruit.

"Kiwifruit" means all varieties of *Actinidia chinensis,* Planch., commonly called kiwifruit, or kiwi, grown in the production area.

§ 920.6 Varieties.

"Varieties" means and includes all classifications or subdivisions of kiwifruit.

§ 920.7 Fiscal period.

"Fiscal period" is synonymous with fiscal year and means a 12-month period beginning on August 1 of one year and ending on the last day of July of the following year or such other period as the committee, with the approval of the Secretary, may prescribe.

§ 920.8 Committee.

"Committee" means the Kiwifruit Administrative Committee established pursuant to § 920.20

§ 920.9 Grower.

"Grower" is synonymous with producer and means any person who produces kiwifruit for the fresh market and who has a proprietary interest therein.

§ 920.10 Handler.

"Handler" is synonymous with shipper and means any person (except a common or contract carrier transporting kiwifruit owned by another person) who handles kiwifruit.

§ 920.11 Handle.

"Handle" and ship are synonymous and mean to sell, consign, deliver, or transport kiwifruit, or to cause kiwifruit to be sold, consigned, delivered, or transported, between the production area and any point outside thereof, or within the production area: *Provided,* That the term handle shall not include the sale of kiwifruit on the vine, the transportation within the production area of kiwifruit from the vineyard where grown to a packing facility located within such area for preparation for market, or the delivery of such kiwifruit to such packing facility for such preparation.

§ 920.12 District.

"District" means the applicable one of the following described subdivisions of the production area or such other subdivision as may be prescribed pursuant to § 920.31:

(a) "District 1" shall include the counties of Siskiyou, Modoc, Shasta, Lassen, Tehama, Plumas, and Butte (with the exception of that area set aside as "District 2").

(b) "District 2" shall include the 95948 postal zip code area known as Gridley (and the surrounding area), incorporating the area located within the following boundaries: The area west of the Feather River; north of the Butte/Sutter county line; east of Pennington and Riley Roads; and south of Farris Road, Ord Ranch Road and Gridley Avenue.

(c) "District 3" shall include the counties of Yuba, Sutter, Sierra, Nevada, and Placer.

(d) "District 4" shall include the counties Del Norte, Humboldt, Trinity, Mendocino, Lake, Sonoma, Marin, Napa, Solano, Yolo, Colusa, and Glenn.

(e) "District 5" shall include the counties of San Joaquin, Calaveras, Tuolumne, Merced, Stanislaus, Contra Costa, El Dorado, Amador, Sacramento, Alpine, San Francisco, Alameda, San Mateo, Santa Clara, Santa Cruz, San Benito and Monterey.

(f) "District 6" shall include the counties of Mono, Mariposa, Madera, Fresno and Kings.

(g) "District 7" shall include the counties of Tulare and Inyo.

(h) "District 8" shall include the counties of San Luis Obispo, Santa Barbara, San Bernardino, Kern, Ventura, Los Angeles, Orange, Riverside, San Diego and Imperial.

§ 920.13 Pack.

"Pack" means the specific arrangement, size, weight, count, or grade of a quantity of kiwifruit in a particular type and size of container, or any combination thereof.

§ 920.14 Container.

"Container" means a box, bag, crate, lug, basket, carton, package, or any other type of receptacle used in the packaging or handling of kiwifruit.

Administrative Body

§ 920.20 Establishment and membership.

There is hereby established a Kiwifruit Administrative Committee consisting of 12 members, each of whom shall have an alternate who shall have the same qualifications as the member for whom he or she is an alternate. The 12 member committee shall be made up of the following: One public member (and alternate); one member (and alternate) from each of the eight California districts; three additional committee members and their alternates to be selected from the three districts with three highest productions based on the production in the prior fiscal period: *Provided*, That no more than a total of two members and their alternates shall represent any one district. With the exception of the public member and alternate, all members and their respective alternates shall be growers or employees of growers.

§ 920.21 Term of office.

The term of office of each member and alternate member of the committee shall be two years from the date of their selection and until their successor has qualified; provided, however, that of the first members of the committee, one-half shall serve for one year, and one-half shall serve for two years, with the determination of term of each member to be made by lot at the time of selection. Except as otherwise provided in this Order, the terms shall begin August 1 and end on the last day of July. Members and alternates may serve up to three consecutive two year terms on the committee.

§ 920.22 Nomination.

(a) *Initial Members.* Nominations for each of the initial members, with the exception of the public member and alternate, together with nominations for the initial alternate members for each position, may be submitted to the Secretary by the committee responsible for promulgation of this part. Such nominations may be made by means of group meetings of the growers concerned in each district. Such nominations, if made, shall be filed with the Secretary no later than the effective date of this part. In the event nominations for initial members and alternate members of the committee are not filed pursuant to, and within the time specified in this section, the Secretary may select such initial members and alternate members without regard to nominations, but selections shall be on the basis of the representation provided in § 920.20.

(b) *Successor Members.* (1) The committee shall hold or cause to be held, not later than July 15 of each year, a meeting or meetings of growers in each district for the purpose of designating nominees for successor members and alternate members of the committe. These meetings shall be supervised by the committee which shall prescribe such procedure as shall be reasonable and fair to all persons concerned.

(2) Only growers from a given district who are present at such nomination meetings, or represented at such meetings by duly authorized employees, may participate in the nomination and election of nominees for members and their alternates.

(3) A particular grower shall be eligible for membership as member or alternate member to fill only one position on the committee.

(c) The public member and alternate member shall be selected by the Secretary in his discretion.

§ 920.23 Selection.

From the nominations made pursuant to § 920.22, or from other qualified persons, the Secretary shall select the 12 members of the committee and an alternate for each such member, with the exception of the public member and alternate member, who shall be selected by the Secretary in his discretion.

§ 920.24 Failure to nominate.

If nominations are not made within the time and in the manner prescribed in § 920.22, the Secretary may, without regard to nominations, select the members and alternate members of the committee on the basis of the representation provided for in § 920.20.

§ 920.25 Acceptance.

Each person to be selected by the Secretary as a member or as an alternate member of the committee shall, prior to such selection, qualify by advising the Secretary that he/she agrees to serve in the position for which nominated for selection.

§ 920.26 Vacancies.

To fill any vacancy occasioned by the failure of any person selected as a member or as an alternate member of the committee to qualify, or in the event of the death, removal, resignation, or disqualification of any member or alternate member of the committee, a successor for the unexpired term of such member or alternate member of the committee shall be nominated and selected, or, in the case of the public member and alternate, selected by the Secretary in his discretion, in the manner specified in §§ 920.22 and 920.23. If the names of nominees to fill any such vacancy are not made available to the Secretary within a reasonable time after such vacancy occurs, the Secretary may fill such vacancy without regard to nominations, which selection shall be made on the basis of representation provided for in § 920.20.

§ 920.27 Alternate members.

An alternate member of the committee, during the absence of either the member for whom that individual is an alternate, or, in the case of districts with two grower positions on the committee, the other member and that member's alternate, shall act in the place and stead of such member and perform such other duties as assigned. In the event of the death, removal, resignation, or disqualification of a member, the alternate of such member shall act for him or her until a successor for such member is selected and has qualified.

§ 920.30 Powers.

The committee shall have the following powers:

(a) To administer the provisions of this part in accordance with its terms;

(b) To receive, investigate, and report to the Secretary complaints of violations of the provisions of this part;

(c) To make and adopt rules and regulations to effectuate the terms and provisions of this part; and

(d) To recommend to the Secretary amendments to this part.

§ 920.31 Duties.

The committee shall have, among others, the following duties:

(a) To select a chairperson and such other officers as may be necessary, and to define the duties of such officers;

(b) To appoint such employees, agents and representatives as it may deem necessary, and to determine compensation and to define the duties of each;

(c) To submit to the Secretary as soon as practicable after the beginning of each fiscal period a budget for such fiscal period, including a report in explanation of the items appearing therein and a recommendation as to the rate of assessment for such period;

(d) To keep minutes, books and records which will reflect all of the acts and transactions of the committee and which shall be subject to examination by the Secretary;

(e) To prepare periodic statements of the financial operations of the committee and to make copies of each

such statement available to growers and handlers for examination at the office of the committee;

(f) To cause its books to be audited by a public accountant at least once each fiscal year and at such times as the Secretary may request;

(g) To act as intermediary between the Secretary and any grower or handler;

(h) To investigate and assemble data on the growing, handling and marketing conditions with respect to kiwifruit;

(i) To submit to the Secretary the same notice of meetings of the committee as is given to its members;

(j) To submit to the Secretary such available information as may be requested;

(k) To investigate compliance with the provisions of this part;

(l) With the approval of the Secretary, to redefine the districts into which the production area is divided and to reapportion the representation of any district on the committee: *Provided,* That any such changes shall reflect, insofar as practicable, shifts in kiwifruit production within the districts and the production area.

§ 920.32 Procedure.

(a) Eight members of the committee, or alternates acting for members, shall constitute a quorum and any action of the committee shall require the concurring vote of the majority of those present: *Provided,* That actions of the committee with respect to expenses and assessments, or recommendations for regulations pursuant to §§ 920.50 through 920.55, of this part shall require at least eight concurring votes.

(b) The committee may vote by telephone, telegraph, or other means of communication, and any votes so cast shall be confirmed promptly in writing: *Provided,* That if an assembled meeting is held, all votes shall be cast in person.

§ 920.33 Expenses and compensation.

(a) Except for the public member and alternate, the members of the committee, and alternates when acting as members, shall serve without compensation but shall be reimbursed for expenses necessarily incurred by them in the performance of their duties under this part: *Provided,* That the committee at its discretion may request the attendance of one or more alternates, including the public alternate, at any or all meetings notwithstanding the expected or actual presence of the respective members and may pay expenses as aforesaid.

(b) The public member and alternate shall be reimbursed for expenses necessarily incurred by them in the performance of their duties under this part, and shall receive per diem compensation established by the committee.

§ 920.34 Annual report.

The committee shall, as soon as is practicable after the close of each marketing season, prepare and mail an annual report to the Secretary and make a copy available to each grower and handler who requests a copy of the report.

Expenses and Assessments

§ 920.40 Expenses.

The committee is authorized to incur such expenses as the Secretary finds are reasonable and likely to be incurred by the committee for its maintenance and functioning and to enable it to exercise its powers and perform its duties in accordance with the provisions of this part. The funds to cover such expenses shall be acquired in the manner prescribed in § 920.41.

§ 920.41 Assessments.

(a) As his or her pro rata share of the expenses which the Secretary finds are reasonable and likely to be incurred by the committee during a fiscal period, each person who first handles kiwifruit during such period shall pay to the committee, upon demand, assessments on all kiwifruit so handled. The payment of assessments for the maintenance and functioning of the committee may be required under this part throughout the period it is in effect, irrespective of whether particular provisions thereof are suspended or become inoperative. If a handler does not pay any assessment within the time prescribed by the committee, the assessment may be subject to an interest charge at a rate prescribed by the committee with the approval of the Secretary.

(b) The Secretary shall fix the rate of assessment to be paid by each such person during a fiscal period in an amount designed to secure sufficient funds to cover the expenses which may be incurred during such period and to accumulate and maintain a reserve fund equal to approximately one fiscal period's expenses. At any time during or after the fiscal period, the Secretary may increase the rate of assessment in order to secure sufficient funds to cover any later finding by the Secretary relative to the expenses which may be incurred: *Provided,* That any assessment, excluding any amount collected pursuant to § 920.55(c), must be limited to a maximum assessment rate of three and one-half cents per flat, or the equivalent thereof. The Secretary may increase this maximum rate in each succeeding year after the initial year of order operation by the Consumer Price Index (cost of living) for California as published by the Bureau of Labor Statistics. Such increase shall be applied to all kiwifruit handled during the applicable fiscal period. In order to provide funds for the administration of the provisions of this part during the first part of a fiscal period before sufficient operating income is available from assessments on the current year's shipments, the committee may accept the payment of assessments in advance, and may also borrow money for such purposes.

§ 920.42 Accounting.

(a) If, at the end of a fiscal period, the assessments collected are in excess of expenses incurred, such excess shall be accounted for in accordance with one of the following:

(1) If such excess is not retained in a reserve, as provided in paragraph (a)(2) of this section, it shall be refunded proportionately to the persons from whom it was collected: *Provided,* That any sum paid by a person in excess of his or her pro rata share of the expenses during any fiscal period may be applied by the committee at the end of such fiscal period to any outstanding obligations due the committee from such person.

(2) The committee, with the approval of the Secretary, may carry over such excess into subsequent fiscal periods as a reserve: *Provided,* That funds already in the reserve do not equal approximately one fiscal period's expenses. Such reserve funds may be used: (i) To defray expenses, during any fiscal period, prior to the time assessment income is insufficient to cover such expenses; (ii) to cover deficits incurred during any fiscal year when assessment income is less than expenses; (iii) to defray expenses incurred during any period when any or all provisions of this part are suspended or are inoperative; and, (iv) to cover necessary expenses of liquidation in the event of termination of this part. Upon such termination, any funds not required to defray the necessary expenses of liquidation shall be disposed of in such manner as the Secretary may determine to be appropriate: *Provided,* That to the extent practical, such funds shall be returned pro rata to the persons from whom such funds were collected.

(b) All funds received by the committee pursuant to the provisions of this part shall be used solely for the purpose specified in this part and shall be accounted for in the manner provided in this part. The Secretary may at any time require the committee and its

members to account for all receipts and disbursements.

(c) Upon the removal or expiration of the term of office of any member of the committee, such member shall account for all receipts and disbursements and deliver all property and funds in his or her possession to the committee, and shall execute such assignments and other instruments as may be necessary or appropriate to vest in the committee full title to all of the property, funds, and claims vested in such member pursuant to this part.

Regulations

§ 920.50 Marketing policy.

(a) Each season prior to making any recommendations pursuant to § 920.51, the committee shall submit to the Secretary a report setting forth its marketing policy for the ensuing marketing season. Such marketing policy report shall contain information relative to:

(1) The estimated total production of kiwifruit within the production area;

(2) The expected general quality and size of kiwifruit in the production area and in other areas;

(3) The expected demand conditions for kiwifruit in different market outlets;

(4) The expected shipments of kiwifruit produced in the production area and in areas outside the production area;

(5) Supplies of competing commodities;

(6) Trend and level of consumer income;

(7) Other factors having a bearing on the marketing of kiwifruit; and

(8) The type of regulations expected to be recommended during the marketing season.

§ 920.51 Recommendations for regulation.

(a) Whenever the committee deems it advisable to regulate the handling of any variety or varieties of kiwifruit in the manner provided in § 920.52, it shall so recommend to the Secretary.

(b) In arriving at its recommendations for regulation pursuant to paragraph (a) of this section, the committee shall give consideration to current information with respect to the factors affecting the supply and demand for kiwifruit during the period or periods when it is proposed that such regulations should be made effective. With each such recommendation for regulation, the committee shall submit to the Secretary the data and information on which such recommendation is predicated and such other available information as the Secretary may request.

§ 920.52 Issuance of regulations.

(a) The Secretary shall regulate, in the manner specified in this section, the handling of kiwifruit whenever the Secretary finds, from the recommendations and information submitted by the committee, or from other available information, that such regulations will tend to effectuate the declared policy of the act. Such regulations may:

(1) Limit, during any period or periods, the shipment of any particular grade, size, quality, maturity, or pack, or any combination thereof, of any variety or varieties of kiwifruit grown in the production area;

(2) Limit the shipment of kiwifruit by establishing, in terms of grades, sizes, or both, minimum standards of quality and maturity during any period when season average prices are expected to exceed the parity level;

(3) Fix the size, capacity, weight, dimensions, markings, or pack of the container, or containers, which may be used in the packaging or handling of kiwifruit.

(b) The committee shall be informed immediately of any such regulation issued by the Secretary and the committee shall promptly give notice thereof to handlers.

§ 920.53 Modification, suspension, or termination of regulations.

(a) In the event the committee at any time finds that, by reason of changed conditions, any regulations issued pursuant to § 920.52 should be modified, suspended, or terminated, it shall so recommend to the Secretary.

(b) Whenever the Secretary finds from the recommendations and information submitted by the committee or from other available information, that a regulation should be modified, suspended, or terminated with respect to any or all shipments of kiwifruit in order to effectuate the declared policy of the act, the Secretary shall modify, suspend, or terminate such regulation. If the Secretary finds that a regulation obstructs or does not tend to effectuate the declared policy of the act, the Secretary shall suspend or terminate such regulation. On the same basis and in like manner the Secretary may terminate any such modification or suspension.

§ 920.54 Special purpose shipments.

(a) Except as otherwise provided in this section, any person may, without regard to the provisions of §§ 920.41, 920.52, 920.53 and 920.55 and the regulations issued thereunder, handle kiwifruit: (1) For consumption by charitable institutions; (2) for distribution by relief agencies; or (3) for commercial processing into products.

(b) Upon the basis of recommendations and information submitted by the committee, or from other available information, the Secretary may relieve from any or all requirements, under or established pursuant to §§ 920.41, 920.52, 920.53 or 920.55, the handling of kiwifruit: (1) To designated market areas; (2) for such specified purposes (including shipments to facilitate the conduct of marketing research and development projects); or, (3) in such minimum quantities or types of shipments, as may be prescribed.

(c) The committee shall, with the approval of the Secretary, prescribe such rules, regulations, and safeguards as it may deem necessary to prevent kiwifruit handled under the provisions of this section from entering the channels of trade for other than the specific purposes authorized by this section. Such rules, regulations, and safeguards may include the requirements that handlers shall file applications and receive approval from the committee for authorization to handle kiwifruit pursuant to this section, and that such applications be accompanied by a certification by the intended purchaser or receiver that the kiwifruit will not be used for any purpose not authorized by this section.

§ 920.55 Inspection and certification.

(a) Whenever the handling of any variety of kiwifruit is regulated pursuant to §§ 920.52, or 920.53, each handler who handles kiwifruit shall, prior thereto, cause such kiwifruit to be inspected by the Federal or Federal-State Inspection Service and certified as meeting the applicable requirements of such regulation: *Provided,* That inspection and certification shall not be required for kiwifruit which previously have been so inspected and certified if such prior inspection was performed within such period as may be established pursuant to paragraph (b) of this section. Promptly after inspection and certification, each such handler shall submit, or cause to be submitted, to the committee a copy of the certificate of inspection issued with respect to such kiwifruit. The committee may, with the approval of the Secretary, presecribe rules and regulations waiving the inspection requirements of this section where it is determined that inspection is not available: *Provided,* That all shipments made under such waiver shall comply with all regulations in effect.

(b) The committee may, with the approval of the Secretary, establish a period prior to shipment during which

the inspection required by this section must be performed.

(c) The committee may enter into an agreement with the Federal and Federal-State Inspection Services with respect to the costs of the inspection required by paragraph (a) of this section, and may collect from handlers their respective pro rata shares of such costs.

Reports

§ 920.60 Reports.

(a) Each handler shall furnish to the committee, at such times and for such periods as the committee may designate, certified reports covering, to the extent necessary for the committee to perform its functions, each shipment of kiwifruit as follows:

(1) The name of the shipper and the shipping point;

(2) The car or truck license number (or name of the trucker), and identification of the carrier;

(3) The date and time of departure;

(4) The number and type of containers in the shipment;

(5) The quantities shipped, showing separately the variety, size and grade of the fruit;

(6) The destination;

(7) Identification of the inspection certificate or waiver pursuant to which the fruit was handled.

(b) Upon request of the committee, made with the approval of the Secretary, each handler shall furnish to the committee, in such manner and at such times as it may prescribe, such other information as may be necessary to enable the committee to perform its duties under this part.

(c) Each handler shall maintain for at least two succeeding fiscal years, such records of the kiwifruit received and disposed of by such handler as may be necessary to verify the reports submitted to the committee pursuant to this section.

(d) All reports and records submitted by handlers pursuant to the provisions of this section shall be received by, and at all times be in custody of, one or more designated employees of the committee. No such employee shall disclose to any person, other than the Secretary upon request therefor, data or information obtained or extracted from such reports and records which might affect the trade position, financial condition, or business operation of the particular handler from whom received: *Provided,* That such data and information may be combined, and made available to any person, in the form of general reports in which the identities of the individual handler furnishing the information, is not disclosed but may be revealed to any extent necessary to effect compliance with the provisions of this part and the regulations issued thereunder.

Miscellaneous Provisions

§ 920.61 Compliance.

(a) Except as provided in this part, no person shall handle kiwifruit, the shipment of which has been prohibited by the Secretary in accordance with the provisions of this part; and no person shall handle kiwifruit except in conformity with the provisions of this part and the regulations issued under this part.

(b) For the purpose of checking and verifying reports filed by handlers, the committee, through its duly authorized representatives shall have access to any handler's premises during regular business hours, and shall be permitted at any such times to inspect such premises and any kiwifruit held by such handler, and any and all records of the handler with respect to his or her acquisition, sales, uses and shipments of kiwifruit. Each handler shall furnish all labor and equipment necessary to make such inspections.

§ 920.62 Right of the Secretary.

The members of the committee (including successors and alternates), and any agents, employees, or representatives thereof, shall be subject to removal or suspension by the Secretary at any time. Each and every regulation, decision, determination, or other act of the committee shall be subject to the continuing right of the Secretary to disapprove of the same at any time. Upon such disapproval, the disapproved action of the committee shall be deemed null and void, except as to acts done in reliance thereon or in accordance therewith prior to such disapproval by the Secretary.

§ 920.63 Termination.

(a) The Secretary may at any time terminate the provisions of this part by giving at least one day's notice by means of a press release or in any other manner in which the Secretary may determine.

(b) The Secretary shall terminate or suspend the operation of any and all of the provisions of this part whenever the Secretary finds that such provisions do not tend to effectuate the declared policy of the act.

(c) The Secretary shall terminate the provisions of this part whenever the Secretary finds by referendum or otherwise that such termination is favored by a majority of the growers: *Provided,* That such majority has, during the current marketing season, produced more than 50 percent of the volume of the kiwifruit which were produced within the production area for shipment in fresh form. Such termination shall become effective on the first day of August subsequent to the announcement thereof by the Secretary.

(d) The committee shall consider all petitions from growers submitted to it for termination of this part provided such petitions are received by the committee prior to February 1 of the then current fiscal period. Upon recommendation of the committee received not later than April 1 of the then current fiscal period, the Secretary shall conduct a referendum among the growers prior to July 15 of such fiscal period to ascertain whether continuance of this part is favored by producers.

(e) The Secretary shall conduct a referendum within the period beginning May 15, 1990, and ending July 15, 1990, to ascertain whether continuance of this part is favored by the growers as set forth in paragraph (c) of this section. The Secretary shall conduct such a referendum within the same period of every sixth fiscal period thereafter.

(f) The provisions of this part shall, in any event, terminate whenever the provisions of the act authorizing them cease to be in effect.

§ 920.64 Proceeding after termination.

(a) Upon the termination of the provisions of this part, the committee shall, for the purpose of liquidating the affairs of the committee, continue as trustee of all the funds and property then in its possession, or under its control, including claims for any funds unpaid or property not delivered at the time of such termination.

(b) The said trustees shall: (1) Continue in such capacity until discharged by the Secretary; (2) from time to time account for all receipts and disbursements and deliver all property on hand, together with all books and records of the committee and of the trustees, to such persons as the Secretary may direct; and (3) upon the request of the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such person, full title and right to all of the funds, property, and claims vested in the committee of the trustees pursuant thereto.

(c) Any person to whom funds, property, or claims have been transferred or delivered, pursuant to this section, shall be subject to the same obligation imposed upon the committee and upon the trustees.

§ 920.65 Effect of termination or amendment.

Unless otherwise expressly provided by the Secretary, the termination of this part or of any regulation issued pursuant to this part, or the issuance of any amendment to either thereof, shall not (a) affect or waive any right, duty, obligation, or liability which shall have arisen or which may thereafter arise in connection with any provision of this part or any regulation issued under this part, or (b) release or extinguish any violation of this part or of any regulation issued under this part, or (c) affect or impair any rights or remedies of the Secretary or of any other person with respect to any such violation.

§ 920.66 Duration of immunities.

The benefits, priviliges, and immunities conferred upon any person by virtue of this part shall cease upon its termination, except with respect to acts done under and during the existence of this part.

§ 920.67 Agents.

The Secretary may, by designation in writing, name any officer or employee of the United States, or name any agency or division in the United States Department of Agriculture, to act as the Secretary's agent or representative in connection with any of the provisions of this part.

§ 920.68 Derogation.

Nothing contained in this part is, or shall be construed to be, in derogation or in modification of the rights of the Secretary or of the United States (a) to exercise any powers granted by the act or otherwise, or (b) in accordance with such powers, to act in the premises whenever such action is deemed advisable.

§ 920.69 Personal liability.

No member or alternate member of the committee and no employee or agent of the committee shall be held personally responsible, either individually or jointly with others, in any way whatsoever, to any person for errors in judgment, mistakes, or other acts, either of commission or omission, as such member, alternate, employee or agent, except for acts of dishonesty, willful misconduct, or gross negligence.

§ 920.70 Separability.

If any provision of this part is declared invalid or the applicability thereof to any person, circumstance, or thing is held invalid, the validity of the remainder of this part or the applicability thereof to any other person, circumstance, or thing shall not be affected thereby.

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

Effective Date: October 12, 1984.

Signed at Washington, D.C. on October 2, 1984.

Karen K. Darling,

Deputy Assistant Secretary, Marketing & Inspection Services.

[FR Doc. 84-26650 Filed 10-4-84; 12:30 pm]

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DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 214

Nonimmigrant Classes; Ports of Entry; Great Falls, MT

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This final rule removes Great Falls, Montana, from the list of ports of entry at 8 CFR 214.2(c)(1) where, except for transit from one part of foreign contiguous territory to another part of the same territory, an alien must make application for admission to the United States as a direct transit without a visa. This change is made because the Service has no inspection personnel assigned to Great Falls, and international commercial carriers no longer service that port of entry.

EFFECTIVE DATE: October 10, 1984.

FOR FURTHER INFORMATION CONTACT: For General Information: Loretta J. Shogren, Director, Policy Directives and Instructions, Immigration and Naturalization Service, 425 I Street, NW., Washington, D.C. 20536, Telephone: (202) 633–3048.

For Specific Information: Steven M. Hurst, Immigration Inspector, Immigration and Naturalization Service, 425 I Street, NW., Washington, D.C. 20536, Telephone: (202) 633–4034.

SUPPLEMENTARY INFORMATION: This final rule removes Great Falls, Montana from the list of ports designated at 8 CFR 214.2(c)(1) as ports where, except for transit from one part of foreign contiguous terrority to another part of the same territory, application for direct transit without a visa must be made. The Service no longer maintains inspection personnel at Great Falls International Airport, Great Falls, Montana. In recent years the number of transit without visa applicants at Great Falls has been low, averaging approximately five to ten annually. All such applicants arrived, after preinspection by the Service in Calgary, Alberta, Canada, on Western Airlines, a carrier that serves other ports listed at 8 CFR 214.2(c)(1). This carrier, the single international commercial carrier serving Great Falls, discontinued arrivals from Canada to that port in early September 1984.

Compliance with 5 U.S.C. 553 as to notice of proposed rulemaking and delayed effective date is unnecessary as this rule relates to agency management. This is not a rule within the definition of section 1(a) of E.O. 12291.

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

List of Subjects in 8 CFR Part 214

Administrative practice and procedure, Aliens, Passports and visas, Port of entry, Travel restrictions.

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

PART 214—NONIMMIGRANT CLASSES

§ 214.2 [Amended]

In § 214.2, paragraph (c)(1) is amended by removing "Great Falls, MT" from the listing of ports of entry authorized to accept transit without visa applications for admission.

(Sec. 214 of the Immigration and Nationality Act, as amended (8 U.S.C. 1184))

Dated: October 3, 1984.

Andrew J. Carmichael, Jr.,

Associate Commissioner, Examinations, Immigration and Naturalization Service.

[FR Doc. 84-26749 Filed 10-9-84; 8:45 am]

BILLING CODE 4410-10-M

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1010

Export of Noncomplying, Misbranded, Banned Products Subject to Regulation Under Consumer Product Safety Act or Federal Hazardous Substances Act; Statement of Policy and Interpretation

AGENCY: Consumer Product Safety Commission.

ACTION: Statement of policy and interpretation.

SUMMARY: The Consumer Product Safety Commission issues a statement of policy and interpretation concerning products which fail to comply with an applicable consumer product safety standard or

banning rule issued under the Consumer Product Safety Act (CPSA), or which are "misbranded hazardous substances" or "banned hazardous substances" as those terms are used in the Federal Hazardous Substances Act (FHSA). The statement issued below announces the Commission's interpretation of the CPSA and FHSA to prohibit the export of such products if they have been sold or distributed in domestic commerce.* The Commission is issuing this statement to announce and codify its policy and interpretation of the CPSA and FHSA with regard to export of such products.

DATE: This statement of policy and interpretation is effective October 10, 1984.

FOR FURTHER INFORMATION CONTACT: Allen F. Brauninger, Office of the General Counsel, Consumer Product Safety Commission, Washington, D.C. 20207; telephone (301) 492-6980.

SUPPLEMENTARY INFORMATION:

Background

Since its activation in 1973, the Consumer Product Safety Commission has from time to time considered the question of whether products that fail to comply with applicable provisions of a standard, banning rule, or other requirements imposed under the statutes which it enforces may legally be exported.

The Commission enforces the Consumer Product Safety Act (CPSA, 15 U.S.C. 2051 *et seq.*), the Federal Hazardous Substances Act (FHSA, 15 U.S.C. 1261 *et seq.*), the Flammable Fabrics Act (FFA, 15 U.S.C. 1191 *et seq.*), and the Poison Prevention Packaging Act (PPPA, 15 U.S.C. 1471 *et seq.*). The CPSA, FHSA, and FFA have provisions applicable to export of products; however, the text of the export provisions in each of these statutes varies to some degree from one act to another. (The PPPA has no provisions applicable to export. That statute is enforced by application of particular provisions of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 16 *et seq.*) or the FHSA, depending upon the particular product involved.)

Before the Commission began operation in 1973, the Federal Trade Commission (FTC) enforced the FFA and had announced a policy concerning export of products which failed to comply with an applicable flammability standard issued under that act. The FTC policy was that any product which failed to comply with an applicable standard of flammability issued under the FFA could not be exported if the product had ever been distributed in domestic commerce.

The Commission affirmed and adopted this policy with regard to export of noncomplying products subject to FFA standards by publication of notices in the **Federal Register** in 1975 (40 FR 59884) and in 1976 (41 FR 16797). The Commission's FFA export policy was codified at 16 CFR 1602.2.

The Commission did not publish and codify a statement of its policy with regard to export of products which failed to comply with consumer product safety standards or banning rules issued under the CPSA. Likewise, the Commission had not published a statement of its policy with regard to products which were "misbranded hazardous substances" or "banned hazardous substances" under the FHSA. A product may be a "misbranded hazardous substance" because it fails to comply with general labeling requirements established by sections 2 (f) and (p) of the FHSA (15 U.S.C. 1261 (f) and (p)); because it fails to comply with specific labeling regulations issued under provisions of section 3 of the FHSA (15 U.S.C. 1262) and codified at 16 CFR Part 1500; or because it is a household substance which fails to comply with an applicable requirement for child-resistant packaging issued under the PPPA, as provided in section 2(p) of the FHSA. A product may be a "banned hazardous substance" because it is a toy or children's article which contains or consists of a hazardous substance as that term is defined in section 2(f) of the FHSA; because it is a household substance which is classified as a "banned hazardous substance" by regulation issued under provisions of section 2(q) of the FHSA (15 U.S.C. 1261(q)); or because it is a toy or children's article which presents an electrical, mechanical, or thermal hazard and is classified as a "banned hazardous substance" by regulation issued under provisions of section 3 (e) through (i) of the FHSA (15 U.S.C. 1262 (e) through (i)). Regulations classifying products as "banned hazardous substances" are codified at 16 CFR Part 1500 through Part 1512.

When questions arose concerning the permissibility of export of noncomplying, misbranded, or banned products regulated under the CPSA or FHSA, the Commission took the position that export of such products is prohibited if the products had been distributed in domestic commerce.

A memorandum from the Commission's Associate Executive Director for Compliance and Enforcement, dated July 19, 1978, described the enforcement policy then applicable to the export of products in violation of regulations, bans, or standards issued under the CPSA or FHSA. (*1*)** This memorandum states that generally export of such products is prohibited if they have ever been sold or offered for sale in domestic commerce. (Although never published in the Code of Federal Regulations, this memorandum was cited in the **Federal Register** notice of August 8, 1980 (45 FR 53056 at 53062), by which the Commission issued regulations concerning notification requirements applicable to export of noncomplying products.) (*2*)

However, in some instances, typically involving minimal violations, the Commission has refrained from enforcement of applicable provisions of the CPSA or FHSA. In those instances, noncomplying, misbranded, or banned products were exported, even though they has been distributed in domestic commerce.

In 1978, the CPSA, FHSA, and FFA were amended by the addition of provisions which require notification of the country of intended destination before the export of any product which fails to comply with an applicable standard, ban, or labeling requirement under any of those acts. (See Pub. L. 95-931, 92 Stat. 2742, November 10, 1978.) The Commission has issued regulations which implement the notification provisions of the 1978 amendments. These regulations are codified at 16 CFR Part 1019.

New FFA Export Policy

On July 7, 1983, the Commission issued a Memorandum Decision and Order *In the Matter of Imperial Carpet Mills, Inc.*, CPSC Docket No. 80-2, deciding issues raised in an interlocutory appeal. One part of the decision and order set aside the Commission's previous policy prohibiting the export of products which fail to comply with an applicable flammability standard issued under the

*Commissioner Terrence M. Scanlon voted against issuance of this statement of policy and interpretation and issued a dissenting statement concerning this matter, which is available in the Commission's public reading room, 8th floor, 1111 18th Street, NW., Washington, D.C., or by calling the Office of the Secretary at (301) 492-6800. Commissioner Carol G. Dawson abstained and did not participate in the Commission decision on this matter.

**Numbers in parentheses identify reference documents listed in Bibliography at the end of this notice. Requests for inspection of any of these documents should be made at the Commission's public reading room, 1111 18th Street, NW., Washington, D.C., or by calling the Office of the Secretary at (301) 492-6800.

FAA if the products had ever moved in domestic commerce. (*3*)

The new export policy announced in the *Imperial Carpet Mills* decision is applicable only to products which fail to comply with a standard issued under the FFA. It has no applicability to products which fail to comply with a standard, ban or labeling requirement imposed under provisions of the CPSA or FHSA. (*3*)

In the **Federal Register** of February 28, 1984 (49 FR 7274), the Commission published notice of a public hearing on March 16, 1984, to receive information and views from all interested persons on the issue of whether the Commission should extend the export policy announced in the *Imperial Carpet Mills* decision to products which fail to comply with standards and banning rules issued under the CPSA or which are misbranded or banned hazardous substances under provisions of the FHSA. (*4*)

Public Hearing

At the hearing, seven persons presented testimony on behalf of the following organizations: Consumer Federation of America, International Organization of Consumers Unions, Women's Health Network, Public Citizen Health Research Group, Citizens Committee for Fire Protection, and Infant Formula Action Coalition. All of these groups opposed extension of the export policy announced in the *Imperial Carpet Mills* decision to noncomplying, misbranded, or banned products which are regulated under the CPSA or FHSA. A written transcript was made of all oral presentations given at the hearing. (*5*)

Additionally, in response to the notice of February 28, 1984, the Commission received written comments from one U.S. Senator (*10*), two U.S. Representatives (*7,11*), seven consumer organizations (*8,9,14,15,16,21,22*), three individual consumers (*18,19,24*), a fraternity (*23*), three trade associations (*6,12,20*), one exporter (*17*), and one attorney (*13*). Comments from the Senator, Congressmen, consumer groups, individual consumers, and the fraternity opposed extension of the export policy announced in the *Imperial Carpet Mills* case to noncomplying, mislabeled, and banned products regulated under the CPSA and FHSA; comments from the trade associations, exporter, and attorney favored such an extension.

The arguments advanced by persons who testified at the hearing and by parties submitting written comments in response to the notice of February 28, 1984, fall into two broad categories:

(1) Those which are based on the text of the export provisions of the statutes and the legislative history of those provisions; and

(2) Those which are based on the commenters' perception of sound public policy.

Statutory Provisions

As noted above, the CPSA, FHSA, and FFA each contain language applicable to exportation of noncomplying products. The provisions of those acts relevant to proceeding are as follows:

Consumer Product Safety Act, section 18(a); 15 U.S.C. 2067(a).

This Act shall not apply to any consumer product if (1) it can be shown that such product is manufactured, sold, or held for sale for export from the United States (or that such product was imported for export), unless (A) such consumer product is in fact distributed in commerce for use in the United States, or (B) the Commission determines that exportation of such product presents an unreasonable risk of injury to consumers within the United States, and (2) such consumer product when distributed in commerce, or any container in which it is enclosed when so distributed, bears a stamp or label stating that such consumer product is intended for export; except that this Act shall apply to any consumer product manufactured for sale, offered for sale, or sold for shipment to any installation of the United States located outside of the United States.

Federal Hazardous Substances Act, sections 4 (a) and (c); 15 U.S.C. 1263 (a) and (c).

The following acts and the causing thereof are hereby prohibited:

(a) The introduction or delivery for introduction into interstate commerce of any misbranded hazardous substance or banned hazardous substance.

* * * * *

(c) The receipt in interstate commerce of any misbranded hazardous substance or banned hazardous substance and the delivery or proffered delivery thereof for pay or otherwise.

Federal Hazardous Substances Act, section 5(b); 15 U.S.C. 1264(b).

No person shall be subject to the penalties of subsection (a) of this section * * * (3) for having violated subsection (a) or (c) of section 4 with respect to any hazardous substance shipped or delivered for shipment for export to any foreign country, in a package marked for export on the outside of the shipping container and labeled in accordance with the specifications of the foreign purchaser and in accordance with the laws of the foreign country, but if such hazardous substance is sold or offered for sale in domestic commerce, or if the Consumer Product Safety Commission determines that exportation of such substance presents an unreasonable risk of injury to persons residing within the United States, this clause shall not apply.

Flammable Fabrics Act, section 15(a); 15 U.S.C. 1202(a).

This Act shall not apply to any fabric, related material, or product which is to be exported from the United States, if such fabric, related material, or product, and any container in which it is enclosed, bears a stamp or label stating that such fabric, related material, or product is intended for export and such fabric, related material, or product is in fact exported from the United States; unless the Consumer Product Safety Commission (hereinafter in this section referred to as the "Commission") determines that exportation of such fabric, related material, or product presents an unreasonable risk of injury to persons residing within the United States; except that this Act shall apply to any fabric, related material, or product manufactured for sale, offered for sale, or intended for shipment to any installation of the United States located outside of the United States.

Arguments Based on Law

Persons opposed to extension of the export policy of the *Imperial Carpet Mills* case to products regulated under the CPSA and FHSA argued that the plain language of the CPSA and FHSA prohibits export of noncomplying, misbranded, or banned products subject to regulation under their provisions if such products have been distributed in domestic commerce. (*5,7,10,21*)

Specifically, these comments point to the language of section 18(a) of the CPSA stating that the CPSA does not apply to any consumer product which is intended and labeled for export, unless "such consumer product is in fact distributed in commerce for use in the United States." These comments also observe that section 5(b) of the FHSA prohibits the imposition of penalties for certain transactions involving misbranded or banned hazardous substances intended and labeled for export except when "such hazardous substance is sold or offered for sale in domestic commerce."

These comments state that while section 15(a) of the FFA provides that the FFA shall not apply to fabrics, related materials, and products intended and labeled for export, that section is silent about the effect of distribution of such goods in domestic commerce on the exemption from the FFA made for goods to be exported.

Commenters opposing extension of the export policy announced in *Imperial Carpet Mills* to products regulated under the CPSA and FHSA argue that such an extension is not permissible in view of the language of section 18(a) of the CPSA and section 5(b) of the FHSA.

Persons opposed to extension of the export policy of the *Imperial Carpet Mills* case to products regulated under the CPSA and FHSA also contend that in 1978 the Congress was aware of the

Commission's policy to prohibit export of noncomplying, misbranded, or banned products if such products had been distributed in domestic commerce. Those commenters argue that with knowledge of that export policy, Congress chose not to modify or eliminate the language of section 18(a) of the CPSA or of section 5(b) of the FHSA concerning the effect of distribution of goods in domestic commerce when it amended those acts by adding provisions to require notification to the Commission before shipment of noncomplying, misbranded, or banned products to foreign countries. (*5,7,11,22*)

One of the written comments favoring extension of the export policy of the *Imperial Carpet Mills* case to products regulated under the CPSA and FHSA states that the text of the CPSA and FHSA, as well as that of the FFA, does not require that a firm must form the intent to export at the time of manufacture in order for goods labeled for export to be exempt from the requirements of that statute. (*13*) This comment argues, in effect, that the language of section 18(a) of the CPSA and of section 5(b) of the FHSA does not exclude a product from the exemption provided by those sections if it "has ever been" distributed in domestic commerce, but only if it "is" so distributed.

The same comments also argues that Congres did not endorse or approve the Commission's export policy when it added the notification requirements in the 1978 amendments of those acts. This comment asserts that in 1978 the Commission had not published or announced a general export policy under the CPSA or the FHSA, but in fact had issued two different and contradictory statements concerning the Commission's authority to forbid export of one particular banned hazardous substance after it had been distributed in domestic commerce. (*13*)

Policy Arguments

In addition to arguments based on the text and legislative history of the CPSA and FHSA, opponents and proponents of extending the *Imperial Carpet Mills* export policy to the CPSA and FHSA advanced several policy arguments for their respective positions.

Policy arguments made by parties opposed to extension of the *Imperial Carpet Mills* export policy to products regulated under the CPSA and FHSA included the following points:

1. A policy which prohibits export of noncomplying, misbranded, or banned products if they have been distributed in domestic commerce provides strong incentive for domestic manufacturers to produce and market products that comply with applicable requirements. Firms are more careful in design of products and will employ better quality control practices if they know that recalled products cannot be exported. (*5,7,8,10,14*) Extension of the export policy announced in *Imperial Carpet Mills* to products subject to regulation under the CPSA and FHSA will reduce the incentive to comply with applicable requirements by allowing firms to "dump" mistakes overseas. Any reduction of incentive to comply with applicable requirements under the CPSA or FHSA will increase the risks to consumers in the United States because manufacturers will exercise less care in the design and production of their products.

2. Existing provisions of the CPSA and FHSA impose no undue restrictions on manufacturers desiring to compete in overseas markets. All that is required is notification to the Commission at least 30 days before shipment of any product which does not meet requirements which would be applicable if the product were intended for sale or distribution in the United States. (*5*)

3. Extension of the *Imperial Carpet Mills* export policy to products regulated under the CPSA and FHSA will tarnish the label "Made in U.S.A." in other countries. Such an extension would also place an undue burden on governments of other countries which may lack the funds, expertise, personnel, or organizational structure to deal with noncomplying, misbranded, or banned products exported from the United States. The net effect of extending the *Imperial Carpet Mills* export policy to goods regulated under the CPSA and FHSA would be to damage rather than improve the overseas market for American products. (*5,9,10,15,19*)

4. Permitting the export of products that have been recalled raises the possibility that the products will be re-introduced into domestic commerce by importation into the United States. The Commission's inspection and enforcement resources would be diverted to preventing re-introduction of recalled goods into domestic commerce. (*5,7,10,14*)

5. The Commission's current policy of prohibiting export of products which fail to comply with applicable requirements under the CPSA or FHSA if they have been distributed in domestic commerce is working in the manner intended. (*5*) The current policy allows the Commission to make case-by-case exceptions in appropriate circumstances. (*22*)

6. A wider variety of products with a greater range of risks are subject to regulation under the CPSA and FHSA than under the FFA. The differences in products and risks of injury justify an export policy for products regulated under the CPSA and FHSA different from the policy for products which fail to comply with FFA standards. (*5*)

Policy arguments in written comments from parties favoring extension of the *Imperial Carpet Mills* export policy to products regulated under the CPSA and FHSA made the following points:

1. Criminal and civil penalties available under the CPSA and FHSA—not the Commission's export policy—provide the mechanisms to assure that products meet applicable requirements and to protect consumers in the United States. (*6*)

2. Firms produce only one class of products. They do not produce one class for domestic consumption and another for the export market. For this reason, a change in the Commission's export policy will not increase risks to consumers in this country by encouraging production of noncomplying products. Instead, a change in policy would benefit industry by removing one barrier to freer export trade. (*6,12,20*)

3. Notification to the Commission and the country of intended destination of a firm's plan to export noncomplying, misbranded, or banned products fully satisfies the requirements of the CPSA and FHSA, as well as the international obligations of the United States. The recipient country, rather than a U.S. regulatory agency, is best able to determine whether a product is safe for use in that country. (*6,13,20*)

4. Extending the *Imperial Carpet Mills* export policy to goods subject to regulation under the CPSA and FHSA would eliminate inconsistency in the Commission's administration of the CPSA, FHSA, and FFA. All three acts have substantially the same language and should be applied consistently. (*6*)

The Commission has given careful consideration to all arguments based on law and policy from all interested parties concerning the question of whether the Commission should extend the export policy of the *Imperial Carpet Mills* decision to cover products subject to regulation under the CPSA and FHSA.

Commission Decision

On May 16, 1984, by a 3–1 vote, the Commission decided not to extend the export policy of the *Imperial Carpet Mills* case to the CSPA and FHSA. (*25*) The majority held that the better interpretation of the statues and the

sounder public policy would be established by prohibiting the export of noncomplying, misbranded, or banned products regulated under the CPSA or FHSA if they have been sold or distributed in domestic commerce. Chairman Nancy Harvey Steorts and Commissioners Stuart M. Statler and Saundra Brown Armstrong concurred in that decision. Commission Terrence M. Scanlon voted in favor of extension of the *Imperial Carpet Mills* export policy to products regulated under the CPSA and FHSA. All four Commissioners issued separate statements of the reasons for their votes in this matter, which were attached to a news releases issued on May 18, 1984. (*25*) Additionally, Commissioners Statler and Armstrong issued separate opinions explaining in detail their views on the issue of an appropriate export policy under the CPSA and FHSA. (*26,27*) The vote on export policy under the CPSA and FHSA was taken before Commissioner Carol G. Dawson's appointment to the Commission.

Although the Commission vote of May 16, 1984, has the effect of continuing the Commission's existing policy with regard to export of noncomplying, misbranded, and banned products subject to regulation under the CPSA and FHSA, the Commission has never published and codified a statement of that policy in a single document.

Therefore, the Commission has decided to issue the following statement of policy and interpretation concerning export of noncomplying, misbranded or banned products subject to regulation under the CPSA or FHSA.

Highlights of Statement

In § 1010.3 of the statement below, the Commission announces that in its enforcement of the CPSA and FHSA, the Commission interprets the provisions of those acts to prohibit the export of any consumer product which fails to comply with an applicable consumer product safety standard or banning rule issued under the CPSA, or any product which is a "misbranded hazardous substance" or a "banned hazardous substance" as those terms are used in the FHSA, if the product has been distributed, sold, or offered for sale in domestic commerce. The policy is not applicable to the following products:

(1) Products which could be regulated only under provisions of the CPSA but which are not subject to a consumer product safety standard or banning rule issued under the Act.

(2) Consumer products which are subject to and fail to comply with an applicable consumer product safety standard or banning rule issued under the CPSA, but which have never been distributed in commerce for use in the United States. (Export of these products is subject to provisions of Commission regulations published at 16 CFR Part 1019.)

(3) Products which could be regulated under one or more sections of the FHSA but which are neither "misbranded hazardous substances" nor "banned hazardous substances."

(4) Products which are misbranded hazardous substances or banned hazardous substances as those terms are used in the FHSA, but which have never been sold or offered for sale in domestic commerce. (Export of these products is subject to provisions of Commission regulations published at 16 CFR Part 1019.)

(5) Products for which the Commission has granted an exemption from an applicable standard, ban, or labeling requirement in accordance with provisions of regulations codified at 16 CFR 1009.9. (These products remain subject to requirements for notification prior to export which are published at 16 CFR Part 1019.)

(6) Products which fail to comply with an applicable standard of flammability issued under the FFA. (Export of these products is subject to provisions of Commission regulations published at 16 CFR Part 1019.)

As noted above, the Commission has occasionally refrained from enforcement of applicable provisions of the CPSA or FHSA in certain cases. This has resulted in export of noncomplying, banned, or misbranded products previously sold, offered, or distributed in domestic commerce. The Associate Executive Director for Compliance and Administrative Litigation will continue to consider any request received by the Commission to refrain from enforcement of the CPSA or FHSA.

Rulemaking Procedures

Generally, the Administrative Procedure Act (APA, 5 U.S.C. 553) requires agencies to publish notice of proposed rulemaking in the **Federal Register** and to afford all interested parties opportunity to submit written comments on proposed rules. However, section 553(b)(A) of the APA states that these requirements for publication of notice and opportunity for comment are not applicable to "interpretative rules" or to "general statements of policy."

The statement of policy and interpretation issued below falls within the exception to requirements for publication of notice of proposed rulemaking and opportunity for submission of written comments because it simply announces the Commission's interpretation of provisions of the CPSA and FHSA applicable to export of certain categories of products, and its policy in the enforcement of those statutory provisions. The statement of policy and interpretation imposes no restriction, obligation, or duty beyond what is required by the CPSA and the FHSA.

Section 553(d) of the APA requires that a "substantive rule" must be issued on a final basis at least 30 days before its effective date; however, that section also states that its requirements do not apply to "interpretative rules and statements of policy."

The statement of policy and interpretation imposes no substantive requirement on any person or firm, but simply announces the Commission's policy to continue an interpretation of statutory provisions which has been used in the enforcement of the CPSA and the FHSA for the past several years.

Therefore, this statement of policy and interpretation shall be effective immediately.

Environmental Consideration

The statement published below does not fall within the categories of Commission actions described in 16 CFR 1021.5(b) that have potential for affecting the human environment. For this reason, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 16 CFR Part 1010

Administrative practice and procedure, Consumer protection, Exports, Hazardous materials.

Conclusion

Therefore, in accordance with provisions of the Consumer Product Safety Act (15 U.S.C. 2067(a)), the Federal Hazardous Substances Act (15 U.S.C. 1263 (a) and (c), 1264(b), 1269(a)), and the Administrative Procedure Act (5 U.S.C. 553), the Consumer Product Safety Commission hereby amends the Code of Federal Regulations, Title 16, Chapter II, Subchapter A, by adding a new Part 1010, to read as follows:

PART 1010—STATMENT OF POLICY AND INTERPRETATION CONCERNING EXPORTATION OF NONCOMPLYING, MISBRANDED, OR BANNED PRODUCTS

Sec.

1010.1 Purpose and scope.
1010.2 Statutory provisions.
1010.3 Statement of policy and interpretation.

Authority: 15 U.S.C. 1263 (a) and (c); 15 U.S.C. 1264(b), 1269(a); 15 U.S.C. 2067(a); 5 U.S.C. 553)

§ 1010.1 Purpose and scope.

(a) This Part 1010 states the policy of the Consumer Product Safety Commission and its interpretation of the Consumer Product Safety Act and the Federal Hazardous Substances Act with regard to exportation of products which have been sold, offered for sale, or distributed in commerce for use in the United States and which:

(1) Fail to comply with an applicable consumer product safety standard or banning rule issued under provisions of the Consumer Product Safety Act (15 U.S.C. 2051 *et seq.*); or

(2) Are "misbranded hazardous substances" or "banned hazardous substances" as those terms are used in the Federal Hazardous Substances Act (15 U.S.C. 1261 *et seq.*).

(b) The policy expressed in this Part 1010 does not apply to any of the following products:

(1) Products which could be regulated only under provisions of the Consumer Product Safety Act but which are not subject to a consumer product safety standard or banning rule issued under that Act.

(2) Consumer products which are subject to and fail to comply with an applicable standard or banning rule issued under provisions of the Consumer Product Safety Act but which have never been distributed in commerce for use in the United States. (See section 18(b) of the Consumer Product Safety Act, 15 U.S.C. 2067(b), and 16 CFR Part 1019 for requirements governing export of such products.)

(3) Products which could be regulated under one or more sections of the Federal Hazardous Substances Act but which are neither "misbranded hazardous substances" nor "banned hazardous substances" as those terms are used in the Act.

(4) Products which are "misbranded hazardous substances" or "banned hazardous substances" as those terms are used in the Federal Hazardous Substances Act but which have never been sold or offered for sale in domestic commerce. (See sections 5(b) and 14(d) of the Federal Hazardous Substances Act, 15 U.S.C. 1264(b) and 1273(d), and 16 CFR Part 1019 for requirements governing export of such products.)

(5) Products for which the Commission has granted an exemption from an applicable standard, ban, or labeling requirement under the CPSA, FHSA, or FAA, in accordance with provisions of 16 CFR 1009.9. (These products remain subject to the notification requirements of 16 CFR Part 1019).

(6) Products which fail to comply with an applicable standard of flammability issued under provisions of the Flammable Fabrics Act (15 U.S.C. 1191 *et seq.*). The Commission's policy regarding export of such products is set forth in the Commission's Memorandum Decision and Order *In the Matter of Imperial Carpet Mills, Inc.*, CPSC Docket No. 8–2, July 7, 1983, and allows export without regard to whether the products have been distributed in domestic commerce. (See section 15 of the Flammable Fabrics Act, 15 U.S.C. 1202, and 16 CFR Part 1019 for requirements governing export of such products.)

§ 1010.2 Statutory provisions.

(a) Section 18(a) of the Consumer Product Safety Act (15 U.S.C. 2057(a)) states:

This Act (the Consumer Product Safety Act) shall not apply to any consumer product if: (1) It can be shown that such product is manufactured, sold, or held for sale for export from the United States (or that such product was imported for export), unless (A) such consumer product is in fact distributed in commerce for use in the United States, or (B) the Commission determines that exportation of such product presents an unreasonable risk of injury to consumers within the United States, and (2) such consumer product when distributed in commerce, or any container in which it is enclosed when so distributed, bears a stamp or label stating that such consumer product is intended for export; except that this Act shall apply to any consumer product manufactured for sale, offered for sale, or sold for shipment to any installation of the United States located outside of the United States.

(b) Section 4 of the Federal Hazardous Substances Act (15 U.S.C. 1263) states in part:

The following acts and the causing thereof are hereby prohibited: (a) The introduction or delivery for introduction into interstate commerce of any misbranded hazardous substance or banned hazardous substance. * * * (c) The receipt in interstate commerce of any misbranded hazardous substance or banned hazardous substance and the delivery or proffered delivery thereof for pay or otherwise.

(c) Section 5(b) of the Federal Hazardous Substances Act (15 U.S.C. 1264(b)) provides in part:

No person shall be subject to the penalties of subsection (a) of this section * * * (3) for having violated subsection (a) or (c) of section 4 with respect to any hazardous substance shipped or delivered for shipment for export to any foreign country, in a package marked for export on the outside of the shipping container and labeled in accordance with the specifications of the foreign purchaser and in accordance with the laws of the foreign country, but if such hazardous substance is sold or offered for sale in domestic commerce, or if the Consumer Product Safety Commission determines that exportation of such substance presents an unreasonable risk of injury to persons residing within the United States, this clause shall not apply.

§ 1010.3 Statement of policy and interpretation.

(a) In its enforcement of the Consumer Product Safety Act, the Commission interprets the provisions of that Act to prohibit the export of products which fail to comply with an applicable consumer product safety standard or banning rule issued under that Act if those products have at any time been distributed in commerce for use in the United States.

(b) In its enforcement of the Federal Hazardous Substances Act, the Commission interprets the provisions of the Act to prohibit the export of products which are misbranded hazardous substances or banned hazardous substances as those terms are used in that Act if those products have at any time been sold or offered for sale in domestic commerce.

Effective date: This statement of policy and interpretation shall be effective October 19, 1984.

(15 U.S.C. 1263 (a) and (c); 15 U.S.C. 1264(b), 1269(a); 15 U.S.C. 2067(a); 5 U.S.C. 553)

Dated: October 4, 1984.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

Bibliography

(*1*) Memorandum from Associate Executive Director for Compliance and Enforcement to the Commission concerning export of products in violation of the Consumer Product Safety Act and Federal Hazardous Substances Act; 4 pages; July 19, 1978.

(*2*) **Federal Register** notice "Exportation of Noncomplying Products; Notification Requirements and Procedures"; 9 pages; August 8, 1980.

(*3*) Memorandum Decision and Order *In the Matter of Imperial Carpet Mills, Inc.*, CPSC Docket No. 80–2; 46 pages; July 7, 1983.

(*4*) **Federal Register** notice announcing public hearing on export policy; 2 pages; February 28, 1984.

(*5*) Transcript of presentations at public hearing on export policy, with attachments; 153 pages; March 16, 1984.

(*6*) Written comment on export policy from Toy Manufacturers of America, Inc.; 4 pages; March 9, 1984.

(*7*) Written comment on export policy from Rep. Michael D. Barnes; 3 pages; March 15, 1984.

(*8*) Written comment on export policy from Concerned Consumers League, Inc.; 2 pages; March 15, 1984.

(9) Written comment on export policy from Natural Resources Defense Council, Inc.; 2 pages; March 16, 1984.

(10) Written comment on export policy from Sen. Howard S. Metzenbaum; 2 pages; March 22, 1984.

(11) Written comment on export policy from Rep. Henry A. Waxman; 2 pages; March 15, 1984.

(12) Written comment on export policy from the Carpet and Rug Institute; 2 pages; March 23, 1984.

(13) Written comment on export policy from Richard H. Gimer; 23 pages; March 26, 1984.

(14) Written comment from National Consumers League; 5 pages; March 16, 1984.

(15) Written comment from Consumers League; 1 page; March 14, 1984.

(16) Written comment on export policy from Infant Formula Action Coalition; 2 pages; April 17, 1984.

(17) Written comment on export policy from Deitsch Plastic Export Co., Inc.; 3 pages; March 8, 1984.

(18) Written comment on export policy from John E. Williams; 1 page; April 25, 1984.

(19) Written comment on export policy from Laura Hewitt; 1 page; March 27, 1984.

(20) Written comment on export policy from National Association of Manufacturers; 2 pages; April 6, 1984.

(21) Written comment on export policy from Consumers Union; 23 pages; April 19, 1984.

(22) Written comment on export policy from Citizens Committee for Fire Protection; 4 pages; April 24, 1984.

(23) Written comment on export policy from Alpha Phi Beta Fraternity; 2 pages; April 29, 1984.

(24) Written comment on export policy from Alison B. Hooker; 1 page; May 11, 1984.

(25) Consumer Product Safety Commission news release concerning export policy decision, with attached statements of Commissioners; 7 pages; May 18, 1984.

(26) Separate opinion of Commissioner Stuart M. Statler on export policy decision; 16 pages; May 15, 1984.

(27) Separate opinion of Commissioner Saundra Brown Armstrong on export policy decision; 13 pages; May 16, 1984.

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16 CFR Part 1602

Statement of Policy Concerning Export of Products Which Fail To Comply With an Applicable Flammability Standard; Revocation

AGENCY: Consumer Product Safety Commission.

ACTION: Final rule.

SUMMARY: The Commission is revoking a policy statement concerning export of products which fail to comply with an applicable standard issued under the Flammable Fabrics Act because it does not reflect the Commission's current position on this subject. The Commission's present policy concerning export of products which fail to comply with an applicable flammability standard is set forth in the Memorandum Decision and Order *In the Matter of Imperial Carpet Mills, Inc.* (CPSC Docket No. 80–2), dated July 7, 1983, and allows export of such products, regardless of whether they have been distributed in domestic commerce.

DATE: This revocation is effective October 10, 1984.

FOR FURTHER INFORMATION CONTACT: Allen F. Brauninger, Office of the General Counsel, Consumer Product Safety Commission, Washington, D.C. 20207; telephone: (301) 492–6980.

SUPPLEMENTARY INFORMATION: The Flammable Fabrics Act (FFA, 15 U.S.C. 1191 *et seq.*) was enacted in 1954 to prohibit the sale of articles of wearing apparel and fabrics and related materials intended for use in wearing appeal which are dangerously flammable because of rapid and intense burning. In 1967, the FFA was amended to expand its coverage to include products of interior furnishing made from fabric and related materials, and to allow new flammability standards to be established by administrative proceedings.

From 1954 until 1973, the FFA was enforced by the Federal Trade Commission (FTC). In 1973, the Consumer Product Safety Commission (CPSC) was activated, and assumed responsibility for administration and enforcement of the FFA in accordance with section 30(b) of the Consumer Product Safety Act (CPSA, 15 U.S.C. 2079(b)).

In its enforcement of the FFA, the FTC had announced a policy concerning export of products not in compliance with an applicable standard of flammability issued under the FFA which prohibited the export of such products if they had ever been distributed in domestic commerce.

The CPSC affirmed and adopted this policy with regard to export of noncomplying products subject to FFA standards by the publication of notices in the Federal Register on December 30, 1975 (40 FR 59884), and on April 22, 1976 (41 FR 16797). The CPSC codified its export policy for the FFA at 16 CFR 1602.2.

On July 7, 1983, the CPSC issued a Memorandum Decision and Order *In the Matter of Imperial Carpet Mills, Inc.* (CPSC Docket No. 80–2.)* One part of that decision and order set aside the CPSC's previous policy prohibiting the export of products which fail to comply with an applicable flammability standard issued under the FFA if the products had ever moved in domestic commerce.

In response to requests from public interest groups, the Commission conducted a hearing on October 26, 1983, to receive views from all interested parties on the question of whether the Commission should reconsider that portion of the decision and order in the *Imperial Carpet Mills* case concerning export of noncomplying goods subject to FFA standards.

After considering all written submissions and oral presentations concerning that issue, the Commission decided not to reconsider the export policy announced in the *Imperial Carpet Mills* decision.

The decision and order in the *Imperial Carpet Mills* case is now final. The language codified at 16 CFR 1602.2 no longer states the Commission's policy with regard to export of products which fail to comply with an applicable standard issued under the FFA. Therefore the Commission is revoking 16 CFR 1602.2.

Finding that notice and comment are unnecessary

Section 553 of the Administrative Procedure Act (APA, 5 U.S.C. 553) governs proceedings for the issuance, amendment, and revocation of rules. That section requires publication of a notice of proposed rulemaking and opportunity for public comment except when the agency finds for good cause that such notice and opportunity for comment are "impracticable, unnecessary, or contrary to the public interest."

As noted above, the policy statement codified at 16 CFR 1602.2 no longer reflects the position of the CPSC with regard to export of products which fail to comply with an applicable standard issued under the FFA. That policy is stated in the memorandum decision and order *In the Matter of Imperial Carpet Mills, Inc.*, which has become final. The Commission has determined that the export policy issue in that decision and order should not be reconsidered.

For these reasons, the Commission for good cause finds that notice of proposed rulemaking and opportunity for public comment are impractical and unnecessary in this proceeding for revocation of 16 CFR 1602.2.

Section 553(d) of the APA requires that the effective date of a substantive rule shall be at least 30 days after

* This document is available in the Commission's Public reading room, 1111 18th Street, NW., Washington, D.C. or by calling the Office of the Secretary at (301) 492–6800.

publication of a notice of final rulemaking, except in the case of a rule which relieves a restriction. Because the revocation of 16 CFR 1602.2 relieves a restriction previously imposed on the export of products which fail to comply with an applicable standard issued under the FFA, the revocation shall become effective immediately.

List of Subjects in 16 CFR Part 1602.

Consumer protection, exports, flammable materials, law enforcement, textiles.

Therefore, under the authority of the Flammable Fabrics Act (15 U.S.C. 1194), the Consumer Product Safety Act (15 U.S.C. 2079(b)), and the Administrative Procedure Act (5 U.S.C. 553), the Commission hereby revokes, removes and reserves §1602.2 from Title 16, Chapter II, Subchapter D of the Code of Federal Regulations.

PART 1602—STATEMENTS OF POLICY AND INTERPRETATION

§ 1602.2 [Reserved]

Dated: October 4, 1984.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 84-26724 Filed 10-9-84; 8:45 am]

BILLING CODE 6355-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 430, 436, 440, and 455

[Docket No. 84N-0276]

Antibiotic Drugs; Clavulanate Potassium; Amoxicillin Trihydrate and Clavulanate Potassium Tablets and Amoxicillin Trihydrate and Clavulanate Potassium for Oral Suspension

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the antibiotic drug regulations to provide for (1) inclusion of accepted standards for a new antibiotic drug, clavulanate potassium and (2) use of the antibiotic drug in two new dosage forms, amoxicillin trihydrate and clavulanate potassium tablets and amoxicillin trihydrate and clavulanate potassium for oral suspension. The manufacturer has supplied sufficient data and information to establish their safety and efficacy.

DATES: Effective October 10, 1984; comments, notice of participation, and requests for hearing by November 9, 1984; data, information, and analyses to justify a hearing by December 10, 1984.

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

FOR FURTHER INFORMATION CONTACT: Joan M. Eckert, Center for Drugs and Biologics (HFN-815), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4290.

SUPPLEMENTARY INFORMATION: FDA has evaluated data submitted in accordance with regulations promulgated under section 507 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 357), as amended, with respect to a request for approval of a new antibiotic drug, clavulanate potassium and its use in two new dosage forms, amoxicillin trihydrate and clavulanate potassium tablets and amoxicillin trihydrate and clavulanate potassium for oral suspension. The agency has concluded that the data supplied by the manufacturer concerning these antibiotic drugs are adequate to establish their safety and efficacy when used as directed in the labeling and that the regulations should be amended in Parts 430, 436, 440, and 455 (21 CFR Parts 430, 436, 440, and 455) to provide for the inclusion of accepted standards for these products.

The agency has determined pursuant to 21 CFR 25.24(b)(22) (proposed December 11, 1979; 44 FR 71742) that this action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects

21 CFR Part 430

Administrative practice and procedure, Antibiotics.

21 CFR Part 436

Antibiotics.

21 CFR Part 440

Antibiotics, Penicillin.

21 CFR Part 455

Antibiotics, Certain other drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 507, 701 (f) and (g), 52 Stat. 1055-1056 as amended, 59 Stat. 463 as amended (21 U.S.C. 357, 371 (f) and (g))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), Parts 430, 436, 440, and 455 are amended as follows:

PART 430—ANTIBIOTIC DRUGS; GENERAL

1. Part 430 is amended:

a. In § 430.4 by adding new paragraph (a)(53) to read as follows:

§ 430.4 Definitions of antibiotic substances.

(a) * * *

(53) *Clavulanic acid.* Clavulanic acid is an antibiotic substance produced by the growth of *Streptomyces clavuligerus* having the structure described as follows: *Z*-(2*R*, 5*R*)-3-(2-hydroxyethylidene)-7-oxo-4-oxa-1-azabicyclo[3.2.0]heptane-2-carboxylic acid, and each of the same substances produced by any other means, is a kind of clavulanic acid.

b. In § 430.5 by adding new paragraphs (a)(83) and (b)(85) to read as follows:

§ 430.5 Definitions of master and working standards.

(a) * * *

(83) *Clavulanic acid.* The term "clavulanic acid master standard" means a specific lot of clavulanic acid or a salt thereof that is designated by the Commissioner as the standard of comparison in determining the potency of the clavulanic acid working standard.

(b) * * *

(85) *Clavulanic acid.* The term "clavulanic acid working standard" means a specific lot of a homogeneous preparation of clavulanic acid or a salt thereof.

c. In § 430.6 by adding new paragraph (b)(85) to read as follows:

§ 430.6 Definitions of the terms "unit" and "microgram" as applied to antibiotic substances.

* * * * *

(b) * * *

(85) *Clavulanic acid.* The term "microgram" applied to clavulanic acid means the clavulanic acid activity (potency) contained in 1.053 micrograms of clavulanic acid master standard.

PART 436—TESTS AND METHODS OF ASSAY OF ANTIBIOTIC AND ANTIBIOTIC-CONTAINING DRUGS

2. Part 436 is amended:

a. In § 436.215 by alphabetically inserting a new item into the table in paragraph (b) and by adding new paragraph (c)(6) to read as follows

§ 436.215 Dissolution test.

* * * * *

(b) * * *

Dosage form	Dissolution medium	Stirring blade[1]	Sampling time(s)
Amoxicillin trihydrate and clavulanate potassium tablets.	900 mL distilled water.	75	30 min.
*	*	*	*

[1] Stirring blade rotation rate (revolutions per minute).

(c) * * *

(6) *Amoxicillin trihydrate.* Assay for the amoxicillin content as described in § 440.103d of this chapter, except use the sample as it is removed from the dissolution vessel.

* * * * *

b. By adding new § 436.351 to read as follows:

§ 436.351 High-performance liquid chromatographic assay for amoxicillin and clavulanic acid.

(a) *Apparatus.* A suitable high-performance liquid chromatograph equipped with:

(1) A suitable detection system specified in the monograph for the drug being tested;

(2) A suitable recording device of at least 25-centimeter deflection;

(3) A suitable chromatographic data managing system; and

(4) An analytical column, 10 to 30 centimeters long, packed with a material as defined in the monograph for the drug being tested; and if specified in that monograph, the inlet of this column may be connected to a guard column, 3 to 5 centimeters in length, packed with the same material of 40 to 60 micrometers particle size.

(b) *Procedure.* Perform the assay and calculate the drug content using the temperature, instrumental conditions, and calculations specified in the monograph for the drug being tested with a flow rate not to exceed 2.0 milliliters per minute. Use a detector sensitivity setting that gives a peak height for the working standard that is at least 50 percent of scale with typical chart speed of not less than 2.5 millimeters per minute. Use the apparatus described in paragraph (a) of this section; and the reagents and working strandard and sample solutions described in the monograph for the drug being tested. Equilibrate and condition the column by passage of 10 to 15 void volumes of mobile phase followed by five replicate injections of the same volume (between 10 and 20 microliters) of the working standard solution. Allow an operating time sufficiently long to obtain satisfactory separation and elution of the expected components after each injection. The retention times for amoxicillin and clavulanic acid are about 2.1 and 1.0 minutes, respectively, under these prescribed conditions. Record the peak responses and calculate the prescribed system suitability requirements as follows:

(c) *System suitability test.* Using the apparatus and procedure described in this section, test the chromatographic system for assay as follows:

(1) *Tailing factors for the amoxicillin and clavulanic acid peaks.* Calculate the tailing factors (T), from distances measured along the horizontal line at 5 percent of the peak height above the baseline, as follows:

$$T = \frac{W_{0.05}}{2f}$$

where:

$W_{0.05}$ = Width of peak at 5 percent height; and

f = Horizontal distance from point of ascent to a point coincident with maximum peak height.

(2) *Efficiency of the column.* Calculate the number of theoretical plates (n) of the column as follows:

$$n = 5.545 \left[\frac{t_R}{w_h} \right]^2$$

where:

n = Efficiency, as number of theoretical plates for column;

t_R = Retention time of amoxicillin or clavulanic acid peaks; and

w_h = Corresponding peak width at half-height.

(3) *Resolution factor.* Calculate the resolution factor (R) as follows:

$$R = \frac{2(t_2 - t_1)}{w_1 + w_2}$$

where:

t_1 = Retention time of amoxicillin peak;

t_2 = Retention time of clavulanic acid peak; and

w_1 and w_2 = Widths of the bases of the corresponding peaks obtained by extrapolating the relatively straight sides of the peaks to the baseline.

(4) *Coefficient of variation (Relative standard deviation).* Calculate the coefficient of variation (S_R in percent) as follows:

$$S_R = \frac{100}{\overline{X}} \left[\frac{\sum_{i}^{N} = 1 (X_i - \overline{X})^2}{N - 1} \right]^{1/2}$$

where:

$\overline{X}$ is the mean of N individual measurements of X_i.

If the complete operating system meets the system suitability requirements of the monograph for the drug being tested, proceed as described in paragraph (b) of this section, using the sample solution in lieu of the working standard solution.

c. By adding new § 436.352 to read as follows:

§ 436.352 High-performance liquid chromatographic assay for determining clavam-2-carboxylate content in clavulanate potassium.

(a) *Apparatus.* A suitable high-performance liquid chromatograph equipped with:

(1) A suitable detection system specified in the monograph for the drug being tested;

(2) A suitable recording device of at least 25-centimeter deflection;

(3) A suitable chromatographic data managing system; and

(4) An analytical column, approximately 30 centimeters in length, packed with a material as defined in the monograph for the drug being tested.

(b) *Procedure.* Perform the assay and calculate the drug content using the temperature, instrumental conditions, and calculations specified in the monograph for the drug being tested with a flow rate not to exceed 0.5 milliliter per minute. Use a detector sensitivity setting that gives a peak height for the working standard that is at least 50 percent of scale with typical chart speed of not less than 2.5 millimeters per minute. Use the apparatus described in paragraph (a) of this section; and the mobile phase and working standard and sample solutions described in the monograph for the drug being tested. Equilibrate and condition the column by passage of 10 to 15 void volumes of mobile phase followed by five replicate injections of the same volume (between 10 and 20 microliters) of the working standard solution. Allow an operating time sufficiently long to obtain satisfactory separation and elution of the expected components after each injection. The retention times for clavam-2-carboxylic acid and clavulanic acid are about 10 and 14 minutes, respectively, under these prescribed conditions. The sample solution should be injected at least in duplicate and an average should be taken. For each such series of samples injected, two injections of standard should be made, one before and one after the sample series, and an average should be taken. Record the peak responses and calculate the prescribed system suitability requirements as follows:

(c) *System suitability test.* Using the apparatus and procedure described in this section, test the chromatographic system for assay as follows:

(1) *Tailing factor.* Calculate the tailing factor (T), from distances measured along the horizontal line at 5 percent of the peak height above the baseline, as follows:

$$T = \frac{W_{0.05}}{2f}$$

where:
$W_{0.05}$ = Width of peak at 5 percent height; and
f = Horizontal distance from point of ascent to a point coincident with maximum peak height.

(2) *Efficiency of the column.* Calculate the number of theoretical plates (n) of the column as follows:

$$n = 5.545 \left[\frac{t_R}{w_h} \right]^2$$

where:
n = Efficiency, as number of theoretical plates for column;
t_R = Retention time of clavam-2-carboxylic acid peak; and
w_h = Corresponding peak width at half-height.

(3) *Resolution factor.* Calculate the resolution factor (R) as follows:

$$R = \frac{2(t_2 - t_1)}{w_1 + w_2}$$

where:
t_1 = Retention time of clavam-2-carboxylic acid peak;
t_2 = Retention time of clavulanic acid peak; and
w_1 and w_2 = Widths of the bases of the corresponding peaks obtained by extrapolating the relatively straight sides of the peaks to the baseline.

(4) *Coefficient of variation (Relative standard deviation).* Calculate the coefficient of variation (S_R in percent) as follows:

$$S_R = \frac{100}{\overline{X}} \left[\frac{\sum_{i}^{N} = 1 (X_i - \overline{X})^2}{N - 1} \right]^{1/2}$$

where:
X is the mean of N individual measurements of X_i.

If the complete operating system meets the system suitability requirements of the monograph for the drug being tested, proceed as described in paragraph (b) of this section, using the sample solution in lieu of the working standard solution.

PART 440—PENICILLIN ANTIBIOTIC DRUGS

3. Part 440 is amended:

a. By adding new § 440.103d to read as follows:

§ 440.103d Amoxicillin trihydrate and clavulanate potassium tablets.

(a) *Requirements for certification*—(1) *Standards of identity, strength, quality, and purity.* Amoxicillin trihydrate and clavulanate potassium tablets are composed of amoxicillin trihydrate and clavulanate potassium with or without one or more suitable lubricants, diluents, and binders. Each tablet contains amoxicillin trihydrate equivalent to either 250 or 500 milligrams of amoxicillin and clavulanate potassium equivalent to 125 milligrams of clavulanic acid. Its amoxicillin trihydrate content is satisfactory if it contains not less than 90 percent and not more than 120 percent of the number of milligrams of amoxicillin that it is represented to contain. Its clavulanate potassium content is satisfactory if it contains not less than 90 percent and not more than 120 percent of the number of milligrams of clavulanic acid that it is represented to contain. Its moisture content is not more than 7 percent if it contains 250 milligrams of amoxicillin and not more than 10 percent if it contains 500 milligrams of amoxicillin. It passes the dissolution test if the quantity Q, at 30 minutes, is 85 percent or greater if it contains 250 milligrams of amoxicillin and 75 percent or greater if it contains 500 milligrams of amoxicillin. The amoxicillin trihydrate conforms to the standards prescribed by § 440.3(a)(1). The clavulanate potassium conforms to the standards prescribed by § 455.15(a)(1) of this chapter.

(2) *Labeling.* In addition to the labeling requirements prescribed by § 432.5 of this chapter, this drug shall be labeled *"amoxicillin and clavulanate potassium tablets".*

(3) *Requests for certification; samples.* In addition to the requirements of § 431.1 of this chapter, each such request shall contain:

(i) Results of tests and assays on:

(*a*) The amoxicillin trihydrate used in making the batch for potency, safety, moisture, pH, amoxicillin content, concordance, crystallinity, and identity.

(*b*) The clavulanate potassium used in making the batch for clavulanic acid content, moisture, pH, identity, and clavam-2-carboxylate content.

(*c*) The batch for amoxicillin content, clavulanic acid content, moisture, and dissolution rate.

(ii) Samples, if required by the Director, Center for Drugs and Biologics:

(*a*) The amoxicillin trihydrate used in making the batch: 12 packages, each containing approximately 300 milligrams.

(*b*) The clavulanate potassium used in making the batch: 12 packages, each containing approximately 300 milligrams.

(*c*) The batch: A minimum of 100 tablets.

(b) *Tests and methods of assay*—(1) *Amoxicillin and clavulanic acid contents.* Proceed as directed in § 436.351 of this chapter, using ambient temperature, an ultraviolet detection system operating at a wavelength between 220 and 230 nanometers, and a column packed with microparticulate (3 to 10 micrometers in diameter) reversed phase packing material such as octadecyl silane bonded silica. Reagents, working standard and sample solutions, system suitability requirements, and calculations for amoxicillin or clavulanic acid content are as follows:

(i) *Reagents*—(*a*) *0.5M Sodium phosphate buffer solution, pH 4.4.* Transfer 7.8 grams of monobasic sodium phosphate to a 1-liter volumetric flask and dissolve in 900 milliliters of distilled water. Adjust the pH to 4 4 ± 0.1 with 18N phosphoric acid or 10N sodium hydroxide. Dilute to volume with distilled water. Mix well.

(*b*) *Mobile phase.* Mix methanol: 0.05M sodium phosphate buffer solution, pH 4.4 (5:95 v/v) and ultrasonicate for no less than 2 minutes. Degas by passing through a 0.5-micron filter with vacuum. The mobile phase may be sparged with the helium through a 2-micrometer metal filter for the duration of the analysis. Adjust the ratio of methanol to aqueous buffer as necessary to obtain satisfactory retention of the peaks.

(ii) *Working standard and sample solutions*—(*a*) *Preparation of working standard solution.* Accurately weigh and transfer into a 200-milliliter volumetric flask approximately 100 milligrams of amoxicillin working standard and approximately 50 milligrams of the clavulanic acid working standard. Dissolve and dilute to volume with

distilled water. Use within 8 hours after preparation.

(b) *Preparation of sample solution.* To obtain a concentration of 0.5 milligram of amoxicillin per milliliter, dissolve a representative number of tablets in water with the aid of a magnetic stirrer or ultrasonication. Filter a small aliquot through Whatman #42 filter paper or equivalent, discarding the first 10 milliliters of filtrate. Alternatively, a suitable membrane filter may be used. Prepare samples not more than 1 hour before the chromatographic injection.

(iii) *System suitability requirements*—(a) *Tailing factor.* The tailing factor (T) is satisfactory if it is not more than 1.5.

(b) *Efficiency of the column.* The efficiency of the column (n) is satisfactory if it is greater than 550 theoretical plates.

(c) *Resolution factor.* The resolution factor (R) between the clavulanic acid and amoxicillin peaks is satisfactory if it is not less than 3.5.

(d) *Coefficient of variation.* The coefficient of variation (S_R in percent) is satisfactory if it is not more than 2.0 percent.

If the system suitability requirements have been met, then proceed as described in § 436.351(b) of this chapter.

(iv) *Calculations.* Calculate the milligrams of amoxicillin or clavulanic acid content per tablet as follows:

$$\text{Milligrams of amoxicillin or clavulanic acid per tablet} = \frac{A_u \times C_s \times V}{A_s \times N}$$

where:

A_u = Response of the amoxicillin or clavulanic acid peak in the chromatogram of the sample (at a retention time equal to that observed for the standard);

A_s = Response of the amoxicillin or clavulanic acid peak in the chromatogram of the amoxicillin or clavulanic acid working standard;

C_s = Concentration of standards in milligrams of amoxicillin or clavulanic acid per milliliter of the standard solution;

V = Volume of sample solution (milliliters); and

N = Number of tablets taken for assay.

(2) *Moisture.* Proceed as directed in § 436.201 of this chapter.

(3) *Dissolution.* Proceed as directed in § 436.215 of this chapter. Dissolution rate is determined by dissolution of the amoxicillin component using the high-performance liquid chromatographic assay described in this section.

c. By adding new § 440.103e to read as follows:

§ 440.103e Amoxicillin trihydrate and clavulanate potassium for oral suspension.

(a) *Requirements for certification*—(1) *Standards of identity, strength, quality, and purity.* Amoxicillin trihydrate and clavulanate potassium for oral suspension is a dry mixture of amoxicillin trihydrate and clavulanate potassium with one or more suitable and harmless colorings, flavorings, buffers, sweetening ingredients, preservatives, stabilizers, and suspending agents. When reconstituted as directed in the labeling, each milliliter contains either amoxicillin trihydrate equivalent to 25 milligrams of amoxicillin with clavulanate potassium equivalent to 6.25 clavulanic acid or amoxicillin trihydrate equivalent to 50 milligrams of amoxicillin with clavulanate potassium equivalent to 12.5 milligrams of clavulanic acid. Its amoxicillin trihydrate content is satisfactory if it is not less than 90 percent and not more than 120 percent of the number of milligrams of amoxicillin that it is represented to contain. Its clavulanate potassium content is satisfactory if it is not less than 90 percent and not more than 125 percent of the number of milligrams of clavulanic acid that it is represented to contain. The moisture content of the dry powder is not more than 7.5 percent when the reconstituted solution is to contain 25 milligrams of amoxicillin per milliliter and not more than 8.5 percent when the reconstituted solution is to contain 50 milligrams of amoxicillin per milliliter. When reconstituted as directed in the labeling, its pH is not less than 4.8 and not more than 6.6. The amoxicillin trihydrate used conforms to the standards prescribed by § 440.3(a)(1). The clavulanate potassium conforms to the standards prescribed by § 455.15(a)(1) of this chapter.

(2) *Labeling.* In addition to the labeling requirements prescribed by § 432.5 of this chapter, this drug shall be labeled *"amoxicillin and clavulanate potassium for oral suspension".*

(3) *Requests for certification; samples.* In addition to the requirements of § 431.1 of this chapter, each such request shall contain:

(i) Results of tests and assays on:

(a) The amoxicillin trihydrate used in making the batch for potency, safety, moisture, pH, amoxicillin content, concordance, crystallinity, and identity.

(b) The clavulanate potassium used in making the batch for clavulanic acid content, moisture, pH, identity, and clavam-2-carboxylate content.

(c) The batch for amoxicillin content, clavulanic acid content, moisture, and pH.

(ii) Samples, if required by the Director, Center for Drugs and Biologics:

(a) The amoxicillin trihydrate used in making the batch: 12 packages, each containing approximately 300 milligrams.

(b) The clavulanate potassium used in making the batch: 12 packages, each containing approximately 300 milligrams.

(c) The batch: A minimum of 6 immediate containers.

(b) *Tests and methods of assay*—(1) *Amoxicillin content or clavulanic acid content.* Proceed as directed in § 436.351 of this chapter, using ambient temperature, an ultraviolet detection system operating at a wavelength between 220 and 230 nanometers, and a column packed with microparticulate (3 to 10 micrometers in diameter) reversed phase packing material such as octadecyl silane bonded silica. Reagents, working standard and sample solutions, system suitability requirments, and calculations for amoxicillin and clavulanic acid content are as follows:

(i) *Reagents*—(a) *(0.05M Sodium phosphate buffer solution, pH 4.4.* Transfer 7.8 grams of monobasic sodium phosphate to a 1-liter volumetric flask and dissolve in 900 milliliters of distilled water. Adjust to pH 4.4 ± 0.1 with 18*N* phosphoric acid or 10*N* sodium hydroxide. Dilute to volume with distilled water. Mix well.

(b) *Mobile phase.* Mix methanol:0.05*M* sodium phosphate buffer solution, pH 4.4 (5:95 v/v) and mix or ultrasonicate for no less than 2 minutes. Degas by passing through a 0.5-micron filter with vacuum. The mobile phase may be sparged with helium through a 2-micrometer metal filter for the duration of the analysis. Adjust the ratio of methanol to aqueous buffer as necessary to obtain satisfactory retention of the peaks.

(ii) *Working standard and sample solutions*—(a) *Preparation of working standard solution.* Accurately weigh and transfer into a 200-milliliter volumetric flask approximately 100 milligrams of amoxicillin working standard and approximately 50 milligrams of the clavulanate working standard. Dissolve and dilute to volume with distilled water. Use within 8 hours after preparation.

(b) *Preparation of sample solution.* Reconstitute the suspension as directed in the labeling. Immediately transfer an appropriate aliquot to a suitable volumetric flask to obtain an approximate amoxicillin concentration of 0.5 milligram per milliliter and dilute to volume with distilled water. Mix well for 10 minutes using a magnetic stirrer. Filter an aliquot through Whatman #42

or equivalent filter paper. Alternatively, a suitable membrane filter may be used. Samples should be prepared just prior to chromatographic injection. Inject the sample solution within 1 hour after the addition of water.

(iii) *System suitability requirements*—(*a*) *Tailing factor.* The tailing factor (*T*) is satisfactory if it is not more than 1.5.

(*b*) *Efficiency of the column.* The efficiency of the column (*n*) is satisfactory if it is greater than 550 theoretical plates.

(*c*) *Resolution factor.* The resolution factor (*R*) between the clavulanic acid and amoxicillin peaks is satisfactory if it is not less than 3.5.

(*d*) *Coefficient of variation.* The coefficient of variation (S_R in percent) is satisfactory if it is not more than 2.0 percent. If the system suitability requirements have been met, then proceed as described in § 436.351(b) of this chapter.

(iv) *Calculations.* Calculate the quantity of amoxicillin or clavulanic acid content in milligrams per milliliter of the oral suspension as follows:

$$\text{Milligrams of amoxicillin or clavulanic acid per milliliter} = \frac{A_u \times C \times V \times 0.5}{A_s}$$

Where:

A_u = Response of the amoxicillin or clavulanic acid peaks in the sample chromatogram;

A_s = Response of the amoxicillin or clavulanic acid peaks in the standard chromatogram;

C = Concentration of the standard (milligrams per milliliter of amoxicillin X potency of amoxicillin standard or milligrams per milliliter of clavulanate X potency of clavulanate standard); and

V = Dilution volume in milliliters.

(2) *Moisture. Proceed as directed in § 436.201 of this chapter.*

(3) *pH.* Proceed as directed in § 436.202 of this chapter, using the suspension reconstituted as directed in the labeling.

PART 455—CERTAIN OTHER ANTIBIOTIC DRUGS

4. Part 455 is amended by adding new § 455.15 to read as follows:

§ 455.15 Clavulanate potassium.

(a) *Requirements for certification*—(1) *Standards of identity, strength, quality, and purity.* Clavulanate potassium is the potassium salt of *Z*-(2*R*,5*R*)-3-(2-hydroxyethylidene)-7-oxo-4-oxa-1-azabicyclo[3.2.0]heptane-2-carboxylic acid. It is so purified and dried that:

(i) It is equivalent to not less than 755 micrograms and not more than 920 micrograms of clavulanic acid per milligram on an anhydrous basis.

(ii) Its moisture content is not more than 1.5 percent.

(iii) Its pH in an aqueous solution containing 10 milligrams per milliliter is not less than 5.5 and not more than 8.0.

(iv) It gives a positive identity test.

(v) Its content of the potassium salt of [3*R*,5*S*]-7-oxo-4-oxa-1-azabicyclo[3.2.0]heptane-3-carboxylic acid (clavam-2-carboxylate) is satisfactory if it is not greater than .01 percent.

(2) *Labeling.* It shall be labeled in accordance with the requirements of § 432.5 of this chapter.

(3) *Requests for certification; samples.* In addition to complying with the requirements of § 431.1 of this chapter, each such request shall contain:

(i) Results of tests and assays on the batch for potency, moisture, pH, identity, and clavam-2-carboxylate content.

(ii) Samples, if required by the Director, Center for Drugs and Biologics: 12 packages, each containing approximately 300 milligrams.

(b) *Tests and methods of assay*—(1) *Clavulanic acid content.* Proceed as directed in § 436.351 of this chapter, using ambient temperature, an ultraviolet detection system operating at a wavelength between 220 and 230 nanometers, and a column packed with microparticulate (3 to 10 micrometers in diameter) reversed phase packing material such as octadecyl silane bonded silica. Reagents, working standard and sample solutions, system suitability requirements, and calculations are as follows:

(i) *Reagents*—(*a*) *0.05M Sodium phosphate buffer solution, pH 4.4.* Transfer 7.8 grams of monobasic sodium phosphate to a 1-liter volumetric flask and dissolve in 900 milliliters of distilled water. Adjust the pH to 4.4±0.1 with 18*N* phosphoric acid or 10*N* sodium hydroxide. Dilute to volume with distilled water. Mix well.

(*b*) *Mobile phase.* Mix methanol: 0.05*M* sodium phosphate buffer, pH 4.4 (5:95 v/v) and stir or ultrasonicate for no less than 2 minutes. Degas by passing through a 0.5-micrometer filter with vacuum. The mobile phase may be sparged with helium through a 2-micrometer metal filter for the duration of the analysis. Adjust the ratio of methanol to aqueous buffer as necessary to obtain satisfactory retention of the peaks.

(ii) *Preparation of clavulanic acid working standard and sample solutions.* Accurately weigh and transfer into volumetric flasks sufficient clavulanic acid working standard or clavulanate potassium sample to obtain a final concentration of 250 micrograms per milliliter. To the clavulanic acid working standard, add sufficient amoxicillin trihydrate to provide a final concentration of 500 micrograms per milliliter. (The amoxicillin serves as an internal marker for system suitability testing.) Dissolve in water by shaking or ultrasonicating until solution becomes clear. Dilute the solutions as required to final volume with water. Use within 8 hours.

(iii) *System suitability requirements*—(*a*) *Tailing factor.* The tailing factor (*T*) is satisfactory if it is not more than 1.5.

(*b*) *Efficiency of the column.* The efficiency of the column (*n*) is satisfactory if it is greater than 550 theoretical plates.

(*c*) *Resolution factor.* The resolution factor (*R*) between the clavulanic acid and amoxicillin peaks is satisfactory if it is not less than 3.5.

(*d*) *Coefficient of variation.* The coefficient of variation (S_R in percent) is satisfactory if it is not more than 2.0 percent. If the system suitability requirements have been met, then proceed as described in § 436.351(b) of this chapter.

(iv) *Calculations.* Calculate the micrograms of clavulanic acid per milligram of sample as follows:

$$\text{Micrograms of clavulanic acid per milligram} = \frac{A_u \times P_s \times W_s \times 100}{A_s \times W_u \times (100 - m)}$$

where:

A_u = The clavulanic acid peak response in the chromatogram of the sample (at a retention time equal to that observed for the standard);

A_s = The clavulanic acid peak response in the chromatogram of the clavulanic acid working standard);

P_s = Potency of the clavulanic acid working standard in micrograms per milligram;

W_u = Milligrams of sample;

W_s = Milligrams of standard; and

m = Percent moisture content of the sample.

(2) *Moisture.* Proceed as directed in § 436.201 of this chapter.

(3) *pH.* Proceed as directed in § 436.202 of this chapter, using an aqueous solution containing 10 milligrams per milliliter.

(4) *Identity.* Proceed as directed in § 436.211 of this chapter, using the sample preparation described in paragraph (b)(2) of that section.

(5) *Clavam-2-carboxylate content.* Proceed as directed in § 436.352 of this

chapter, using ambient temperature, an ultraviolet detection system operating at a wavelength of 210 nanometers, and a column packed with microparticulate (3 to 10 micrometers in diameter) reversed phase packing materials such as octadecyl silane bonded silica. Mobile phase, working standard and sample solutions, system suitability requirements, and calculations are as follows:

(i) *Mobile phase. 0.1M Sodium phosphate buffer solution, pH 4.0.* Prepare a 0.1*M* aqueous solution of monobasic sodium phosphate and adjust to pH 4.0 with phosphoric acid.

(ii) *Working standard and sample solutions*—(*a*) *Preparation of working standard solution.* Accurately weigh and transfer into a 50-milliliter volumetric flask approximately 16 milligrams of clavam-2-carboxylate authentic sample. Dilute to volume and transfer 10 milliliters into a 100-milliliter flask. Dilute to volume with water.

(*b*) *Preparation of sample solution.* Accurately weigh 100 milligrams of the sample into a 10-milliliter flask. Dilute to volume with water.

(iii) *System suitability requirements*—(*a*) Tailing factor. The tailing factor (*T*) for the clavulanate standard peak is satisfactory if it is not more than 1.5.

(*b*) *Efficiency of the column.* The efficiency of the column (*n*) is satisfactory if it is greater than 4,000 theoretical plates.

(*c*) *Resolution factor.* The resolution factor (*R*) between the clavulanic acid and clavam-2-carboxylic acid peaks is satisfactory if it is greater than 1.0.

(*d*) *Coefficient of variation (Relative standard deviation).* The coefficient of variation (S_R in percent) is satisfactory if it is not more than 2.0 percent. If the system suitability requirements have been met, then proceed as described in § 436.352(b) of this chapter.

(iv) *Calculations.* Calculate the percent of clavam-2-carboxylate content as follows:

$$\text{Percent clavam-2-carboxylate content} = \frac{\text{Mean sample height (or area)} \times \text{weight of standard} \times P}{\text{Mean peak height (or area) of standard} \times \text{weight of sample} \times 50}$$

where:

P=Percent clavam-2-carboxylic acid in the standard.

This final rule announces standards that FDA has accepted in a request for approval of an antibiotic drug. Because this final rule is not controversial and because when effective it provides notice of accepted standards, notice and comment procedure and delayed effective date are found to be unnecessary and not in the public interest. The final rule, therefore, is effective October 10, 1984. However, interested persons may, on or before November 9, 1984, submit written comments to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Any person who will be adversely affected by this final rule may file objections to it and request a hearing. Reasonable grounds for the hearing must be shown. Any person who decides to seek a hearing must file (1) on or before November 9, 1984, a written notice of participation and request for hearing, and (2) on or before December 10, 1984, the data, information, and analyses on which the person relies to justify a hearing, as specified in 21 CFR 430.20. A request for a hearing may not rest upon mere allegations or denials, but must set forth specific facts showing that there is a genuine and substantial issue of fact that requires a hearing. If it conclusively appears from the face of the data, information, and factual analyses in the request for hearing that no genuine and substantial issue of fact precludes the action taken by this order, or if a request for hearing is not made in the required format or with the required analyses, the Commissioner of Food and Drugs will enter summary judgement against the person(s) who request(s) the hearing, making findings and conclusions and denying a hearing. All submissions must be filed in three copies, identified with the docket number appearing in the heading of this order and filed with the Dockets Management Branch.

The procedures and requirements governing this order, a notice of participation and request for hearing, a submission of data, information, and analyses to justify a hearing, other comments, and grant or denial of a hearing are contained in 21 CFR 430.20.

All submissions under this order, except for data and information prohibited from public disclosure under 21 U.S.C. 331(j) or 18 U.S.C. 1905, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

Effective date. October 10, 1984.

(Secs. 507, 701 (f) and (g), 52 Stat. 1055–1056 as amended, 59 Stat. 463 as amended (21 U.S.C. 357, 371 (f) and (g)).)

Dated: October 2, 1984.

Daniel L. Michels,

Director, Office of Compliance, Center for Drugs and Biologics.

[FR Doc. 84-26672 Filed 10-9-84; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Part 17

[Docket No. R-84-1191; FR-1644]

Administrative Claims; Implementing Certain Provisions of the Debt Collection Act of 1982; Announcement of Effective Date

AGENCY: Office of the Secretary, HUD.

ACTION: Interim rule; announcement of effective date.

SUMMARY: This notice announces the effective date for an interim rule published in the **Federal Register** on August 14, 1984 (49 FR 32346), implementing certain provisions of the Debt Collection Act of 1982. The interim rule includes procedures for reporting an individual debtor to a consumer reporting agency, contracting for private collection services, and collecting money owed the Department by administrative offset and salary offset. The effective date provision of the rule stated that the rule would become effective upon expiration of the first period of 30 calendar days of continuous session of Congress after publication, but not until further notice of effectiveness is published in the **Federal Register.**

Thirty calendar days have expired since the publication of this interim rule.

EFFECTIVE DATE: The effective date for the interim rule published August 14, 1984 (49 FR 32346) is October 10, 1984.

FOR FURTHER INFORMATION CONTACT: Samuel B. Rothman, Office of General Counsel, Program Compliance and Enforcement Division, Room 10240, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C. 20410. Telephone (202) 755-7184. (This is not a toll-free number.)

Dated: October 4, 1984.

Donald A. Franck,

Acting Assistant General Counsel for Regulations.

[FR Doc. 84-26674 Filed 10-9-84; 8:45 am]

BILLING CODE 4210-32-M

Office of the Assistant Secretary for Fair Housing and Equal Opportunity

24 CFR Part 115

[Docket No. N-84-1455; FR-1976]

Recognition of Substantially Equivalent Laws

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Rule-related notice.

SUMMARY: Title 24, Part 115 of the Code of Federal Regulations describes the procedure for recognition of State and local fair housing laws that provide rights and remedies for alleged discriminatory housing practices that are substantially equivalent to those provided by the Federal Fair Housing Act (Title VIII of the Civil Rights Act of 1968). This notice: (1) Announces HUD's decision recognizing six additional jurisdictions; and (2) provides updated and consolidated lists informing the public of the recognition status and recent changes to the recognition status of State and local jurisdictions.

EFFECTIVE DATE: This notice will be effective on October 8, 1984.

FOR FURTHER INFORMATION CONTACT: Steven Sacks, Director, Federal, State and Local Programs Division, Office of Fair Housing and Equal Opportunity, 451 Seventh Street, S.W., Washington, D.C. 20410, (202) 426-3500. (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: On June 22, 1984 (49 FR 25640), the Department proposed to recognize the laws of six local jurisdictions as providing rights and remedies for alleged discriminatory housing practices that are substantially equivalent to those provided under the Federal Fair Housing Act (Title VIII of the Civil Rights Act of 1968) (the Act). These jurisdictions are: (1) Hillsborough County, Florida; (2) Tampa, Florida; (3) Dubuque, Iowa; (4) Lawrence, Kansas; (5) Jefferson County, Kentucky; and (6) Reading, Pennsylvania. No public comments have been submitted and the Department has decided to recognize the laws of these six jurisdictions as substantially equivalent under 24 CFR § 115.6(c).

The recognition of these jurisdictions was originally proposed as an amendment to 24 CFR 115.11. The proposed rule however, noted that the Department had published another proposed rule amending Part 115 to permit the recognition of jurisdictions through the publication of rule-related **Federal Register** notices rather than by rule amendments. The Department indicated that the final recognition decision in this proceeding would be published as a rule-related notice if the proposed rule amending Part 115 became final and effective before the recognition proceeding was concluded. On August 9, 1984 (49 FR 32042), the Department published its final rule amending the recognition procedure. This final rule is effective on October 8, 1984. Accordingly, the Department is announcing its final decision recognizing the laws of the six jurisdictions by this **Federal Register** notice.

The August 9, 1984 final rule made several other revisions to Part 115, including the addition of a requirement that HUD annually publish various lists informing the public of the recognition status of jurisdictions. Since the August 9, 1984 rule stated that the first annual list would be published by October 8, 1984, we have consolidated the publication of these lists with the **Federal Register** notice recognizing the six new jurisdictions.

As recently amended, 24 CFR 115.6(e)(1) requires HUD to publish an annual updated, consolidated list of all State and local jurisdictions recognized as having substantially equivalent fair housing laws. Including the six newly recognized jurisdictions, the recognized jurisdictions are:

States

Alaska
California
Colorado
Connecticut
Delaware
Florida
Hawaii
Illinois
Indiana
Iowa
Kansas
Kentucky
Maine
Maryland
Massachusetts
Michigan
Minnesota
Montana
Nebraska
Nevada
New Hampshire
New Jersey
New Mexico
New York
North Carolina
Oregon
Pennsylvania
Rhode Island
South Dakota
Virginia
Washington
West Virginia
Wisconsin

Localities

Anchorage, Alaska
Phoenix, Arizona
District of Columbia
New Haven, Connecticut
Clearwater, Florida
Metropolitan Dade County, Florida
Hillsborough County, Florida
Jacksonville, Florida
Orlando, Florida
Pensacola, Florida
St. Petersburg, Florida
Tallahassee, Florida
Tampa, Florida
Bloomington, Illinois
Evanston, Illinois
Park Forest, Illinois
Springfield, Illinois
Urbana, Illinois
Columbus, Indiana
East Chicago, Indiana
Fort Worth, Indiana
Gary, Indiana
South Bend, Indiana
Dubuque, Iowa
Iowa City, Iowa
Kansas City, Kansas
Lawrence, Kansas
Olathe, Kansas
Salina, Kansas
Jefferson County, Kentucky
Lexington-Fayette, Kentucky
Howard County, Maryland
Montgomery County, Maryland
Prince Georges County, Maryland
Minneapolis, Minnesota
St. Paul, Minnesota
Kansas City, Missouri
St. Louis, Missouri
Lincoln, Nebraska
Omaha, Nebraska
New York City, New York
Charlotte, North Carolina
Mecklenburg County, North Carolina
New Hanover County, North Carolina
Raleigh, North Carolina
Winston-Salem, North Carolina
Dayton, Ohio
Allentown, Pennsylvania
Harrisburg, Pennsylvania
Philadelphia, Pennsylvania
Pittsburgh, Pennsylvania
Reading, Pennsylvania
York, Pennsylvania
Sioux Falls, South Dakota
Knoxville, Tennessee
Fort Worth, Texas
King County, Washington
Seattle, Washington
Tacoma, Washington
Beckley, West Virginia
Charleston, West Virginia
Huntington, West Virginia
Beloit, Wisconsin

Section 115.6(e) (2) and (3) require HUD to publish a list of jurisdictions whose recognition has been withdrawn since the issuance of the previous annual notice and a list of jurisdictions with respect to which notice of denial of recognition has been published since issuance of the previous annual notice. Since there has been no previous annual notice, it is impossible to make such a listing. However, during the last year, no jurisdiction proposed for recognition has been denied recognition and recognition has been withdrawn from only one previously recognized jurisdiction, i.e., Wichita, Kansas.

Section 115.6(e)(4) requires HUD to publish a list of jurisdictions for which a notice for public comment has been published and whose request for recognition remains pending. Two

jurisdictions, the Village of Maywood, Illinois and Detroit, Michigan, have been proposed for recognition and await final HUD resolution.

Finally, § 115.6(e) (5) and (6) require HUD to publish a list of jurisdictions for which a notice of proposed withdrawal of recognition has been published and remains pending and a list of jurisdictions that have an agreement with HUD for interim referrals or other utilization of service. There are no jurisdictions that fit in these categories.

Dated: October 3, 1984.

Antonio Monroig,

Assistant Secretary for Fair Housing and Equal Opportunity.

[FR Doc. 84-26754 Filed 10-9-84; 8:45 am]

BILLING CODE 4210-28-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 5f

[T.D. 7975]

Temporary Regulations Relating to Elections and Miscellaneous Matters Under Section 338 of the Internal Revenue Code

Correction

In FR Doc. 84-23613 beginning on page 35086 in the issue of Thursday, September 6, 1984, make the following corrections:

1. On page 35087, first column, first complete paragraph, line eleven, "§ 1.339-1T" should read "§ 1.338-1T".

2. On the same page, second column, second complete paragraph, lines ten and eleven, "[THAT DAY]" should read "December 5, 1984".

§ 1.338-2T [Corrected]

3. On page 35090, third column, § 1.338-2T(f)(2)(iii), line eighteen, "date" should appear between "sale" and "would".

BILLING CODE 1505-01-M

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 50

National Capital Parks Regulations Vietnam Veterans Memorial; Demonstrations; Sale and Distribution of Printed Matter

AGENCY: National Park Service, Interior.

ACTION: Final rule.

SUMMARY: This final rule amends the National Capital Parks regulations in § 50.19 of 36 Code of Federal Regulations on demonstrations and special events in the National Capital Parks to enlarge the area around the Vietnam Veterans Memorial where demonstrations and special events are prohibited and to place additional restrictions on the use of sound amplification equipment and stages near the memorial. Having administered the Vietnam Veterans Memorial for almost two years, the National Park Service has determined that present restrictions on demonstrations and special events are inadequate to maintain an atmosphere of calm, tranquility and reverence at the memorial. In addition, physical changes in the memorial, for example the addition of a flagpole and changes in the walkway system, make the present definition of the memorial inaccurate. Revising the definition of the memorial and adding minor restrictions on sound equipment and stages will meet both of these needs.

The current regulation governing the memorial was issued as an interim regulation on November 12, 1982 (47 FR 51126). The proposed regulation was published in the **Federal Register** on April 4, 1984 (49 FR 13387). On the effective date of this final rulemaking, the interim regulation will be withdrawn.

In addition, this final rule amends National Park Service regulations in §§ 50.24 and 50.52 of 36 Code of Federal Regulations to prohibit sales and distribution of literature in the Vietnam Veterans Memorial. The amendment also revises the prohibited area around the Washington Monument so as to make it consistent with the area in which demonstrations are prohibited. Finally, the final rule eliminates the prohibition on sales and distribution of literature in Constitution Gardens.

EFFECTIVE DATE: November 9, 1984.

FOR FURTHER INFORMATION CONTACT: Sandra Alley, Associate Regional Director, Public Affairs, National Capital Region, National Park Service, 1100 Ohio Drive, SW., Washington, D.C. 20242, telephone (202) 426-6700; Richard G. Robbins, Assistant Solicitor, National Capital Parks, Office of the Solicitor, Department of the Interior, Washington, D.C. 20240, telephone (202) 343-4338.

SUPPLEMENTARY INFORMATION: The following persons participated in the writing of this rule: Richard G. Robbins and Patricia S. Bangert, Office of the Solicitor, Department of the Interior.

Background

1. Vietnam Veterans Memorial

The Act of July 1, 1980 (94 Stat. 872) authorized the Vietnam Veterans Memorial Fund, Inc. to establish a memorial in honor and recognition of the men and women of the Armed Forces of the United States who served in the Vietnam War. The legislation specified that the memorial was to be located on National Park System lands in Constitution Gardens in West Potomac Park in the District of Columbia.

The memorial was dedicated in November of 1982. As designed, the memorial was intended to harmonize with and enhance the landscape on which it stands. For that reason, the memorial is comprised of the memorial wall, a sculpture, and a flagpole integrated into a garden design. The wall and the flagpole are in place in the memorial. The statue will be placed in the memorial in the next few months. The memorial was designed to be an inviting, hospitable but, nevertheless, peaceful and reflective location in which to contemplate the courage and sacrifice of the Americans who served in Vietnam.

At the time of the dedication of the memorial, the National Park Service issued an interim regulation that defined the boundaries of the memorial. 47 FR 51127 (November 12, 1982). In order to maintain an atmosphere of calm, tranquility and reverence in the area of the memorial, the National Park Service also prohibited demonstrations and special events in the area of the memorial except for official annual Memorial Day and Veterans Day commemorative ceremonies.

After almost two years of experience in administering the Vietnam Veterans Memorial, and after physical changes were made to the memorial, the National Park Service proposed a rule that would revise the definition of the Vietnam Veterans Memorial, while maintaining restrictions on demonstrations and special events in the area of the memorial. 49 FR 13387 (April 4, 1984). In addition, the National Park Service received over thirty petitions from citizens to enlarge the area of the memorial and restrict activities in the memorial.

After reviewing comments received during the sixty-day comment period on that proposed rule, the National Park Service has now prepared a final rule that will govern the Vietnam Veterans Memorial.

2. Sale and Distribution of Printed Matter

In addition, the National Park Service proposed in the April 1984 rulemaking to add the Vietnam Veterans Memorial to the list of park areas where sales and distribution of literature are prohibited. Prior to 1976, sales were prohibited in all park areas. However, that prohibition was revised after the United States District Court for the District of Columbia struck down the total ban as applied to the sale of newspapers. *Washington Free Community, Inc.* v. *Wilson*, 334 F. Supp. 77 (1971). The Court did, however, recognize a substantial government interest in maintaining an atmosphere of calm, tranquility and reverence in certain park areas and suggested that a prohibition on sales and distribution of literature in those parks would be upheld if it was necessitated by the character of the individual park area. In fact, the District Court in a criminal proceeding has recently upheld restrictions on sales and distribution of literature as applied to the Washington Monument.

In 1976, the National Park Service promulgated a final rule allowing the sale and distribution of printed material without the aid of a structure or stand in all parks except for six enumerated areas. 41 FR 34748 (August 17, 1976); as amended by 44 FR 56934 (October 3, 1979). The National Park Service determined that these six areas could not accommodate sales and distribution of literature because of the atmosphere of calm, tranquility and reverence existing in the parks. For that same reason, the National Park Service now adds the Vietnam Veterans Memorial to that list.

In addition, after reevaluation of the prohibition on sales and distribution of literature around the Washington Monument and Constitution Gardens, the National Park Service proposed to narrow the restricted area around the Monument and eliminate Constitution Gardens entirely as a restricted area. This proposal was incorporated in the final regulations.

Analysis of Comments

The National Park Service received eleven comments concerning the proposed regulations (in addition to the thirty-plus petitions for the rulemaking). Five commentators, including two associations (the Association of the United States Army and the Howard County Vietnam Veterans Organization) supported the proposed regulations as written. Three commentators supported the regulations but suggested exemptions for veterans' vigils or wreath-laying ceremonies. Three commentators opposed the regulations.

The three commentators opposing the regulations, including the American Civil Liberties Union ("ACLU"), shared the belief that the Vietnam Veterans Memorial is an appropriate site for demonstrating individual convictions, through organized demonstrations or leafletting. The ACLU suggested that anything less would be unconstitutional. The National Park Service believes that the Vietnam Veterans Memorial was intended to be a place where individuals could quietly contemplate and reflect upon the many lives that were given in the Vietnam War. From the many petitions for rulemaking and other comments on the regulations, it appears that members of the public, and especially those with some ties to the individuals memorialized or the Vietnam War, desire such reflective and contemplative area. For example, one veteran of the Vietnam War, supporting the regulation, wrote:

> I feel this way because so many of the visitors to Washington, D.C. and the Vietnam Memorial have to travel such a great distance. Also this long trip could possibly be made only a few times during a lifetime. It would be a shame for veterans and relatives of the war dead to be subject to abuse from blaring loudspeakers and demonstrations regardless of the cause. Its (sic) very important to preserve the dignity and serene atmosphere of the memorial and surrounding grounds.

The National Park Service believes that the final regulations strike the proper balance between the rights of demonstrators and those of other park visitors. Especially with the abundance of available park land immediately adjacent to the Vietnam Veterans Memorial, demonstrators are accorded ample alternative avenues of communication within sight of the memorial.

The ACLU and another commentator also criticized the regulations as too broad. The ACLU suggested that both the definition of the memorial and the restrictions within the memorial were too broad.

As to the area encompassed within the definition of the term Vietnam Veterans Memorial, the ACLU argued that only the area adjacent to the memorial wall should be included in the definition and, even there, small groups should be allowed to demonstrate without permits.

The National Park Service responds that the Vietnam Veterans Memorial encompasses not only the memorial wall but also a flagpole and statue placed nearby Limiting restrictions to just the area adjacent to the memorial wall would mean that demonstrations and other activities could take place at the statue and flagpole. The statue and flagpole are integral elements of the memorial and are no less entitled to be free from activity intrusions than the memorial wall.

In addition, the other reasons discussed in the proposed rulemaking support enlarging the definition of the memorial. For example, the proposed rule observed that the area to the south of the memorial wall is particularly sensitive because any loud sounds in this area are intensified when they reflect off the wall. The area to the east of the memorial wall slopes directly down into the wall, and thus, being part of the "valley" holding the memorial structures, is sensitive also to sound amplification and other activity. These observations were made after staff spent a considerable amount of time at the memorial observing natural conditions and sound levels.

The ACLU also criticized the National Park Service's attempts to prevent activity on the pathways leading to and through the memorial. The ACLU suggests that individuals impeding access be arrested by the police under other general regulations. However, this suggestion does not take into account the legitimate sensitivities, concerns, and needs of the public who, through letters and comments, have indicated that demonstrations and other activities on, and to the sides of, the paths leading to and through the memorial are unreasonable intrusions. Further, the suggestion that the police take care of any problems is contrary to the National Park Service policy of clearly delineating what can and what cannot be done in and around the national monuments so that police action is not necessary.

The ACLU further commented that the restrictions contained in the regulations are too broad. This comment is based primarily upon their belief that the memorial is not contemplative or reflective. The ACLU argues that demonstrations must be allowed in the memorial if eating ice cream, talking, taking pictures and bringing children are allowed. The National Park Service does not believe that it offends due process to prohibit demonstrations in the memorial while allowing children into the area, even those eating ice cream. The National Park Service believes that valid distinctions can be drawn between the activities cited by the ACLU and demonstration and leafletting activities.

The ACLU also argues that the proposed restrictions are inconsistent with a concession stand and the Festival

of American Folklife operating "just outside the area in which demonstrations are banned". The "nearby" concession stand is several hundred yards and a hill away from the outer edges of the memorial. In fact, the concession stand is not even visible from the memorial. Further, the Festival of American Folklife for the past three years has been held east of 15th Street, approximately three quarters of a mile away from the Vietnam Veterans Memorial.

Further, the ACLU suggested that the sale and distribution of literature should be allowed everywhere except adjacent to the memorial wall. The ACLU argues that there is no proof that individuals standing on a path within the memorial distributing one pamphlet or another could interfere with the use of the site for contemplation or remembrance. The National Park Service believes that individuals selling or distributing literature may be as disruptive and harassing as individuals engaged in other demonstration and special event activities in the area of the memorial. The intent of the regulation is to prohibit all activity which unreasonably interferes with the atmosphere of contemplative calm and tranquility at the memorial.

Finally, the ACLU suggests alternative regulations that would: (1) Permit small demonstrations without a permit any place in the memorial; (2) permit larger demonstrations with a permit within the memorial, but subject, perhaps, to undefined limitations that would prevent "substantial interference" with visitor use; and (3) permit vigil and religious-type demonstrations. The National Park Service believes this is an unacceptable alternative to a regulation that clearly defines prohibited activity so as to maintain an atmosphere of contemplation and reflection in the memorial.

The ACLU's second and third suggestions are to allow some demonstrations but not others within the memorial. The National Park Service must reject the suggestions as they would result in the Park Service making content-based distinctions between demonstrators; for example, religious-type demonstrations would be allowed, while others would not.

One of the three opposing commentators also suggested that all demonstrations, except those accompanied by electronically amplified sound, be allowed in the memorial. Further, he suggested that those accompanied by such sound be scheduled at intervals, for example, one a month. For the reasons cited above, the National Park Service believes that all demonstration and special event activity should occur outside the area of the memorial. Because of the abundance of park land adjacent to the proposed memorial area, the Park Service feels that demonstrators have ample alternative avenues of communication in these areas.

Three other commentators generally agreed with the regulations, but had additional suggestions and concerns. The American Legion suggested that the proposed rule be amended to allow "patriotic ceremonies, memorial in nature" that would be supervised by the National Park Service. The National Park Service must reject the suggestion as infusing a content-based distinction into otherwise content-neutral regulations. The Park Service may not permit certain types of demonstrations but not others in the memorial.

For the same reasons, the National Park Service must reject the suggestion of another veteran of Vietnam that a permanent vigil site be erected in the memorial. However, the Park Service would note that vigils and other demonstration and special event activities would be allowed outside, but within the sight of, the memorial.

A third commentator expressed some concern that a presently ongoing demonstration by Vietnam veterans not be moved too far from the memorial. Again, this group could continue their demonstration within sight of the memorial but outside its boundaries.

Finally, five individuals or groups wrote in to support the regulations as proposed. One commentator was the father of a man who died in Vietnam. Another commentator was the sister of a casualty. Her reasons for supporting the regulations are as follows:

> I am deeply in debt to the Vietnam Veterans Memorial Committee for directing the creation and construction of such a memorable and eloquent structure. I feel it's (sic) sanctity should be retained at all times. My brother died in Vietnam on November 4, 1967, and his name is engraved in granite where everyone who sees will be reminded of the true consequence of war in human terms. The memorial is no place for noisy and boisterous demonstrations or political rallys, it's a place to contemplate and think and thank God that we live in a country that has the courage to openly remember the valiant men and women who died for what we all believe in—freedom and democracy It would be sacriligious to consider the memorial a gathering place for any cause except for that of which it stands—in memory of those who served and died in Vietnam and those still unaccounted for. (Name deleted).

Regulatory Changes

1. Vietnam Veterans Memorial

The final rule amends 36 CFR 50.19(a)(10) by revising the definition of the Vietnam Memorial as now contained in the interim regulation. The new definition, which includes the memorial wall, the flagpole and the soon-to-be completed sculpture, expands the adjacent acreage into which these structures are integrated beyond that indicated in the interim regulation. In the new definition, the memorial extends to and is bounded by the south curb of Constitution Avenue on the north, the east curb of Henry Bacon Drive on the west, the north Reflecting Pool walkway on the south and a straight line drawn perpendicular to Constitution Avenue two hundred (200) feet from the memorial wall on the east (this is also a line extended from the east side of the western concrete border of the steps to the west of the center steps to the Federal Reserve Building). The diagram following the rulemaking shows the new boundaries of the memorial.

The final rule retains the prohibition contained in the interim regulation on demonstrations and special events within this area, as discussed in the preamble to the interim regulation and proposed rulemaking. This prohibition simply adds the Vietnam Veterans Memorial to the list of national memorials where demonstrations and special events are not permitted, for example the Jefferson and Lincoln Memorials, and the Washington Monument. As is the case with the other monuments, the final regulation also prohibits the sale and distribution of literature within the Vietnam Veterans Memorial.

Finally, the final regulation prohibits staging and sound equipment closer than one hundred feet to the memorial boundaries. It also requires that sound systems be faced away from the memorial.

The final rule would continue to allow official annual Memorial Day and Veterans Day commemorative ceremonies to be held at the Vietnam Veterans Memorial. The National Park Service believes that these ceremonies are consistent with and promote the intended purposes of the memorial, as outlined above. Further, the final rule, like the interim rule, is not intended to prohibit ceremonies dedicating the memorial or its component parts.

The only change made in the proposed rule is the north boundary of the memorial. The proposed rule set that boundary at the north curb of the

Constitution Avenue service road. The final rule sets the boundary at the south curb of Constitution Avenue. The change involves approximately fifteen (15) feet of grassy median strip between the service road and the Constitution Avenue sidewalk. Discussions with Park Service personnel showed that the south curb of Constitution Avenue is the primary parking and unloading area for visitors, especially handicapped visitors, to the memorial. Since the sidewalk is very narrow there, the grassy area is utilized as an unloading area for children, persons in wheelchairs, and other individuals. In addition, the grassy area surrounds the primary entrance to the memorial. Therefore, demonstrations and special events in this area could substantially interfere with access to the memorial, especially access of handicapped persons.

The National Park Service believes that there is a substantial governmental interest in maintaining an atmosphere of calm, tranquility and reverence in the vicinity of the major memorials, and especially at the Vietnam Veterans Memorial. Regulations affecting the same purpose have been in effect for years at the other major memorials. Further, the Supreme Court in the past year has made clear that government may preserve and maintain public spaces so that they may be enjoyed by the public at large. *Members of the City Counsel of Los Angeles* v. *Taxpayers for Vincent*, ——U.S.——, 80 L.Ed.2d 772, 104 S.Ct.—— (1984). *Clark* v. *Community for Creative Non-Violence*, 468 U.S.——, 82 L.Ed.2d 221, 104 S.Ct.—— (1984).

In addition, the Supreme Court has unequivocally held that the National Park Service is entitled to deference in devising the proper means to meet the goal of preserving and maintaining park areas. In *Clark* v. *Community for Creative Non-Violence*, the Court said:

> We are unmoved by the Court of Appeals' view that the challenged regulation is unnecessary, and hence invalid, because there are less speech-restrictive alternatives that could have satisfied the government interest in preserving park lands. There is no gainsaying that preventing overnight sleeping will avoid a measure of actual or threatened damage to Lafayette Park and the Mall. The Court of Appeals' suggestions that the Park Service minimize the possible injury by reducing the size, duration, or frequency of demonstrations would still curtail the total allowable expression in which demonstrators could engage, whether by sleeping or otherwise, and these suggestions represent no more than a disagreement with the Park Service over how much protection the core parks require or how an acceptable level of preservation is to be attained. We do not believe, however, that either United States v. O'Brien or the time, place, and manner decisions assign to the judiciary the authority to replace the Park Service as the manager of the Nation's parks or endow the judiciary with the competence to judge how much protection of park lands is wise and how that level of conservation is to be attained. (Footnote omitted.) *Id.* at 230–231.

The National Park Service further believes that the restrictions in the final rule will substantially enhance the visitor's park experience without placing an unreasonable limitation on First Amendment activity. Abundant alternative demonstration locations exist within sight of the memorial.

In writing the rule, the National Park Service has endeavored to put in place narrow restrictions tailored to serve the substantial governmental interest involved. The new definition of the Vietnam Veterans Memorial had to take into account physical changes in the memorial. For example, the flagpole, which is an integral part of the memorial and which has been constructed since the publication of the interim rulemaking, is outside of that area designated as the memorial in the interim rulemaking. The final rulemaking extends the boundary of the memorial south and westward to encompass the flagpole.

Likewise, the new regulations had to take into account the area necessary to accommodate the unexpectedly large number of people who desire to see the memorial. Since its dedication in November of 1982, an average of 10,200 people have visited the memorial each day, bringing total visitation to seven million people. In addition, the new regulations had to take into account the fact that the steady stream of visitors to the memorial often includes relatives of persons whose names appear on the memorial wall. For these persons, and especially for those persons who have been unable to retrieve the bodies of loved ones from Vietnam, the memorial has taken on a very real and important meaning. In response, the final regulations adds additional footage to the definition of the Vietnam Veterans Memorial to provide additional space for visitors to view the memorial.

Finally, the new regulations had to take into account the rights of visitors to utilize the Vietnam Veterans Memorial without interference from demonstrations, special events or leafletting. Letters to the National Park Service indicate that these activities occurring close to the memorial substantially interfere with the visitor's ability to contemplate the memorial and its meaning in a quiet, peaceful setting. The area to the south of the memorial wall is particularly sensitive because any loud sounds in this area are intensified when they reflect off the wall. The area to the east of the memorial wall slopes directly down into the wall, and thus, being part of the "valley" holding the memorial structures, is sensitive to sound amplification and other activity. The pathways through and to the memorial are also included in the restricted area as visitors have indicated that it is especially intrusive to have to pass through demonstrations to get through and to the memorial.

Along this same line, stages and sound systems placed close to the memorial may also have an adverse effect on visitors. In the past, the National Park Service has gained voluntary compliance with the restrictions on sound systems and staging now contained in the final rule. However, the National Park Service believes that it has an obligation to put such informal policies in regulations so that the public will have adequate notice of requirements for demonstrations and special events close to the memorial.

As with the other provisions of the regulations, the distance requirement for staging and sound equipment will not impact adversely on demonstrations and special events near the memorial. Trees to the north and south of the memorial make staging and sound systems in these areas impractical. The one hundred foot distance requirement to the east of the memorial would place stages and sound systems on the crest of a knoll. Stages or sound systems set anywhere within the one hundred feet east of the memorial would sit on the downward incline of that knoll, making it difficult for speakers to be heard or seen. Set upon the knoll, stages have the memorial wall as a visual backdrop.

The one hundred foot requirement to the west of the memorial places stages and sound systems in the flat, grassy area bounded by Constitution Avenue and Bacon Drive. This is the most practical area for stage west of the memorial. Again, with a stage and sound system placed in this location, the memorial flag and future statue should be in clear view.

The exact location on either side of the memorial where stages and sound systems are allowed is easy to determine. To the east of the memorial, a line drawn from the center door of the Federal Reserve Building to the Reflecting Pool walkway is approximately one hundred feet from the east memorial boundary. The area in which stage and sound restrictions apply to the west of the memorial can be

paced off from the east curb of Bacon Drive.

These lines are shown on the map of the memorial which follows this rulemaking and which will be included in the Code of Federal Regulations.

2. Sales and Distribution of Printed Matter

The final rulemaking also prohibits sales and distribution of printed materials in the Vietnam Veterans Memorial. For the reasons discussed above, the National Park Service believes that it is especially important to maintain an atmosphere of calm, tranquility and reverence in the memorial. Therefore, like the area around the Washington Monument and the interiors of the Lincoln and Jefferson Memorials, the Vietnam Veterans Memorial would be designated as a site where sale and distribution of printed material is not allowed.

Finally, the final rule narrows restrictions on sales and distribution of literature around the Washington Monument and eliminates altogether restrictions on such activities in Constitution Gardens outside of the Vietnam Veterans Memorial.

Regulations presently in effect prohibit sales and distribution of literature within a circle extending ten feet from the paved area surrounding the base of the Washington Monument. However, demonstrations are prohibited in a smaller area extending only to the inner circle surrounding the Monument's base. The difference in prohibited areas creates the situation where an individual can demonstrate in an area in which he cannot sell or distribute literature. Therefore, the National Park Service corrects this situation in these final regulations by revising the area in which sales and distribution of literature are prohibited around the Washington Monument to conform it to the area in which demonstrations are prohibited.

In addition, the National Park Service eliminates Constitution Gardens as an area in which sales and distribution of literature are prohibited. Constitution Gardens was under construction when it was designated as a restricted area in the 1976 rulemaking discussed above. Experience in administering the completed area indicates that it can accommodate sales and distribution of literature without substantially interfering with visitors' enjoyment of the park.

Impact Analysis

The National Park Service has determined that this document is not a major rule requiring preparation of a Regulatory Impact Analysis under Executive Order 12291. The National Park Service has also determined that the final rule will not have a significant economic impact on a substantial amount of small entities and, therefore, does not require a small entity flexibility analysis under 5 U.S.C. 601. The final rule merely defines the term "Vietnam Veterans Memorial", prohibits demonstrations, special events, and the sale and distribution of literature on the memorial grounds, except for official annual Memorial Day and Veterans Day commemorative ceremonies, places minor restrictions on stages and sound systems close to the memorial and eliminates restrictions on the sale and distribution of literature in other areas. It will have no substantial impact on any aspect of the economy.

The National Park Service has further determined that this final rule is not a major Federal action significantly affecting the quality of the human environment.

List of Subjects in 36 CFR Part 50

District of Columbia, National parks, National capital parks.

PART 50—NATIONAL CAPITAL PARKS REGULATIONS

In consideration of the foregoing, Part 50 of Title 36 of the Code of Federal Regulations is accordingly amended.

1. The authority citation for Part 50 reads as follows:

Authority: Sec. 6 of the Act of July 1, 1898 (30 Stat. 571); Secs. 1–3 of the Act of August 25, 1916 (39 Stat. 535, as amended); Sec. 16 of the Act of March 3, 1925 (43 Stat. 1126, as amended); Act of March 17, 1948 (62 Stat. 81); Act of August 8, 1953 (67 Stat. 495); Act of July 1, 1980 (94 Stat. 872); 16 U.S.C. 1–3; D.C. Code 8–137 (1981); D.C. Code 40–721 (1981).

2. Paragraph (a)(10) of § 50.19 is revised to read as follows:

§ 50.19 Demonstration and special events.

(a) * * *

(10) The term "Vietnam Veterans Memorial" means the structures and adjacent areas extending to and bounded by the south curb of Constitution Avenue on the north, the east curb of Henry Bacon Drive on the west, the north side of the north Reflecting Pool walkway on the south and a line drawn perpendicular to Constitution Avenue two hundred (200) feet from the east tip of the memorial wall on the east (this is also a line extended from the east side of the western concrete border of the steps to the west of the center steps to the Federal Reserve Building extending to the Reflecting Pool walkway).

* * * * *

3. Paragraph (v) of § 50.19(c)(2), which was published as an interim rule on November 12, 1982 (47 FR 51126), is adopted as final without change.

4. Section 50.19 is amended by redesignating paragraphs (e) (11) through (13) as (e) (12) through (14) and adding a new paragraph (e)(11) to read as follows:

§ 50.19 Demonstrations and special events.

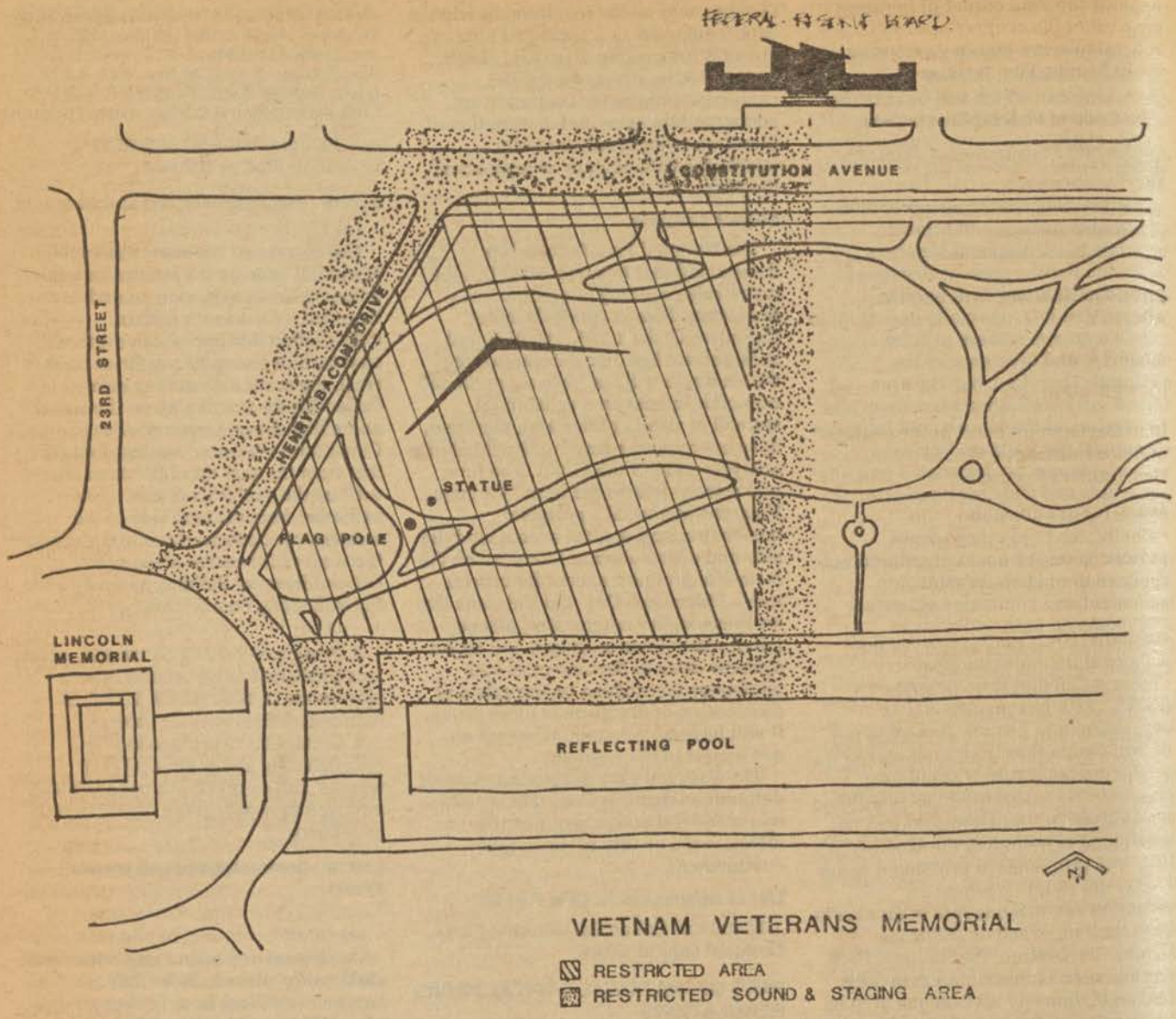
* * * * *

(e) * * *

(11) Stages and sound amplification shall not be placed closer than one hundred (100) feet from the boundaries of the Vietnam Veterans Memorial and sound systems shall be directed away from the memorial at all times.

5. A new diagram is added to the end of § 50.19 to replace the current diagram of the Vietnam Veterans Memorial to read as follows:

* * * * *



6. Section 50.24 is amended by revising paragraph (c)(2)(iii), removing paragraph (c)(2)(iv), redesignating paragraphs (c)(2)(v) and (c)(2)(vi) as (c)(2)(iv) and (c)(2)(v), and adding a new paragraph (c)(2)(vi) to read as follows:

§ 50.24 Soliciting, advertising, sales.

* * * * *

(c) * * *

(2) * * *

* * * * *

(iii) Washington Monument area enclosed within the inner circle that surrounds the Monument's base.

* * * * *

(iv) The Vietnam Veterans Memorial area extending to and bounded by the south curb of Constitution Avenue on the north, the east curb of Henry Bacon Drive on the west, the north side of the north Reflecting Pool walkway on the south and a line drawn perpendicular to Constitution Avenue two hundred (200) feet from the east tip of the memorial wall on the east (this is also a line extended from the east side of the western concrete border of the steps to the west of the center steps to the Federal Reserve Building extending to the Reflecting Pool walkway).

* * * * *

7. Section 50.52 is amended by revising paragraph (a)(3), removing paragraph (a)(4), redesignating paragraphs (a)(5) and (a)(6) as (a)(4) and (a)(5) and adding a new paragraph (a)(6) as follows:

§ 50.52 Sale and distribution of printed matter.

(a) * * *

* * * * *

(3) Washington Monument area enclosed within the inner circle that surrounds the Monument's base.

* * * * *

(6) Vietnam Veterans Memorial area extending to and bounded by the south curb of Constitution Avenue on the north, the east curb of Henry Bacon Drive on the west, the north side of the north Reflecting Pool walkway on the south and a line drawn perpendicular to Constitution Avenue two hundred (200) feet from the east tip of the memorial wall on the east (this is also a line extended from the east side of the

western concrete border of the steps to the west of the center steps to the Federal Reserve Building extending to the Reflecting Pool walkway).

* * * * *

Date Approved: September 28, 1984.

J. Craig Potter,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 84-26768 Filed 10-9-84; 8:45 am]

BILLING CODE 4310-70-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[OSWER-8-FRL-2689-4]

Utah Decision on Final Authorization of State Hazardous Waste Management Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of final determination on application of Utah for final authorization.

SUMMARY: Utah has applied for final authorization under the Resource Conservation and Recovery Act (RCRA). EPA has reviewed Utah's application and has reached a final determination that Utah's hazardous waste program satisfies all of the requirements necessary to qualify for final authorization. Thus, EPA is granting final authorization to the State to operate its program in lieu of the Federal program.

EFFECTIVE DATE: Final Authorization for Utah shall be effective at 1:00 p.m. on October 24, 1984.

FOR FURTHER INFORMATION CONTACT: Mr. Jon P. Yeagley, EPA/Region 8, 1860 Lincoln Street, Denver, Colorado 80295, Telephone: (303) 844-2221.

SUPPLEMENTARY INFORMATION: Section 3006 of the Resource Conservation and Recovery Act (RCRA) allows the Environmental Protection Agency (EPA) to authorize State hazardous waste progams to operate in the State in lieu of the Federal hazardous waste program. To qualify for final authorization, a State's program must: (1) Be "equivalent" to the Federal program; (2) be consistent with the Federal program and other State programs; and (3) provide for adequate enforcement (Sec. 3006(b) of RCRA, 42 U.S.C. 6226(b)).

On February 29, 1984, Utah submitted a complete application to obtain final authorization to administer the RCRA program. July 5, 1984, EPA published a tentative decision announcing its intent to grant Utah final authorization. Further background on the tentative decision to grant authorization appears at Vol. 49, No. 130 **Federal Register**, Page 27585, July 5, 1984.

Along with the tentative determination EPA announced the availability of the application for public comment and the date of a public hearing on the application. The public hearing was held on July 31, 1984.

The tentative determination to authorize the State of Utah was made based on Utah's commitment to provide additional materials to EPA. The materials were presented and reviewed by July 31, 1984, and adequately addressed EPA's prior concerns as follows:

1. The Program Description should include a strategy for the permitting of all existing hazardous waste facilities in the State of Utah.

Utah has prepared a schedule for requesting permit applications and permitting all existing hazardous waste facilities within the State. The Utah Permitting Strategy is Attachment IV to the Capability Assessment submitted with the tentative decision package for Utah. The schedule is amended to have all groundwater monitoring facilities requested by FY-86.

2. The State must define the relationship between the Department of Health and the Hazardous Waste Committee and determine the need for the Committee to sign the Memorandum of Agreement with the Department and EPA.

Utah has reviewed the Department-Committee relationship, verified the description provided in the Application, and provided joint signatures of the Department and Committee to the Memorandum of Agreement.

3. A penalty policy for recommending fines associated with filing of civil actions must be agreed to by the Department and the Committee

The penalty policy is in place, adopted by the Committee for use in calculating civil action penalty recommendations.

4. The Utah Hazardous Waste Regulations must be amended to avoid requiring financial assurance mechanisms prior to the regulations' effective date.

Utah amended its regulations to require third party liability financial mechanisms on the date of authorization for those facilities with sales or revenues totaling $5 million or more. This regulation is certified final.

5. A Memorandum of Agreement commitment must be made by the State to provide investigative support to EPA and authorized States in cases where hazardous waste generated in Utah is transported out of the State for storage, treatment and/or by disposal in a non-permitted facility.

Utah has added this commitment to the Memorandum of Agreement with the necessary Attorney General's certification.

Public Participation

A public hearing and opportunity for review and comment on EPA's tentative decision were noticed in the **Federal Register** and state-wide newspapers. The hearing, held on July 31, 1984, was attended by approximately twelve individuals representing the general public, the press, industry, and State government. Written comments were submitted by one company in support of the authorization. No oral comments were received.

Decision

After reviewing the public comment and the changes the State has made to its application/program since the tentative decision, I conclude that Utah's application for final authorization meets all of the statutory and regulatory requirements established by RCRA. Accordingly, Utah is granted final authorization to operate its hazardous waste program. This means that Utah now has the responsibility for permitting treatment, storage and disposal facilities within its borders and carrying out the other aspects of the RCRA program. Utah also has primary enforcement responsibility, although EPA retains the right to conduct inspections under section 3007 of RCRA and to take enforcement actions under section 3008, 7003, and 3013 of RCRA.

Compliance With Executive Order 12291

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

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 505(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. The authorization effectively suspends the applicability of certain Federal regulations in favor of Utah's program, thereby eliminating duplicative requirements for handlers of hazardous waste in the State. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 271

Hazardous materials, Indian lands, Reporting and recordkeeping requirements, Waste treatment and disposal, Intergovernmental relations, Penalties, Confidential business information.

Authority: This notice is issued under the authority of section 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: October 2, 1984.

John G. Welles,

Regional Administrator.

[FR Doc. 84-26720 Filed 10-9-84; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA-6592]

Final Flood Elevation Determination; Correction

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule; correction.

SUMMARY: The Federal Emergency Management Agency has published a listing which included the final flood elevation determination for the City of Putnam, Windham County, Connecticut. This notice will serve to delete the City of Putnam, Windham County, Connecticut, from that list.

FOR FURTHER INFORMATION CONTACT: Dr. Brian R. Mrazik, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, D.C. 20472 (202) 287-0701.

SUPPLEMENTARY INFORMATION: As a result of the community's annexation into the Town of Putnam, Windham County, Connecticut, it has been determined that the City no longer possesses the requisite primary flood plain management authority to participate in the National Flood Insurance Program, therefore, the Notice of Final Flood Elevation Determination for the City of Putnam published at 49 FR 11204 on March 26, 1984, should be deleted.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001-4128; Executive Order 12127, 44 FR 19367; and delegation of authority to the Administrator)

Issued: September 27, 1984.

Jeffrey S. Bragg,

Administrator, Federal Insurance Administration.

[FR Doc. 84-26690 Filed 10-9-84; 8:45 am]

BILLING CODE 6718-03-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 285

[Docket No. 31012-199]

Atlantic Tuna Fisheries

Correction

In FR Doc. 84-25878 appearing on page 38641 in the issue of Monday, October 1, 1984, make the following correction: In the last line of the first column and the first line of the second column, "721°50'W." should read "72°50'W.".

BILLING CODE 1505-01-M

Proposed Rules

Federal Register
Vol. 49, No. 197
Wednesday, October 10, 1984

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 JUSTICE

Immigration and Naturalization Service

8 CFR Part 248

Change of Nonimmigrant Classification

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Proposed rule.

SUMMARY: The proposed rule would require that when an alien is seeking to change nonimmigrant status to that of an "H" temporary worker or "L" intracompany transferee classification, the application for that change must be filed with the nonimmigrant visa petition (Form I-129B) which authorizes the "H" or "L" classification or the application must be accompanied by the notice of approval of the nonimmigrant visa petition (Form I-171C). This rule would also require that the application for such change of nonimmigrant status to "H" or "L" must always be filed with the district director who has jurisdiction over the nonimmigrant visa petition (Form I-129B). This rule would help the Service provide more expeditious adjudication of the change of status request by keeping all related documents together and by reducing the Service's need to obtain records from another Service office prior to the adjudication of an application.

DATE: Written comments must be submitted on or by November 9, 1984.

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

FOR FURTHER INFORMATION CONTACT:

For general information: Loretta J. Shogren, Director, Policy Directives and Instructions, Immigration and Naturalization Service, 425 I Street, N.W., Washington, D.C. 20536, Telephone: (202) 633-3048.

For Specific Information: Jeffrey D. Trecartin, Immigration Examiner, Immigration and Naturalization Service, 425 I Street, NW., Washington, D.C. 20536, Telephone: (202) 633-3946.

SUPPLEMENTARY INFORMATION: The current regulation governing the place of filing of an application to change nonimmigrant status, Form I-506, provides that the application be filed with the district director having jurisdiction over the *residence* of the applicant. This provision differs from the current rule which governs jurisdiction for filing visa petitions to determine eligibility for "H" "L" nonimmigrant visa classification. A visa petition to classify an alien as a temporary worker "H" or intra-company transferee "L" must be filed with the district director having jurisdiction over the place where the services will be performed without regard to the beneficiary's place of residence. In a number of cases, this results in the filing of the eligibility visa petition (Form I-129B) and the application for change of nonimmigrant classification (Form I-506) in two different jurisdictions. This would be the case when the alien lives in one state (e.g., New York) and works in another state (e.g., New Jersey). This split of jurisdiction in "H" and "L" cases causes increased processing time and unnecessary administrative problems. The proposed rule would require either the concurrent filing of the application (Form I-506) and the nonimmigrant visa petition (Form I-129B) with the district director having jurisdiction over the Form I-129B, or if submitted separately, the proposed rule would require that the notice of approval of the petition, Form I-171C, accompany the Form I-506. The proposed rule would also require that the Form I-506 be filed in the same jurisdiction as the Form I-129B in all cases, thus keeping both proceedings under the jurisdiction of the same district director.

This change would benefit both the Service and the public by consolidating the paperwork needed to make such a change of status, reduce transfer of files within the Service's record system and as a result, provide more efficient, timely service to the public.

In accordance with 5 U.S.C. 605(b), the Commissioner of Immigration and Naturalization certifies that this rule if promulgated, will not have significant economic impact on a substantial number of small entities. The rule would not be a major rule as defined in section 1(b) of E.O. 12291. It would not have an effect on the economy of $100 million or more; result in an increase in costs, prices for consumers, individual industries, Federal, state, or local government agencies, or geographic region; or have a significant adverse effect on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to complete with foreign-based enterprises in domestic or export markets.

List of Subjects in 8 CFR Part 248

Administrative practice and procedure, Aliens, Immigration and Nationality Act.

Accordingly, it is proposed to amend Chapter I of Title 8 of the Code of Federal Regulations as follows:

PART 248—CHANGE OF NONIMMIGRANT CLASSIFICATION

Section 248.3 would be amended by revising paragraph (a); existing paragraphs (b) thru (f) would be redesignated (c) thru (g), respectively; and a new paragraph (b) would be added as follows:

§ 248.3 Application.

(a) *General.* A nonimmigrant alien who seeks to change the visa classification under which he or she was admitted to the United States shall apply for a change of nonimmigrant classification on Form I-506. The applicant shall submit documentary evidence establishing eligibility for the change of classification being requested. The application (Form I-506) must be filed with the district director having jurisdiction over the applicant's place of termporary residence in the United States, *except* for change of status to classification under section 101(a)(15)(H) or (L) of the Act.

(b) *Change to H or L.* An applicant for change of nonimmigrant classification to H or L shall submit Form I-506 accompanied by either Form I-129B, Petition to Classify Nonimmigrant as Temporary Worker or Trainee, or a copy of the notice of approval of the visa petition (Form I-171C), to the district

director having jurisdiction over the place of employment.

* * * * *

§ 248.4 [Removed]

Section 248.4 would be removed.

(Secs. 103 and 248 of the Immigration and Nationality Act, as amended (8 U.S.C. 1258 and 1101))

Dated: September 17, 1984.

Andrew J. Carmichael, Jr.,

Associate Commissioner, Examinations, Immigration and Naturalization Service.

[FR Doc. 84-26667 Filed 10-9-84; 8:45 am]

BILLING CODE 4410-10-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 84-AWA-2]

Proposed Alteration of VOR Federal Airways

Correction

In FR Doc. 84-24882 beginning on page 36869 in the issue of Thursday, September 20, 1984, make the following corrections:

1. On page 36870, first column, **V-417 [New]**, first line, "Montgomery" should read "Monroe".

2. On the same page, second column, **V-18 [Amended]**, line eighteen, "INT Augusta" should read "INT Atlanta".

BILLING CODE 1505-01-M

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Ch. V

Unemployment Insurance Service Proposed Quality Control Program; Under Secretary's Order No. 4-75, Dated April 16, 1975 (40 FR 18515) (5 U.S.C. 553) Interpreting and Applying Sections 303 (a)(1) and (a)(6) and 303(b)(2) of the Social Security Act (42 U.S.C. 503 (a)(1), (a)(6), and 503(b)(2)

Correction

In FR Doc. 84-25526 appearing on page 38083, in the issue of Wednesday, September 26, 1984, make the following correction: In the second column, *Introduction*, line nine "employment" should read "unemployment".

BILLING CODE 1505-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Parts 203, 226, and 234

[Docket No. R-84-1173; FR-1935]

Single Family and Condominium Mortgage Insurance; Changes to Loan-to-Value Limitation for Modestly Priced Homes

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Proposed rule.

SUMMARY: This rule proposes to implement a provision of the Housing and Urban-Rural Recovery Act of 1983 (1983 Act) which authorizes a higher loan-to-value ratio for HUD-insured owner-occupied homes or family units with an appraised value of $50,000 or less. Because a higher loan-to-value ratio means the purchaser would need a smaller downpayment, this amendment would help those persons traditionally served by FHA—homebuyers with sound credit and income and strong motivation to support mortgage debt, but with a limited amount of liquid assets to provide a large downpayment. This amendment would particularly help first-time homebuyers who do not have equity in a previous home to use for a downpayment.

DATE: *Comments due date* December 10, 1984.

ADDRESS: Interested persons are invited to submit comments on this rule to the Office of General Counsel, Rules Docket Clerk, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C. 20410. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection during regular business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Brian Chappelle, Acting Director, Single Family Development Division, Department of Housing and Urban Development, Room 9270, 451 Seventh Street, SW., Washington, D.C. 20410. Telephone: (202) 755-6720. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: The National Housing Act (NHA) (12 U.S.C. 1701-1749) authorizes HUD/Federal Housing Administration (FHA) to insure mortgages for single family residences. This authority includes one- to four-family residences (see section 203) and one-family units in condominiums (see section 234). Section 203 of the NHA is the underlying provision for the insurance of mortgages covering single family residences, and many other NHA sections adopt the basic provisions contained in section 203. Other sections to which this rule applies include: section 203(k), loan insurance for rehabilitation of a structure used primarily as a residence; and sections 809 and 810, armed services housing mortgage insurance.

HUD/FHA insures lenders against losses on insured home mortgages, thereby lowering lenders' risk and encouraging a flow of credit for homeownership. The Department's insurance program has increased the opportunity for homeownership—one of the fundamental objectives of the Department. The limits on how much the Department may insure are set by the National Housing Act. Maximum mortgage amounts depend on whether the buyer intends to live in the home, the appaised value of the property, the number of family units in the dwelling and the prevailing housing prices in the area. The insured mortgage amount cannot exceed a fixed percentage of the appraised value, called the loan-to-value ratio.

In most single family mortgages, when the mortgagor (purchaser) is going to occupy the residence, the loan-to-value ratio is the sum of 97% of the first $25,000 of the appraised value plus 95 percent of the appraised value in excess of $25,000. Appraised value is defined as the estimated value of the property plus the estimated closing costs or the acquisition cost, whichever is less. (See 24 CFR 203.18 and 234.27 for loan-to-value ratios in other circumstances.

Section 424 of the Housing and Urban-Rural Recovery Act of 1983 (Pub. L. 98-181, November 30, 1983) (1983 Act) amends section 203(b) of the NHA by establishing a special loan-to-value ratio for owner-occupied modestly priced homes. If the appraised value of the property (estimated value plus estimated closing costs) does not exceed $50,000, section 424 allows a loan-to-value ratio of 97 percent of the entire appraised value of the property as of the date the mortgage is accepted for insurance. By another provision of the 1983 Act, (section 420) the maximum mortgage limits authorized for one-family residences under section 203(b) of the NHA also apply to section 234 condominium units. (See rule implementing section 420 in the April 11, 1984 issue of the **Federal Register**, 49 FR 14336.)

Today's rule proposes to amend the Department's regulations in Parts 203 and 234 to implement the direct authorization contained in the 1983 Act to increase the loan-to-value ratio for owner-occupied, modestly priced single family homes, including condominium units. This change would reduce the downpayment requirement for purchasers of modestly priced single-family homes. Under current loan-to-value limitations, a $50,000 home requires a $2,000 downpayment. If adopted as final, this rule would require a $1,500 downpayment on a $50,000 home. This reduction in the necessary initial cash investment would permit more moderate and middle income homebuyers to own their own homes. Because the 1983 Act specifically limits this loan-to-value limitation to owner-occupants, this rule also proposes to amend HUD's regulations to make it clear that investor-owners may not qualify for this special low downpayment.

This proposal also contains technical amendments to Part 226, Armed Services Housing—Civilian Employees, which must be consistent with Part 203.

Before the Department can implement this lower downpayment requirement, the 1983 Act requires that the Secretary find and report to Congress that the implementation of this provision will not adversely affect the actuarial soundness of HUD's single family mortgage insurance programs, taking into account the already higher loan-to-value ratio resulting from the advance payment of mortgage insurance premiums in effect in most of the section 203 programs. The Secretary has made such a finding, and has submitted his report to Congress.

A finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50, which implement section 102(2)(C) of the National Enviornmental Policy Act of 1969 (42 U.S.C. 4332). The Finding of No Significant Impact is available for public inspection and copying during regular business hours in the Office of the Rules Docket Clerk, Office of the General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C. 20410.

This proposed rule does not constitute a "major rule" as that term is defined in section 1(b) of Executive Order 12291 on Federal Regulation issued by the President on February 17, 1981. Analysis of the proposed rule indicates that it does not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Under the provisions of section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601), the Undersigned certifies that this proposed rule does not have a significant economic impact on a substantial number of small entities, because the rule merely carries out a statutory policy and does not impose any new administrative or economic burdens on small entities.

This rule was listed as item number 55 in the Department's Semiannual Agenda of Regulations published on April 19, 1984 (see 49 FR 15902, 15921) under Executive Order 12291 and the Regulatory Flexibility Act.

The applicable Catalog of Federal Domestic Assistance program numbers are: 14.105; 14.108; 14.117–14.122; 14.133; 14.159; 14.161; 14.163; 14.165; and 14.166.

List of Subjects

24 CFR Part 203

Home improvement, Loan programs: housing and community development, Mortgage insurance, Reporting and recordkeeping requirements, Solar energy.

24 CFR Part 226

Government employees, Mortgage insurance.

24 CFR Part 234

Mortgage insurance; Reporting and recordkeeping requirements.

Accordingly, the Department proposes to amend 24 CFR Parts 203, 226, and 234 as follows:

PART 203—MUTUAL MORTGAGE INSURANCE AND REHABILITATION LOANS

1. Section 203.18 is proposed to be amended by revising paragraphs (a)(2), (a)(3), and the introductory language of paragraph (c) and by adding a new paragraph (c)(3) as set forth below:

§ 203.18 Maximum mortgage amounts.

(a) * * *

(2) *Loan-to-value limitation—no approval before construction.* In a case where a dwelling is not approved for mortgage insurance before the beginning of construction, the loan-to-value ratio may not exceed 90 percent of the appraised value of the property as of the date the mortgage is accepted for insurance, unless the dwelling—

(i) Was completed more than one year before the date of the mortgage insurance application; or

(ii) Was approved for guaranty, insurance, or a direct loan by the Administrator of Veterans Affairs before the beginning of construction; or

(iii) Is covered by a consumer protection or warranty plan acceptable to the Secretary and satisfies all requirements which would have been applicable if such dwelling had been approved for mortgage insurance before the beginning of construction.

(3) *Loan-to-value limitation—approval before construction.* If a dwelling is approved for mortgage insurance before construction, or if it meets one of the alternative conditions identified in paragraph (a)(2) of this section, the following loan-to-value limitations apply:

(i) If the appraised value of the property does not exceed $50,000, the loan-to-value limitation is 97 percent of the appraised value of the property as of the date the mortgage is accepted for insurance.

(ii) If the appraised value of the property exceeds $50,000, the loan-to-value limitation is 97 percent of the first $25,000 of the appraised value of the property as of the date the mortgage is accepted for insurance and 95 percent of the appraised value in excess of $25,000.

(iii) If the mortgagor qualifies as a veteran (see paragraph (b) of this section), the loan-to-value limitation is the lesser of (A) 100 percent of the first $25,000 of the appraised value of the property as of the date the mortgage is accepted for insurance plus 95 percent of the appraised value in excess of $25,000; or (B) the sum of the appraised value not in excess of $25,000 and the items of pre-paid expense approved by the Commissioner minus $200, plus 95 pecent of the appraised value in excess of $25,000.

* * * * *

(c) *Nonoccupant mortgagors.* Except as limited in paragraph (C)(3) of this section, a mortgage executed by an owner who is not the occupant of the property may equal;

* * * * *

(3) In no case may a nonoccupant mortgagor qualify for the 97 percent loan-to-value limitation provided for owner-occupants of property whose appraised value does not exceed $50,000. (See § 203.18(a)(3).)

* * * * *

2. In § 203.50, paragraphs (f)(1) and (f)(2) are proposed to be amended by

removing the reference "§ 203.18(a) (1) (2)" and adding in its place the reference "§ 203.18(a) (1) and (3)".

PART 226—ARMED SERVICES HOUSING—CIVILIAN EMPLOYEES [SEC. 809]

3. Section 226.5 is proposed to be amended by revising paragraphs (a)(1) and (a)(2) to read as follows:

§ 226.5 Maximum mortgage amount; loan-to-value limitation.

(a) * * *

(1) *Loan-to-value limitation—no approval before construction.* In a case where a dwelling is not approved for mortgage insurance before the beginning of construction, the loan-to-value ratio may not exceed 90 percent of the appraised value of the property as of the date the mortgage is accepted for insurance, unless the dwelling—

(i) Was completed more than one year before the date of the mortgage insurance application; or

(ii) Was approved for guaranty, insurance, or a direct loan by the Administrator of Veterans Affairs before the beginning of construction; or

(iii) Is covered by a consumer protection or warranty plan acceptable to the Secretary and satisfies all requirements which would have been applicable if such dwelling had been approved for mortgage insurance before the beginning of construction.

(2) *Loan-to-value limitation—approval before construction.* If a dwelling is approved for mortgage insurance before construction, or if it meets one of the alternative conditions identified in paragraph (a)(1) of this section, the following loan-to-value limitations apply—

(i) If the appraised value of the property does not exceed $50,000, the loan-to-value limitation is 97 percent of the appraised value of the property as of the date of the mortgage is accepted for insurance.

(ii) If the appraised value of the property exceeds $50,000, the loan-to-value limitation is 97 percent of the first $25,000 of the appraised value of the property as of the date the mortgage is accepted for insurance and 95 percent of the appraised value in excess of $25,000.

(iii) If the mortgagor qualifies as a veteran under § 203.18(b) of this chapter, the loan-to-value limitations is the lesser of (A) 100 percent of the first $25,000 of the appraised value of the property as of the date the mortgage is accepted for insurance plus 95 percent of the appraised value in excess of $25,000; or (B) the sum of the appraised value not in excess of $25,000 and the items of prepaid expense approved by the Commissioner minus $200, plus 95 percent of the appraised value in excess of $25,000.

* * * * *

PART 234—CONDOMINUM OWNERSHIP MORTGAGE INSURANCE

4. Section 234.27 is proposed to be amended by revising paragraphs (a)(2), (a)(3), and the introductory language of paragraph (d), and by adding a new paragraph (d)(3) to read as follows:

§ 234.27 Maximum mortgage amounts.

(a) * * *

(2) *Loan-to-value limitation—no approval before construction.* In a case where a family unit is not approved for mortgage insurance before the beginning of construction, the loan-to-value ratio may not exceed 90 pecent of the appraised value of the property as of the date the mortgage is accepted for insurance, unless the family unit—

(i) Was completed more than one year before the date of the mortgage insurance application; or

(ii) Was approved for guaranty, insurance, or a direct loan by the Administrator of Veterans Affairs before the beginning of construction; or

(iii) Is covered by a consumer protection or warranty plan acceptable to the Secretary and satisfies all requirements which would have been applicable if such dwelling had been approved for mortgage insurance before the beginning of construction.

(3) *Loan-to-value limitation—approval before construction.* If a family unit is approved for mortgage insurance before construction, or if it meets one of the alternative conditions identified in paragraph (a)(2) of this section, the following loan-to-value limitations apply—

(i) If the appraised value of the family unit does not exceed $50,000, the loan-to-value limitation is 97 percent of the appraised value of the property as of the date the mortgage is accepted for insurance.

(ii) If the appraised value of the family unit exceeds $50,000, the loan-to-value limitation is 97 percent of the first $25,000 of the appraised value of the property as of the date the mortgage is accepted for insurance and 95 percent of the appraised value in excess of $25,000.

(iii) If the mortgagor qualifies as a veteran under § 203.18(b) of this chapter, the loan-to-value limitation is the lesser of (A) 100 percent of the first $25,000 of the appraised value of the property as of the date the mortgage is accepted for insurance plus 95 percent of the appraised value in excess of $25,000; or (B) the sum of the appraised value not in excess of $25,000 and the items of prepaid expense approved by the Commissioner minus $200, plus 95 percent of the appraised value in excess of $25,000.

* * * * *

(d) *Nonoccupant mortgagors.* Except as limited in paragraph (d)(3) of this section, a mortgage executed by an owner who is not the occupant of the family unit may equal:

* * * * *

(3) In no case may a nonoccupant mortgagor qualify for the 97 percent loan-to-value limitation provided for owner-occupants of family units whose appraised value does not exceed $50,000. (See § 234.27(a)(3).)

Authority: Sec. 203(b)(2), National Housing Act (12 U.S.C. 1709(b)(2)); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: September 13, 1984.

Maurice L. Barksdale,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 84-26683 Filed 10-9-84; 8:45 am]

BILLING CODE 4210-27-M

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24 CFR Part 207

[Docket No. R-84-1207; FR-1768]

Multifamily Housing Mortgage Insurance Assignment of Insured Mortgages

AGENCY: Office of the Assistant Secretary of Housing—Federal Housing Commissioner, HUD.

ACTION: Proposed rule.

SUMMARY: The proposed rule would amend 24 CFR 207.261 to permit an insured mortgagee to sell or syndicate beneficial interests in an insured multifamily mortgage or pool of multifamily mortgages without prior HUD consent, subject to certain conditions. These conditions would maintain the rights, benefits, and obligations of all parties potentially affected by an assignment of insured mortgages.

DATES: Comment due date: December 10, 1984.

ADDRESSES: Interested persons are invited to submit comments about this rule to the Office of the General Counsel, Rules Docket Clerk, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C. 20410.

Communications should refer to the above docket number and title. A copy of each comment received will be available for public inspection and copying during regular business hours at the above address.

FOR FURTHER INFORMATION CONTACT: James T. Tahash, Director, Program Planning Division, Office of Multifamily Housing Management, Room 6180, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C. 20410. Telephone (202) 426-3970 (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: The proposed amendment would add a new provision to 24 CFR 207.261 which would allow the sale or transfer of all or any portion of a beneficial interest in an insured multifamily mortgage or pool of such mortgages without prior HUD consent. Such a sale or transfer would be subject to the following conditions: (1) The insured mortgagee must retain legal title to and custody of the insured mortgage and mortgage documents and (2) neither HUD nor the mortgagor would have an obligation to recognize or deal with anyone other than the insured mortgagee (or its servicing agent) after the transfer of the beneficial interest. The amendment should encourage the addition of capital into the mortgage markets by permitting insured mortgagees to sell their beneficial interest in the insured mortgage to other types of investors.

This rule would not constitute a "major rule" as that term is defined in section 1(b) of Executive Order 12291 on Federal Regulations issued on February 17, 1981. Analysis of the rule indicates that it would not: (1) Have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR Part 50 which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of the General Counsel, Rule Docket Clerk, at the above address.

Pursuant to the provisions of 5 U.S.C. 605 (the Regulatory Flexibility Act), the Undersigned hereby certifies that this rule would not have a significant economic impact on a substantial number of small entities. The proposed rule merely liberalizes present procedure by eliminating the need to request prior HUD approval in order to sell or transfer beneficial interests in multifamily mortgages, subject to certain conditions.

This proposed rule was listed as item number 72 in the Department's Semiannual Agenda of Regulations published on April 19, 1984 (49 FR 15902 at 15924) pursuant to Executive Order 12291 and the Regulatory Flexibility Act.

The Catalog of Federal Domestic Assistance program numbers are 14.134, Mortgage Insurance—Rental Housing; 14.155, Mortgage Insurance for the Purchase or Refinancing of Existing Multifamily Housing Projects.

List of Subjects in 24 CFR Part 207

Mortgage insurance, Rental housing, Mobile home parks, Assignments of insured mortgages.

Accordingly, HUD proposes to amend 24 CFR Part 207 as follows:

PART 207—MULTIFAMILY HOUSING MORTGAGE INSURANCE

Section 207.261 would be amended by revising paragraphs (a) and (e)(1) and by adding paragraphs (f)–(h) to read:

§ 207.261 Assignment of insured mortgages.

(a) *In general.* An approved mortgagee may assign, transfer or pledge an insured mortgage, a partial interest in an insured mortgage, or a benefical interest in an insured mortgage in accordance with the terms and conditions prescribed in this section.

* * * * *

(e) * * *

(1) The insured mortgage shall be held by an approved mortgagee subject to the inspection and supervision of a governmental agency authorized by law to make periodic examination of its books and accounts, and which shall for the purpose of this paragraph (e) be referred to as the "principal" mortgagee;

* * * * *

(f) *Transfer of beneficial interest by mortgage participation certificates.* The insured mortgagee of record may sell or transfer a beneficial interest in all or a part of an insured mortgage, without obtaining the approval of the Commissioner, through the sale of pass-through certificates representing a beneficial interest in an insured mortgage or in a pool of insured mortgages, if the following conditions are met:

(1) The insured mortgage or mortgages (including insured mortgages held by a trustee holding title for the benefit of certificate holders) shall be held by an approved mortgagee subject to the inspection and supervision of a governmental agency authorized by law to make periodic examination of its books and accounts;

(2) The insured mortgagee shall at all times retain legal title to the mortgage;

(3) The declaration of trust or other agreement under which the beneficial interest in the insured mortgage or pool of insured mortgages is transferred, in addition to other provisions as may be agreed upon between the parties, shall provide that the insured mortgagee shall remain the mortgagee of record under the contract of mortgage insurance; that the Commissioner shall have no obligation to recognize or deal with anyone other than the insured mortgagee with respect to the rights, benefits and obligations of the insured mortgagee under the contract of insurance; that the mortgagor shall have no obligation to recognize or deal with anyone other than the insured mortgagee or its servicing agent with respect to the rights, benefits and obligations of the mortgagor or the insured mortgagee under the mortgage; and that, except as required by a servicer acting for an insured mortgagee, the mortgage documents shall remain in the custody of the insured mortgagee, or its agent for purposes of such custody, which agent shall be an approved mortgagee.

(g) *Notice not required.* No notice of any sale or transfer of a participating or partial interest under paragraph (e) or the sale or transfer of a beneficial interest under paragraph (f) shall be required, unless the insured mortgage is transferred in its entirety to a new mortgagee on the public records.

(h) *Unauthorized transfer, pledge or assignment.* The contract of insurance may, at the option of the Commissioner and under such conditions as the Commissioner may prescribe, be terminated if an insured mortgage, a partial interest in an insured mortgage, or a beneficial interest in an insured mortgage is transferred, pledged or assigned and the transfer, pledge or assignment does not meet the requirements contained in this section.

Authority: Sec. 207, National Housing Act (12 U.S.C. 1713); Sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: September 13, 1984.

Maurice L. Barksdale,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 84-28680 Filed 10-9-84; 8:45 am]

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24 CFR Parts 207, 220, 221, 246, and 255

[Docket No. R-84-1181; FR-1905]

Multifamily Housing Mortgage Insurance; Deregulation of Rents

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Proposal rule.

SUMMARY: This proposed rule would implement a recent statutory amendment granting the Secretary discretionary authority to regulate rents in unsubsidized multifamily projects with mortgages insured under section 207 or section 234(d) of the National Housing Act. Before this amendment, the statute mandated that the Secretary regulate rents in those projects. The Secretary proposes to deregulate rents for such projects, where a project is insured (or coinsured) under section 207 on or after the date of the date of enactment of the amendment (November 30, 1983). The rule would clarify the method of determining rent adjustments for certain projects insured under section 207. In addition, for projects insured under section 220 or 221 receiving section 8 Loan Management Set Aside, the rents (excluding the section 8 rents) would be decontrolled. The rule would also specify how maximum rents would be determined when local rent control is preempted.

DATES: Comments due December 10, 1984.

ADDRESS: Interested persons are invited to submit comments regarding this rule to the Office of General Counsel, Rules Docket Clerk, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C. 20410. Communications should refer to the above-mentioned docket number and title. A copy of each communication submitted will be available for public inspection and copying during regular business hours at the above address.

FOR FURTHER INFORMATION CONTACT: James J. Tahash, Office of Multifamily Housing Management, Room 6180, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C. 20410. Telephone number (202) 426-3970. This is not a toll-free number.

SUPPLEMENTARY INFORMATION:

Statutory Scheme

Section 431(a)(1) of the Housing and Urban-Rural Recovery Act of 1983, Pub. L. 98-181, 97 Stat. 1153, approved November 30, 1983 (1983 Act), amended section 207(b)(2) of the National Housing Act (NHA) to provide, in pertinent part, that

> The Secretary may, in the Secretary's discretion, require any such mortgagor to be regulated or restricted as to rents or sales, . . . so as to provide reasonable rentals to tenants and a reasonable return on the investment. Any such regulations or restrictions shall continue for such period or periods as the Secretary, in the Secretary's discretion, may require, . . .

Before the amendment effected by section 431(a)(1), section 207(b)(2) contained language requiring the Department to regulate rents in projects insured or held by HUD under this authority. HUD promulgated rules for the guidance of program participants with respect to the regulation of rents in these unsubsidized multifamily projects. *See, e.g.*, 48 FR 16670, 16673 (April 19, 1983).

In the rule cited above (48 FR 16670), acting under a similar grant of discretionary authority to regulate rents provided for in sections 220 and 221(d)(4) of the NHA, the Secretary elected to invoke this discretion and to end the control of rents on projects insured under these two sections of the NHA.

In decontrolling rents in projects insured under sections 220 and 221(d)(4), the Department quoted from *The Report of the President's Commission on Housing (1982)* that "unsubsidized projects with FHA-insured loans should not be subject to regulatory control of rents." Report, *supra* at 166, *cited in* 48 FR at 16670. This conclusion from the Report, along with the following elaboration of the Department's rationale for decontrolling rents in sections 220 and 221(d)(4) projects, is equally applicable to future projects insured under section 207 of the HHA, and is explicitly adopted in this rule.

> As the insurer or holder (as a result of assignment) of the mortgages on such projects, HUD has a paramount interest in their economic viability. Moreover, HUD is committed to the preservation and enhancement of the quantity and quality of available housing. For projects which receive no subsidy, the Department has concluded that the best method of achieving these goals is to allow free markets to determine rents which will enable owners to recover current operating costs and achieve a reasonable rate of return based on present property values. *Id.*

This rule, however, would not deregulate rents in existing projects, insured under section 207 of the NHA before enactment of the 1983 Act. A companion amendment in the 1983 Act, at section 431(c), provides that the amendment to section 207(b)(2) "shall not apply with respect to mortgages insured by the Secretary . . . before the date of enactment of [the 1983] Act." In view of this explicit language, the deregulation of rents proposed by this rule would apply only to those projects on which the mortgage was insured on or after November 30, 1983 (the date of enactment of the 1983 Act). With respect to those projects with mortgages insured before November 30, 1983, however, the Department will continue to regulate rents in accordance with 24 CFR 207.19(e). *See* 48 FR at 16673.

Section 431(a)(1) of the 1983 Act provides that the Secretary may, in the Secretary's discretion, require a mortgagor "to be regulated or restricted as to rents . . . so as to provide reasonable rentals to tenants and a reasonable return on the investment." In this rule, the Department proposes to decontrol rents. HUD believes that the free market will provide for rent levels that will enable owners to recover current operating costs and achieve a reasonable rate of return based on current property values, and that owners, relieved of rent control on these projects, will charge rents that by market standards in the area yield a reasonable return but remain competitive.

Section 431(b) of the 1983 Act amended section 234(d)(2) of the NHA to confer discretionary authority on the Secretary to regulate rents in projects insured under that section. Formerly (i.e., before passage of the 1983 Act), section 234(d)(2) mandated the regulation of rents in such projects. However, no revision to the existing regulation at 24 CFR 234.560(b), implementing section 234(d)(2), is necessary. The existing regulatory provision conforms to the amendatory language of section 431(b) of the 1983 Act.

Regulatory Revisions

As a result of the statutory amendment to section 207 of the NHA, the Department is proposing the following revisions to existing regulations under 24 CFR Part 207. Revisions to existing regulations under

24 CFR Parts 220, 221, 246 and 255 are also included in this rule.

In § 207.19(e), a new paragraph (7) would be added to indicate that, for projects insured under this section after November 30, 1983, the rents and charges would be determined by the owner (i.e., the rents are deregulated), except for those projects that receive section 8 assistance, Rent Supplement, or Rental Assistance Payments, or are constructed for occupancy exclusively by elderly and handicapped persons. A new paragraph (8) would be added also to provide that "reasonable rentals" or "moderate rental charges" under section 207(b)(2) of the NHA would be determinable by reference to market rentals in the area.

Projects with units receiving a tenant-based subsidy would continue to have their rents and charges approved by HUD or determined in accordance with the HAP Contract, as the case may be. Additional charges for facilities and services in elderly projects would be subject to approval by HUD. Also, rents on projects refinanced under section 207 of the NHA pursuant to section 223(f) of the NHA that receive assistance under the Rent Supplement Program or under section 236 of the NHA would be determined in accordance with § 207.19(e)(2)(i).

Sections 207.19(e)(4), 220.511(c)(3), and 221.531(c)(4) would also be revised. These revisions would clarify the method of determining rent adjustments with respect to projects described in these sections. An owner of such a project could, with the prior approval of the Department, have the rents determined under 24 CFR 207.19(e)(2)(ii). However, if the owner elected to have the rents determined under paragraph (e)(2)(ii), or (in the case of section 220 and 221 projects), decontrolled, the rents for those units receiving section 8 assistance would be adjusted in accordance with the Annual Adjustment Factor set out in 24 CFR Part 888, Subpart B, and the HAP Contract.

Paragraph (3) of section 207.19(e) would be amended to specify that, in preempting local rent control laws, the Department would determine the maximum rents that projects so affected may charge by using the method outlined in section 207.19(e)(i). This identical amendment would also be made to § 220.511(d) and 221.531(c)(5).

The rule would also contain an amendment to 24 CFR 255.223(c) to indicate that rents would be deregulated on projects with mortgages coinsured on or after November 30, 1983. Rents on projects with mortgages coinsured before November 30, 1983 are currently determined in accordance with the interim rule published on May 25, 1983 at 46 FR 23386, 23405.

As a consequence of the deregulation of rents proposed by this rule, along with the actual deregulation effected by the final rule of April 19, 1983 (48 FR 16670), some of the projects affected by these rules are now covered under 24 CFR Part 246, Subpart B, with respect to preemption of local rent control. Accordingly, the Department would amend 24 CFR Part 246, Subpart C, §246.20 (formerly Part 403.20) to remove reference to these projects in that subpart. (This action would have the effect of giving tenants in these projects in which rents are deregulated the opportunity to comment on preemption determinations.)

Other Findings

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of the Rules Docket Clerk, Room 10276, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, D.C. 20410.

This rule would not constitute a "major rule" as that term is defined in section (b) of the Executive Order on Federal Regulation issued by the President on February 17, 1981. Analysis of the rule indicates that it would not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Under 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the Undersigned hereby certifies that this rule would not have a significant economic impact on a substantial number of small entities. The rule would exercise the Department's discretionary authority, in accordance with a recent statutory amendment, to decontrol rents. The rule would eliminate cash deficiencies for some small entities but would not result in additional costs to any small entities.

This rule was listed as sequence number 75 in the Department's Semiannual Agenda of Regulations published on April 19, 1984 (49 FR 15924) under Executive Order 12291 and the Regulatory Flexibility Act.

The Catalog of Federal Domestic Assistance program numbers are 14.134 and 14.149.

List of Subjects

24 CFR Part 207

Mortgage insurance, Rental housing, Manufactured home parks.

24 CFR Part 220

Home improvement, Mortgage insurance, Urban renewal, Rental housing, Loan programs—housing and community development, Projects.

24 CFR Part 221

Condominiums, Low and moderate income housing, Mortgage insurance, Displaced families, Single family housing, Projects, Cooperatives.

24 CFR Part 246 (formerly Part 403)

Intergovernmental relations, Low and moderate income housing, Mortgages, Rent subsidies, Rent control.

24 CFR Part 255

Mortgage insurance.

Accordingly, 24 CFR Parts 207, 220, 221, 246 and 255 are proposed to be amended as follows:

PART 207—MULTIFAMILY HOUSING MORTGAGE INSURANCE

1. Section 207.19 would be amended by revising the introductory text of paragraph (e), paragraphs (e)(3) and (4), and by adding a new paragraph (e)(7), to read as follows:

§ 207.19 Required supervision of private mortgagors.

* * * * *

(e) *Rents and charges.* Except as otherwise provided in paragraph (7) of this section, no charges shall be made by the mortgagor for the accommodations (rents), facilities or services offered by the project in excess of those approved by the Commissioner. In approving such charges and in passing upon subsequent rent adjustments, consideration will be given to providing rental income necessary to maintain the economic soundness of the project and a reasonable return on investment consistent with reasonable rents to tenants. The determination will be made as follows:

* * * * *

(3) *Rent control.* Any state or local law, ordinance, or regulation regulating the rents of projects subject to this paragraph (e) may be preempted only as provided in Part 246 of this chapter, and

the maximum rents that may be charged following any such preemption action will be determined using the method outlined in paragraph (e)(2)(i) of this section.

(4) *Special Allocations.* Rent adjustments for projects with units assisted under Part 886, Subparts A or C of this title, Section 8 Housing Assistance Payments Program—Special Allocations, shall be determined under paragraph (e)(2)(i) of this section, except that a mortgagor may, with HUD's prior approval, have the rents determined under paragraph (e)(2)(ii) of this section. However, if the mortgagor elects to have the rents determined under paragraph (e)(2)(ii), the rents for units occupied by assisted tenants shall be determined in accordance with the HAP Contract and applicable regulations.

* * * * *

(7) *Mortgages on projects insured on or after November 30, 1983.* A mortgagor shall determine the charge for accommodations (rents), facilities or services offered by a project insured on or after November 30, 1983, except as follows:

(i) In the case of a project constructed for occupancy exclusively by elderly and handicapped tenants, or in the case of any project or units within a project having a section 8 contract under Part 880, 881, 883, or 886, Subpart A or C, of this title, no charge shall be made for facilities or services except with the prior approval of the Commissioner in accordance with applicable regulations and administrative procedures.

(ii) Rent adjustments for any units assisted under Part 880 of this title (Section 8 Housing Assistance Payments Program for New Construction), Part 881 of this title (Section 8 Housing Assistance Payments Program for Substantial Rehabilitation), Part 883 of this title (Section 8 Housing Assistance Payments Program—State Housing Agencies), or Part 886 of this title (Section 8 Housing Payments Program—Special Allocations) shall not exceed comparable market-rate rents in the project without prior HUD approval. However, to the extent that units in a project are occupied by assisted tenants and are subject to a section 8 Housing Assistance Payments Contract under Part 880, Part 881, Part 883 or Part 886, the rents for those units shall be determined in accordance with the HAP Contract and applicable regulations.

(iii) Rents on projects refinanced under section 207 of the National Housing Act pursuant to section 223(f) of the National Housing Act that have a Rent Supplement Contract under 24 CFR Part 215; or that receive Rental Assistance Payments under 24 CFR Part 236, shall be determined in accordance with paragraph (e)(2)(i) of this section. No charges shall be made by the mortgagor for facilities or services offered by the project except with the prior approval of the Commissioner and in accordance with applicable regulations and administrative procedures.

(8) *Reasonable rentals or moderate rental charges.* With respect to projects covered by mortgages insured after November 30, 1983, and on which rents are deregulated under this section, reasonable, moderate rentals are determinable by reference to market rentals in the area.

PART 220—URBAN RENEWAL MORTGAGE INSURANCE AND INSURED IMPROVEMENT LOANS

2. In § 200.511, paragraphs (a), (c)(1), (c)(3) and (d) would be revised to read as follows:

§ 220.511 Supervision of mortgagors.

(a) All of the provisions of § 207.19 of this chapter apply, except that (1) § 207.19(e) shall not apply except as specifically referenced in this section and (2), in the case of a mortgage covering property on which there is located a dwelling or dwellings designed principally for residential use for two to eleven families, § 207.19(d) relating to labor standards and prevailing wage requirements shall not apply.

(b) * * *

(c)(1) In the case of any project or units within a project described in paragraph (c)(2) or (c)(3) of this section, no charge shall be made by the mortgagor for facilities or services without the approval of the Commissioner, in accordance with applicable regulations and administrative procedures.

(2) * * *

(3) Rent adjustments for projects with units assisted under Part 886, Subpart A or C of this title, Section 8 Housing Assistance Payments Program—Special Allocations, shall be determined under 24 CFR 207.19(e)(2)(i), or a mortgagor may, with HUD's prior approval, determine the charge for accommodations, facilities, or services offered by the project, except that the rents for those units, when occupied by assisted tenants, shall be determined in accordance with the HAP Contract and applicable regulations.

(d) *Rent control.* Any state or local law, ordinance, or regulation regulating the rents of projects subject to paragraph (b) or (c) of this section may be preempted only as provided in Part 246 of this chapter, and the maximum rents that may be charged following any such preemption action will be determined using the method outlined in 24 CFR 207.19(e)(2)(i).

PART 221—LOW COST AND MODERATE INCOME MORTGAGE INSURANCE

3. In § 221.531, paragraphs (c) (1), (4) and (5) would be revised to read as follows:

§ 221.531 Supervision applicable to general mortgagors.

* * * * *

(c) * * *

(1) In the case of any project constructed for occupancy exclusively by elderly and handicapped tenants, or in the case of any project or units within a project described in paragraphs (c)(2) through (c)(4) of this section, no charge shall be made for facilities or services without the approval of the Commissioner, in accordance with applicable regulations and administrative procedures.

* * * * *

(4) Rent adjustments for projects with units assisted under Part 886, Subpart A or C, of this title, Section 8 Housing Assistance Payments Program—Special Allocations, shall be determined under 24 CFR 207.19(e)(2)(i), or a mortgagor may, with HUD's prior approval, determine the charge for accommodations, facilities, or services offered by the project, except that the rents for those units, when occupied by assisted tenants, shall be determined in accordance with the HAP Contract and applicable regulations.

(5) *Rent control.* Any state or local law, ordinance, or regulation regulating the rents of projects subject to this paragraph (c) may be preempted only as provided in Part 246 of this chapter, and the maximum rents that may be charged following any such preemption action will be determined using the method outlined in 24 CFR 207.19(e)(2)(i).

PART 246—LOCAL RENT CONTROL

4. Section 246.20 would be revised to read as follows:

§ 246.20 Applicability.

This subpart applies to all projects with mortgages insured or held by HUD that receive a subsidy in the form of (a) interest reduction payments under section 236 of the National Housing Act; (b) below-market interest rates under section 221(d) (3) or (5) of the National Housing Act; (c) direct loans at below-market interest rates under section 202 of the Housing Act of 1959; or (d) rent

supplement payments under section 101 of the Housing and Urban Development Act of 1965; or (e) projects that converted their rent supplement contract under section 101 of the Housing and Urban Development Act of 1965 to section 8 under 24 CFR 886, Subpart A, for the term of the HAP contract.

PART 255—COINSURANCE FOR PRIVATE MORTGAGE LENDERS

5. In § 255.223, paragraph (c) would be revised to read as follows:

§ 255.223 Required supervision of mortgagors.

(c) *Rents and charges.*— (1) *Projects coinsured before November 30, 1983.* With respect to projects covered by mortgages coinsured before November 30, 1983, no charge shall be made by a mortgagor for the accommodations, facilities, or services offered by a project in excess of those approved by the lender. In approving such charges and in passing upon applications for changes, the lender shall be subject to standards established by the Commissioner, which standards shall give consideration to the following and similar factors:

(i) Rental income necessary to maintain the economic soundness of the project.

(ii) Rental income necessary to provide a reasonable return on the investment, consistent with providing reasonable rentals to tenants.

(2) *Projects coinsured on or after November 30, 1983.* A mortgagor shall determine the charge for accommodations, facilities, or services offered by a project covered by a mortgage insured on or after November 30, 1983. However, to the extent that units in a project are subject to a section 8 Housing assistance Payment Contract under Part 880, Part 881, Part 883 or Part 886 of this title, the rents for those units, when occupied by assisted tenants, shall be determined in accordance with the HAP contract and applicable regulations.

(3) *Rent control.* Any state or local law, ordinance, or regulation regulating the rents of projects subject to this paragraph (c) may be preempted only as provided in Part 246, Subpart B of this chapter, and the maximum rents that may be charged following any such preemption action will be determined using the method outlined in § 207.19(e)(2)(i) of this title.

* * * * *

Authority: Section 207, National Housing Act, 12 U.S.C. 1713; Section 7(d), Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: September 13, 1984.

Maurice L. Barksdale,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 84-26682 Filed 10-9-84; 8:45 am]

BILLING CODE 4210-27-M

Office of the Assistant Secretary for Community Planning and Development

24 CFR Part 570

[Docket No. R-84-1199; FR-1974]

Section 108 Loan Guarantee Assistance; Fees

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Proposed rule.

SUMMARY: The Department is proposing to amend 24 CFR Part 570, Subpart M, which governs the Loan Guarantee Program under section 108 of the Housing and Community Development Act of 1974. The proposed rule would allow the Secretary to establish a fee to help defray administrative costs of processing loan guarantee applications and servicing guaranteed loans. The rule would establish a methodology for computing the fee and would permit the Secretary to make future adjustments in the fee by placing a notice in the Federal Register.

DATE: Comments must be submitted on or before December 10, 1984.

ADDRESS: Interested persons are invited to submit comments to the Rules Docket Clerk, Office of the General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Comments should refer to the above docket number and title. A copy of each comment received will be available for public inspection during regular business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Paul D. Webster, Director, Financial Management Division, Room 7180, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Telephone (202) 755-1871. (This is not a toll-free number.).

SUPPLEMENTARY INFORMATION:

Subpart M of 24 CFR Part 570 governs the Loan Guarantee Program under section 108 of the Housing and Community Development Act of 1974 (the Act). Under this program, HUD is authorized to guarantee notes and other obligations issued by local government units entitled to receive grants under section 106(b) of the Act. The loan proceeds are used for financing the acquisition and rehabilitation of real property.

The Department proposes to amend the regulations governing this program to require applicants to pay a fee which reflects the administrative costs of the program. Section 108(c) of the Act indicates that HUD may charge costs. This section provides:

> Notwithstanding any other provision of this title, grants allocated to an issuer pursuant to this title (including program income derived therefrom) are authorized for use in the payment of principal and interest due (*including such servicing, underwriting, or other costs as may be specified in regulations of the Secretary*) on the notes or other obligations guaranteed pursuant to this section. (Emphasis added.)

Similarly, Section 7(j) of the Department of Housing and Urban Development Act authorizes the charging of costs. It states:

> Notwithstanding any other provision of law the Secretary is authorized to establish fees and charges, chargeable against program beneficiaries and project participants, which shall be adequate to cover over the long run, costs of inspection, project review and financing service, audit by Federal or federally authorized auditors, and other beneficial rights, privileges, licenses, and services. Such fees and charges heretofore or hereafter collected shall be considered nonadministrative and shall remain available for operating expenses of the Department in providing similar services on a consolidated basis.

The proposed fee is intended to recover the direct and indirect administrative costs incurred to review a loan guarantee application for compliance with the requirements of Part 570, to process the application, and to service the loan. Since all notes and other obligations subject to the loan guarantee will be fully secured by a pledge of the applicant's current or future entitlement grants, it is unnecessary to recover costs associated with defaults. Since the processing and servicing costs should not vary significantly with the size of the loan guarantee, the size of the loan guarantee will not be a factor in determining the amount of the fee.

The proposed rule would not establish the amount of the loan guarantee fee. Rather, the Department proposes to establish a methodology for establishing the fee periodically, based on changing administrative costs. In accordance with this methodology (described below), the Secretary would periodically establish the fee by notice in the Federal Register. In this manner, the revenue generated by a fee will always remain reasonably

commensurate with HUD's direct and indirect costs.

Under the proposed methodology, the loan guarantee fee would be computed by multiplying the average number of staff hours required to process the loan guarantee application and to service the guaranteed loan times the administrative cost per staff hour budgeted for Community Planning and Development during the fiscal year.

HUD has not yet completed its studies to ascertain the average number of staff hours required to process applications and service guaranteed loans. These figures will be available and fully justified in the **Federal Register** notice setting the fee. However, based on a 6-year repayment period, preliminary figures indicate that HUD will spend approximately 80 staff hours reviewing a loan guarantee application and 12 staff hours servicing the guaranteed loan. Based on these estimates and CPD's budgeted administrative costs per staff hour of $26.82 for FY–85 (source: 1985 Budget), the total loan guarantee fee under the proposed methodology currently would be $2,468.00.

The proposed rules does not require payment of the fee until HUD approves the loan guarantee application and the applicant submits a note or other obligation to HUD for inspection and guarantee. Thus, loan guarantee applications that are disapproved will not be subject to the payment of a fee. Proposed § 570.703(g)(3)(i) would ensure that these disapproved applications and the costs associated with these disapproved applications are not included in the computation of the loan guarantee fee.

Because there is a delay between the filing of a loan guarantee application and the submission of an obligation for HUD inspection and guarantee, several loan guarantee applications may be pending on the effective date of a final rule in this proceeding. The Department does not wish to subject these applications to the loan guarantee fee. Accordingly, only those applications submitted after the effective date of a final rule in this proceeding will be subject to the fee.

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C 4332. The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of the Rules Docket Clerk, Room 10276, at the address listed above.

This rule does not constitute a "major rule," as that term is defined in section 1(b) of Executive Order 12291 issued by the President on February 17, 1981. Analysis of the proposed rule indicates that it does not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Under the Regulatory Flexibility Act (5 U.S.C. 601), the Undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. The amendment will have some economic impact by requiring units of local government to pay a fee for loan guarantees under Section 108 of the Act. However, since these units of local government are generally not small entities as defined in the Regulatory Flexibility Act and since grants allocated under Part 570 may be used for fee payment, this impact will not be significant.

This rule was not listed in the Department's Semiannual Agenda of Regulations published April 19, 1984 (49 FR 15902), under Executive Order 12291 and the Regulatory Flexibility Act.

The Catalog of Federal Domestic Assistance program number is 14.218—Community Development Block Grants/Entitlement Grants.

List of Subjects in 24 CFR Part 570

Community development block grants, Grant programs: housing, and community development, Loan programs: housing and community development, Low and moderate income housing, New communities, Pockets of poverty, Small cities.

Accordingly, the Department proposes to amend 24 CFR Part 570 as follows:

PART 570—COMMUNITY DEVELOPMENT BLOCK GRANTS

Add a new paragraph (g) to § 570.703, to read as follows:

§ 570.703 Loan requirements.

* * * * *

(g) *Loan guarantee fee.* (1) Each application approved under § 570.702(d) shall be subject to a loan guarantee fee. The loan guarantee fee shall be payable upon submission of a note or other obligation to HUD for inspection and guarantee. Grants allocated under this part may be used for payment of the fee.

(2) The Secretary shall establish the loan guarantee fee by publishing a notice of the fee in the **Federal Register**. The Secretary may periodically revise the amount of the fee established under this section by placing a notice of the amount of the new fee in the **Federal Register.**

(3) The amount of the loan guarantee fee shall be determined by multiplying the average number of staff hours required to process a loan guarantee application and to service a guaranteed loan by the anticipated administrative cost per staff hour.

(i) The average number of staff hours required to process a loan guarantee application and to service a guaranteed loan shall be determined by means of Departmental studies and other relevant data. Disapproved loan guarantee applications and the number of staff hours required to process disapproved loan guarantee applications will not be considered in this determination.

(ii) Based on HUD budget estimates for the current fiscal year, the administrative cost per staff hour shall be determined by dividing the total anticipated staffing and administrative expense budgeted for Community Planning and Development (CPD) activities by the total estimated number of staff hours budgeted for CPD activities.

Authority: Section 108, Housing and Community Development Act of 1974 (42 U.S.C. 5308); sections 7(d) and 7(j), Department of HUD Act (42 U.S.C. 3535 (d) and (j)).

Dated: September 13, 1984.

Jack R. Stokvis,

General Deputy, Assistant Secretary for Community Planning and Development.

[FR Doc. 84–26679 Filed 10–9–84; 8:45 am]

BILLING CODE 4210–29–M

Office of Assistant Secretary for Public and Indian Housing

24 CFR Part 941

[Docket No. R–84–1198; FR–1975]

Public Housing Development; Prototype Costs

AGENCY: Office of Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Proposed rule.

SUMMARY: The Department proposes to amend its public housing development regulations governing the calculation of prototype cost limits. Under the proposed rule, currently published unit prototype costs will be used to compute dwelling construction and equipment

cost limits and total development cost ceilings. This change will promote greater control of project costs and encourage cost savings.

DATES: Comments due December 10, 1984.

ADDRESS: Interested persons are invited to submit comments to the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410–0500. Comments should refer to the above docket number and title. A copy of each comment submitted will be available for public inspection during regular business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Raymond W. Hamilton, Director, Public Housing Development Division, Office of Public Housing, Office of Assistant Secretary for Public and Indian Housing, Department of Housing and Urban Development, Washington, D.C. 20410–5000, telephone (202) 426–0939. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On September 12, 1980 (45 FR 60838), the Department published a new procedure for the development of public housing projects under the United States Housing Act of 1937. The procedure included a revised method for determining project prototype cost limits (PPCL). PPCLs represent the ceiling amount that may be approved for dwelling construction and equipment costs in new construction projects. PPCLs are also used to compute total development cost caps for all projects.

Before the September 12, 1980 rule, PPCLs were based on the current unit prototype costs published annually by the Department. The published unit prototype costs represent the dwelling construction and equipment costs for modest housing of various unit sizes and structure types for economically similar market areas. Because the annually published unit costs could not keep pace with the high inflation at that time, processing was frequently delayed until new prototype costs were published. This procedure hindered the continuous processing of public housing development projects.

To alleviate the stop-and-go processing of proposals, the current procedure for calculating PPCLs was established for all projects funded after October 1, 1980. Under this procedure, HUD established a base project prototype cost (BPPC) based on published unit prototype costs effective when HUD invites a proposal under § 941.403 or when HUD approves a proposal submitted under § 941.402. The BPPC is adjusted from the effective date of the unit prototype cost to the execution date of the construction contract or the contract of sale, based on a commercial cost index.

Because of the length of time necessary to process proposals, HUD must often calculate PPCLs by adjusting unit costs that are several years old. While the Department anticipated that PPCLs would be comparable under the two calculations, PPCLs based on the indexed adjustments of past unit prototype costs are generally higher than PPCLs based on currently published unit prototype costs. This has resulted in approval of higher dwelling construction and equipment cost limits and higher total development cost caps.

During the past several years, the Department has instituted a number of cost containment policies (including the development of total development cost caps at 24 CFR 941.406). In view of this policy and our belief that this amendment will result in cost savings and in greater control of project costs, we propose to eliminate the use of the prototype adjustment factor and return to our past procedure of basing PPCLs on unadjusted current unit prototype costs. The return to the use of unadjusted unit prototype costs should not significantly affect the continuous processing of development proposals. Due to the general decrease in the rate of inflation experienced in recent periods, the annual published unit costs should reasonably keep pace with cost changes. Moreover, in cases where delays may be significant, some relief may be available through a request for approval to exceed the project prototype cost limits under § 941.204(e).

Paragraph (d) of the proposed rule would apply the trended prototype cost methodology of current § 941.204 to certain pending public housing projects. Under the transition provisions of paragraph (d), the trended cost methodology would apply (1) to turnkey projects funded after October 1, 1980, where the PHA has been notified of proposal approval before the effective date of this proposed rule, and (2) to conventional projects funded after October 1, 1980, where the PHA has advertised for bids before the effective date of this regulation. Under these transition provisions, some PHAs may be ineligible to use trended costs even though they advertise for turnkey developer proposals prior to the effective date of the regulations. These PHAs may readvertise for proposals or issue an addendum to an outstanding advertisement indicating that the prototype costs will be computed on the basis of published unit prototype costs.

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of the Rules Docket Clerk, Room 10276, at the address listed above.

This rule does not constitute a "major rule," as that term is defined in section 1(b) of Executive Order 12291 issued by the President on February 17, 1981. Analysis of the proposed rule indicates that it does not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Under 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the Undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. Since the proposed amendment is intended to have the effect of containing development costs for public housing projects, it may have an economic impact on builders or developers of public housing, some of whom may constitute small entities, but it is not believed that the number of small entities affected will be substantial.

This rule was not listed in the Department's Semiannual Agenda of Regulations published April 19, 1984 [49 FR 15902] pursuant to Executive Order 12291 and the Regulatory Flexibility Act.

Paperwork Reduction Act

The information collection requirements contained in this rule were submitted to the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520) and have been assigned OMB Control Number 2577–0036.

The catalog of Federal Domestic Assistance program number and title is 14.146, Low-Income Housing—Assistance Program (Public Housing).

List of Subjects in 24 CFR Part 941

Loan Programs—housing and community development, Public housing, Prototype costs, Cooperative projects, Turnkey.

Accordingly, 24 CFR Part 941 would be amended to read as follows:

PART 941—PUBLIC HOUSING DEVELOPMENT

24 CFR 941.204 paragraphs (c), (d) and (e) would be revised to read as follows:

§ 941.204 Prototype costs.

* * * * *

(c) *Project Prototype Cost Limit* Except as provided in paragraph (d) below, the field office shall establish the project prototype cost limit as follows: When the field office invites proposals under § 941.403 or when it approves a proposal submitted under § 941.402, the field office shall determine the project prototype cost limit by multiplying the most recently published applicable unit prototype cost limit for each structure type by the number of units for a specific bedroom type. The commulative total will be the project prototype cost limit. The project prototype cost limit shall be recalculated, if necessary, to reflect changes to unit prototype costs published in the **Federal Register** that are effective on or before the date of the construction contract (if conventional) or on or before the date of the contract of sale (if turnkey).

(d) *Exceptions.* For turnkey projects funded after October 1, 1980 in which the PHA has been notified of proposal approval before [effective date of the regulation] and for conventional projects funded after October 1, 1980 in which the PHA has advertisied for bids before [effective date of the regulation], the project prototype cost limit will be calculated as follows:

(1) The field office shall establish the base project prototype cost at the time it invites proposals under § 941.403, or at the time it approves a proposal submitted under § 941.402. The base project prototype cost shall be computed by multiplying the then-current applicable unit prototype cost by the number of units for that unit size and structure type and then adding the amounts for all units in the proposed project.

(2) The field office, using a commercial construction cost index specified by the Assistant Secretary, shall determine the percentage of actual changes (increases or decreases) in construction costs from the effective date of the unit prototype cost to the execution data of the construction contract or the contract of sale. The resulting percentage is the prototype cost adjustment factor.

(3) The field office shall determine the project prototype cost limit by multipying the base project prototype cost by the prototype cost adjustment factor.

(e) *Request to Exceed Project Prototype Cost Limit.* The amount approvable by the field office for dwelling construction and equipment may not exceed the project prototype cost limit as computed in paragraphs (c) or (d) above. The limit may be exceeded (in accordance with Section 6(b) of the Act) by up to ten percent, with the approval of the Assistant Secretary. (Approval of the Assistant Secretary to exceed 100 percent prototype costs is also required for projects being processed under a Program Reservation issued before October 1, 1980.) A request for approval to exceed 100 percent of the project prototype cost limit shall be supported by a justification describing the circumstances involved for the particular project and demonstrating that such approval is needed.

(Approved by the Office of Management and Budget under OMB Control Number 2577–0036.)

Authority: Sec. 7(d), Department of HUD Act, 42 U.S.C. 3535(d); Section 6, U.S. Housing Act of 1937, 42 U.S.C. 1437(d).

Dated: September 18, 1984.

Warren T. Lindquist,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 84-26681 Filed 10-9-84; 8:45 am]

BILLING CODE 4210-33-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Ch. I

[AD-FRL-2689-6]

Regulatory Strategies for the Gasoline Marketing Industry

AGENCY: Environmental Protection Agency (EPA).

ACTION: Extension of public comment period.

SUMMARY: On August 8, 1984, 49 FR 31706, the EPA published a notice of availability of the document "Evaluation of Air Pollution Regulatory Strategies for the Gasoline Marketing Industry." The document described the analyses performed to evaluate a range of regulatory alternatives, including estimation of public health risk due to exposure to the emissions from the gasoline marketing industry, risk reduction potential and cost of the various alternatives, and an assessment of anticipated economic impacts. A 60 day period for public comment was provided. In response to several requests, the period for receiving comments on the analysis is being extended.

DATE: Comments must be postmarked on or before November 8, 1984.

ADDRESSES: Comments should be submitted (in duplicate if possible) to: Central Docket Section (LE–131), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460, Attention: Docket Number A–84–07.

FOR FURTHER INFORMATION CONTACT: Mr. James B. Weigold, (919) 541–5641, Office of Air Quality Planning and Standards (MD–11), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

SUPPLEMENTARY INFORMATION: The Agency has received written requests for an extension of the public comment period from the Motor Vehicle Manufacturers Association and the Standard Oil Company (Indiana). In addition, the California Air Resources Board and the Bay Area Air Quality Management District advised the Agency of their intention to formally request an extension of the comment period. These groups each expressed the need for more time to evaluate, and prepare adequate comments on, the extensive material contained in the analysis document. The Agency provided the document for public review expressly for the purpose of receiving comprehensive comment on the assumptions, methodology, and results of the analyses performed. Considering the scope of the document and the national significance of the gasoline marketing issue, the Agency believes it would benefit from a reasonable extension of the comment period. Therefore, the deadline for submitting comments on the regulatory analysis is being extended 30 days to November 8, 1984.

Dated: September 27, 1984.

John C. Topping,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 84-26719 Filed 10-9-84; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 52

[A-5-FRL-2688-1]

Approval and Promulgation of Implementation Plans; Illinois

AGENCY: Environmental Protection Agency (USEPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: USEPA is proposing to approve a revision to the Illinois State Implementation Plan (SIP) for Ozone.

The revision, if finally approved, will provide for an extended compliance schedule for seven coating lines at All-Steel, Incorporated (All-Steel) located in Cook County, Illinois. This revision will allow All-Steel additional time to convert to water-dispersed enamel coatings and high-solids coatings. This action is taken in response to a March 17, 1983, request from the State of Illinois.

DATE: Comments on this revision and on the proposed USEPA action must be received by November 9, 1984.

ADDRESSES: Copies of the SIP revision are available at the following addresses for review. (It is recommended that you telephone Uylaine E. McMahan, at (312) 353-0396, before visiting the Region V office).

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

Illinois Environmental Protection Agency, Division of Air Pollution Control, 2200 Churchill Road, Springfield, Illinois 62706.

Comments on this proposed rule should be addressed to: (Please submit an original and five 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: Uylaine McMahan, (312) 353-0396.

SUPPLEMENTARY INFORMATION: On March 17, 1983, the Illinois Environmental Protection Agency (IEPA) submitted a proposed revision to its ozone SIP for several coating lines located in All-Steel's Cook County, Illinois plant which is part of the Chicago ozone nonattainment area. This proposed revision is in the form of a February 10, 1983, Opinion and Order of the Illinois Pollution Control Board (IPCB), IPCB 82-110. It grants a variance from the existing SIP requirements for seven coating lines (1001-1006 and 1009) until December 31, 1983, and provides a legally enforceable compliance schedule.

Under the existing federally approved SIP, each surface coating line is subject to the emission control requirements contained in Rule 205 Chapter 2 (Air Pollution) of the IPCB Rules and Regulations. IPCB 205(n)(1)(G) limits volatile organic compound (VOC) emissions to 3.0 pounds of VOC per gallon of coating, excluding water. Rule 205(j) stipulates that final compliance with Rule 205(n)(1)(G) is required by December 31, 1982.

In lieu of the compliance date contained in the existing federally approved SIP, the State is proposing an extended compliance schedule for seven of All-Steel's coating lines. All-Steel has encountered several difficulties converting to water dispersed enamel coatings and high-solids coatings for their seven coating lines. In recognition of these difficulties the State submitted the extended compliance schedule to USEPA.

In the March 20, 1984, **Federal Register** (49 FR 10277), USEPA proposed to disapprove this proposed SIP revision because the Illinois ozone SIP lacked an approvable attainment demonstration for the Chicago nonattainment area. The attainment demonstration contained in the State's 1982 ozone SIP was proposed for disapproval in the February 3, 1983, **Federal Register**. One public comment was received from IEPA in response to the March 20, 1984, **Federal Register**.

Comment: IEPA believes that the reasons discussed by USEPA for disapproval of the proposed compliance schedule in the March 20, 1984, Notice of Proposed Rulemaking no longer exist because the State has submitted to USEPA an approvable ozone attainment demonstration for the Chicago area. USEPA should, therefore, approve the proposed changes. The State believes a reproposal of the rulemaking is not necessary. USEPA can and should finally approve the compliance schedule changes as proposed by IEPA. If, however, there are alternative grounds for disapproval not stated in the March 20, 1984 Notice, the State feels USEPA should repropose a rulemaking which identifies and addresses these grounds.

USEPA Response: USEPA agrees with the State that because the State has submitted an approvable ozone attainment demonstration for the Chicago area,[1] this is no longer a basis for disapproving the compliance date extension for All-Steel. USEPA has determined that this revision should be published as notice of proposed rulemaking, giving the public the opportunity to submit comments on this revision and because expeditiousness of the compliance date extension was not discussed in the March 20, 1984, notice of proposed rulemaking.

USEPA is today withdrawing the March 20, 1984, proposal as it applies to the All-Steel plant and is reproposing to approve the SIP revision for All-Steel.

Proposed Actions: USEPA has determined that All-Steel's schedule to achieve final compliance by December 31, 1983, is expeditious, and that the compliance date extension will not interfere with reasonable further progress. Therefore, USEPA proposes approval of the All-Steel Proposed SIP revision.

USEPA is providing a 30-day comment period on this notice for proposed rulemaking. Public comments received on or before (November 9, 1984) will be considered in USEPA's final rulemaking. All comments will be available for inspection during normal business hours at the Region V office listed at the front of this notice.

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).

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

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons, Ingovernmental relations.

(Secs. 110, 172 and 301(a) of the Clean Air Act, as amended (42 U.S.C.) 7410, 7502, and 7601(a))

Dated: August 28, 1984.

Charles H. Sutfin,

Acting Regional Administrator.

[FR Doc. 84-26722 Filed 10-09-84; 8:45 am]

BILLING CODE 6560-50-M

[1] The Chicago area ozone attainment demonstration was proposed for approval August 15, 1984 (49 FR 32601).

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40 CFR Part 122

[EN FRL-2611-6]

The National Pollutant Discharge Elimination System; Draft Application Forms for New NPDES Permits and Facilities Which Do Not Discharge Process Wastewater

Correction

In FR Doc. 84-25797 beginning on page 38812 in the issue of Monday, October 1, 1984, make the following corrections:

On page 38814, in the second column, the following text and signature line were omitted and should be inserted immediately following the fourth complete paragraph in the column:

". . . The Agency invites comments on the amount of time and cost required to complete these proposed application forms. The final rule will respond to any OMB or public comments on the information collection requirements.

Authority: These regulations are issued under the authority of the Clean Water Act, 33 U.S.C. 1251 *et seq.*

List of Subjects in 40 CFR Part 122

Administrative practice and procedure, Air pollution control, Hazardous materials, Reporting and recordkeeping requirements, Waste treatment and disposal, Water pollution control, Water supply, Confidential business information.

Dated: September 19, 1984.

William D. Ruckelshaus,

Administrator."

BILLING CODE 1505-01-M

40 CFR Part 180

[OPP-30072; FRL 2583-3]

Procedural Regulations; Proposed Tolerance Processing Fees

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to revise its regulations on fees charged for processing tolerance petitions for pesticides under the Federal Food, Drug, and Cosmetic Act (FFDCA). Since the fee schedule was last revised in 1972, inflation, federal employee costs and the complexity of scientific review have substantially increased the processing costs. In order to correct this imbalance, the Agency is proposing to increase the fees charged for the processing of tolerance petitions.

DATES: Written comments on this proposed rule should be submitted on or before December 10, 1984.

ADDRESS: Written comments by mail to: Information Services Branch, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

In person, bring comments to: Rm 236, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 236 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT:

By mail: Mr. Ken Wetzel, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

Office location and telephone number: Room 1002-E, CM#2. 1921 Jefferson Davis Highway, Arlington, VA. 22202, (703) 557-1127.

SUPPLEMENTARY INFORMATION:

I. Background

As part of its responsibilities for the regulation of pesticides, the Environmental Protection Agency (EPA or Agency) is charged with administration of the Pesticide Residue amendment to the Federal Food, Drug and Cosmetic Act (FFDCA). Section 408 of the Act authorizes the Agency to establish tolerance levels and exemptions from the requirements for tolerances for raw agricultural commodities. Tolerances or exemptions are required before a pesticide can be registered for use.

The Agency's review of tolerance or exemption petitions generally requires review of data from several disciplines, including residue chemistry and toxicology. Such reviews require high levels of scientific expertise and consume significant resources within the Office of Pesticide Programs (OPP), which oversees pesticide regulation within the Agency. Section 408(o) of the Federal Food, Drug, and Cosmetic Act requires that the Agency collect fees as will, in the aggregate, be sufficient to cover the costs of processing petitions for pesticide products, i.e., that the tolerance process be as self-supporting as possible. The fee schedule for tolerance petitions was last revised in 1972. Since that time, inflation (Consumer Price Index), federal employee costs, and the complexity of reviewing petitions utilizing more rigorous and sophisticated scientific techniques and standards have increased. These factors have resulted in costs substantially exceeding the fees charged and a situation in which the revenues generated from tolerance petition fees do not cover the costs incurred in the processing of the petitions. The Agency is proposing to revise the fee schedule to correct this imbalance.

In 1983 the Office of Pesticide Programs (OPP) conducted a study entitled "Tolerance Fee Cost Analysis", to determine the costs of processing tolerance petitions. The results of that study are the basis of the new fees proposed in this document. The study is available for public inspection at the Office of Pesticide Programs, Room 236, CM#2, identified in the "Address". The major sources of information utilized in the study were the OPP Time Accounting Information System (TAIS), financial and internal program records, and interviews with, and questionnaries completed by, Agency supervisors involved in the processing and reviewing of tolerance petitions.

The study attempted to determine OPP costs for processing petitions by reviewing Fiscal Year 1982 activities. Non-OPP Agency costs (i.e., research and development, enforcement, and Agency management and administration) were not included because insufficient data were available to determine their relationship to processing costs and it was determined that their costs were not appropriate for recovery because the fee receipts are deposited to a Revolving Fund which EPA has established and administers only for OPP.

OPP's internal TAIS reports the direct work hours associated with reviewing tolerance petitions by broad classifications that are not directly analogous to the fee categories. The TAIS is an automated internal OPP information system developed in 1979 to record direct professional employee time spent on various activities and projects. Professional employees (exclusive of some administrative and policy analysts) at or below the section chief level are required to complete a TAIS form each pay period (every two weeks). Secretaries and clerical employees are not required to submit TAIS forms. In 1982, 404 OPP employees participated in TAIS out of a total OPP workforce of 587.

Interviews were conducted with managers and supervisors to determine the average number of hours devoted to processing a petition according to the various fee categories. A questionnaire was also developed for use in determining this information. TAIS and the supervisory interviews and questionnaires were used in estimating the direct hours devoted to processing tolerances according to the fee categories. Indirect hours (secretarial/clerical support, OPP management and administration) were calculated by reviewing the OPP organizational structure and employee rosters to estimate the percentage of activities and employee time expended in support of

tolerance petition processing by these categories of employees.

The direct and indirect hours were totaled and converted to work years to determine the total work years devoted to petition processing by category. This information was compared to the estimated number of completed actions in each category to determine the average number of work years, or unit cost, utilized per completed action. The unit costs in work years were converted to unit costs in dollars by using the average OPP salary and expense figures ($38,900 per OPP employee) in 1982.[1] A narrative explanation (Proposed Revisions) of the findings are contained in the following section entitled Study Findings and Proposed Fee Structure.

II. Study Findings and Proposed Fee Structure

A. Introduction

The results of the Tolerance Fee Cost Analysis Study indicated that while costs generally increased as had been expected, the costs for various individual services enumerated in § 180.33, did not all rise proportionally (at the same rate) against fees since 1972. In some instances, costs are now lower than the existing fees. In addition, the Agency has concluded, on the basis of experience since 1972, that some modifications and additions to the fee categories themselves are warranted.

The major changes to the fee categories are the elimination of separate charges for "supplements" and "substantive amendments" and the addition of fees for processing crop group petitions. The categories themselves have been reorganized to provide a more concise and logical flow to the reader. In addition, the proposed regulation now states specifically that a petition will not be accepted for processign until the required fee has been submitted to or waived by, EPA. These changes, described in detail later in this section, are in the interest of both financial equity and administrative efficiency.

In addition, fee waiver provisions have been clarified. Fees will be automatically waived for petitions submitted by Federal and state governments and their agencies and the Inter-Regional Research Project Number 4 (IR–4 Program). A petition for which a waiver of fee has been requested will not be accepted for processing until the fee has been waived or, if the waiver is denied, the proper fee, commensurate with the appropriate petition category, is submitted after notice of denial. A $1,000 deposit is required for each waiver requested for public interest (e.g. important public health use, innovative pest control) or financial hardship except for those submittted by public interest groups (nonprofit organizations which have no financial interest in the petition). If the waiver is denied, the fee appropriate to the petition type is required in addition to the initial $1,000. If the waiver is granted, the $1,000 would be returned.

B. Proposed Revisions

As stated in the Background, the Tolerance Fee Cost Analysis Study was conducted to determine the average unit cost in 1982 for completing an action by various fee and non/fee categories of activities. In this section the proposed revisions and new fees are presented and explained. The proposed fees in the document were arrived at by multiplying the average work year unit cost, in the Cost Analysis Study, by the average OPP employee salary and expense (personnel compensation and benefits and operating expenses) in 1983 ($41,350). It is proposed that the fees be adjusted again prior to publication as a final rule to be consistent with employee costs at that time.

The following table summarizes and compares the current and proposed fees and categories of petitions. Changes in the categories (description of activities and addition of new fee activities) and the fees are presented. The table is followed by detailed narrative description and explanation of each category and corresponding proposed fee.

[1] Salary and expenses include employee personnel compensation and benefits and such operating expenses as office supplies, equipment, travel, ADP, etc. The proposed fees have been adjusted to reflect FY 1983 actual costs per employee.

TOLERANCE FEES FOR PESTICIDE PETITIONS

Current categories	Current fee	Proposed categories	Proposed fee
(a) Each petition for a new tolerance or for a higher tolerance than already established up to and including nine raw agricultural commodities.	$10,000 (a)	Same	$40,000
Plus for each commodity more than nine	1,000	Same	1,000
(b) A petition for temporary tolerance or temporary exemption	6,000	(d) Same	16,000
Renew or extend temporary tolerance	3,000	Same	2,000
(c) Request for lower tolerance or tolerance on additional commodities at the same level	1,000	(b) Same	10,000
Plus for each raw agricultural commodity (including the first)	1,000	Same	600
(d) Each petition for exemption from a tolerance or repeal of a tolerance or exemption	10,000	(c) Each petition for exemption from a tolerance or repeal of an eaxemption.	7,000
		(f) Each petition for repeal of a tolerance	5,00
(d)(2) Request for temporary tolerance at the same or higher level for pesticide having tolerances for other uses.	1,000	(e) Same	8,000
Plus for each raw agricultural commodity (including the first)	1,000	Same	700
(e) Petition not accepted because incomplete; deposit less $1,000 for clerical fees returned to petitioner.	1,000	(g) If petition is incomplete or voluntarily withdrawn, before significant Agency scientific review has begun, deduct $1,000 and return original deposit. When resubmitted, fee will be as if submitted to first time.	1,000
If supplement submitted, original deposit retained plus $1,000	1,000	Deleted	
(f) Petition writhdrawn after filing and resubmitted in six months	3,000	Deleted, see (g)	
(g) Additional information and data (i.e. substantive amendment) submitted after petition filed	3,000	Deleted	
	(h) Each petition for a crop group tolerance regardless of the number of raw agricultural commodities	[1]	
(h) Filing of objections	1,000	Same	2,000

TOLERANCE FEES FOR PESTICIDE PETITIONS —Continued

Current categories	Current fee	Proposed categories	Proposed fee
(i)(3) Advance deposit to cover costs of advisory committee	10,000	(j)(3) Same	20,000
Further advance deposit	10,000	Same	20,000
(j) Petition for judicial review of an order under section 408 (d)(5) or (e) of FFDCA	[2]	(k) Same but automatically waive this requirement for those who have no financial interest in the petition (e.g. public interest groups).	
(k) Mailing and payment instructions to the petitioner		(m) Instructions updated and made explicit that a petition will not be accepted for processing until the required fee has been submitted or a waiver has been granted.	
(l) Administrator may waive or refund fees to promote the public interest	0	(l) Same but add a fee for the request to waive or refund except for public interest groups. Refundable if request approved.	1,000
(m) Administrator may waive or refund fees for hardships	0	Same but add a fee for the request to waive or refund. Refundable if request is approved.	1,000
		Fees will be automatically waived for federal and state governments and their agencies, and the IR–4 program.	
		(n) Fees schedule will be adjusted annually based on changes in the federal GS pay scale. New fee schedule will be published as a final rule in the Federal Register when adjustments are made and will become effective 30 or more days after publication.	

[1] 100 percent of the of the analogous category for a single tolerance that is not a crop group petition.
[2] Cost of preparing the record on which the order is based.

Current § 180.33(a) requires a fee of $10,000, plus $1,000 for each raw agricultural commodity more than nine on which the establishment of a new tolerance of a tolerance higher than already established is requested. The average cost of processing in 1983, using the average OPP salary and expense figure of $41,350, was approximately $39,800 plus $1,000 for each raw agricultural commodity more than nine. Therefore, it is proposed that this category be changed to require a fee of $40,000 plus $1,000 for each raw agricultural commodity over nine. It is proposed that this fee be codified in paragraph (a) of § 180.33.

Current § 180.33(b) requires a fee of $6,000 to establish a temporary tolerance or temporary exemption and $3,000 to renew or extend a temporary tolerance. The analysis showed that the average cost to establish a temporary tolerance or temporary exemption, based on 1983 salary and expense costs, was approximately $15,800 and approximately $2,200 to renew or extend a temporary tolerance. Therefore, it is proposed to increase the fee for temporary tolerances and temporary exemptions to $16,000 and decrease the fee to $2,000 to renew or extend a temporary tolerance. It is proposed that these fees be codified in paragraph (d) of § 180.33.

Current § 180.33(c) requires a $1,000 fee for each request plus $1,000 for each commodity for establishment of a tolerance at a lower level or levels than already established for the same pesticide chemical or for establishment of a tolerance on additional commodities at the same level. Processing costs for this type of work were extremely high (approximately $9,900) but were affected less by the number of commodities than the original fees indicated. It is proposed that the fee for a tolerance at a lower level or the same level for additional commodities than already established be raised to $10,000 plus $600 for each raw agricultural commodity. It is proposed that this fee be codified in paragraph (b) of § 180.33.

Current § 180.33(d) requires a $10,000 fee for each petition for exemption from a tolerance or repeal of a tolerance or exemption, Costs were approximately $7,300 for an exemption or repeal of an exemption. There were no repeals of tolerances in 1982 or recent years and a cost could not be developed for this activity. However, it is believed that the cost for repeal of a tolerance would be lower than repeal of an exemption. Therefore, it is proposed to establish a fee of $7,000 for each petition for exemption from a tolerance or repeal of an exemption and $5,000 for repeal of a tolerance. It is proposed that the fee for exemption for a tolerance or repeal of an exemption be codified in paragraph (c) of § 180.33 and the fee for repeal of a tolerance be codified in paragraph (f) of § 180.33.

Current § 180.33(d)(2) requires $1,000 plus $1,000 per commodity for each request for an additional temporary tolerance, at the same or higher level, for a pesticide having a tolerance for other uses. The study analysis showed that costs were approximately $7,900 for requests for temporary tolerances for pesticides having a tolerance for other uses. The cost of each commodity was approximately $700. Therefore, the proposed fee for a request for a temporary tolerance for a pesticide having a tolerance for other uses is $8,000 per petition, plus $700 for each raw agricultural commodity. It is proposed that this fee be codified in paragraph (e) of § 180.33.

Current § 180.33(e) states that if a petition is not accepted because it is technically incomplete, $1,000 is to be retained and the remainder of the fee returned to the petitioner unless a supplement is submitted in which case the original fee is retained and an additional $1,000 is required. The analysis showed that no petitions in 1982 were returned because of incompleteness and no supplements were submitted. Accordingly, it is proposed that the fee for a petition returned because it is technically incomplete remain at $1,000 and if resubmitted, the fee will be as if the petition were submitted for the first time. It is also proposed that there be no fee for supplements. The original fee will cover all later supplements submitted. It is proposed that this fee be codified in paragraph (g) of § 180.33.

Current § 180.33(f) contains a similar provision that if a petition is voluntarily withdrawn by the petitioner after filing and is resubmitted within six months, $3,000 is to be charged or a fee equal to the one originally submitted, whichever is smaller. If resubmitted after six months, the current fee schedule requires a fee equal to the amount necessary if it were being resubmitted for the first time. It is proposed that if a petition is withdrawn voluntarily after filing, independent of time-frame but prior to substantive, costly Agency scientific review, the fee, less $1,000 for handling and administrative review, shall be returned. If scientific review has begun, all of the fee would be retained. If the petition is resubmitted, it shall be accompanied by the fee that would be required if it were being submitted for the first time. It is proposed that these changes also be incorporated into paragraph (g) of § 180.33.

Current § 180.33(g) states that if additional information or data (a substantive amendment) is required after a petition is filed, a $3,000 fee is charged or a fee equal to the one originally submitted, whichever is smaller. The analysis indicates that the total costs of processing and reviewing substantive additional data (substantive amendments) in 1982 were approximately $266,000 or $13,300 for each amendment. Since this cost in many cases exceeds the cost of the original submission, it is proposed that the fee for a substantive amendment be deleted. The cost of substantive amendments has been prorated to other appropriate fee categories. If an amendment is submitted, an additional fee will be required. The cost of reviewing amendments by the Agency will be considered as being covered by the initial fee.

On June 29, 1983, the Agency issued a final rule amending the Crop Group regulations contained in 40 CFR 180.34(f) to allow for more extensive use of group tolerances for related crops. A crop group tolerances is a tolerance that applies to a group of related commodities as opposed to a single commodity. This regulation allows for reduced scientific data requirements on a per crop basis by minimizing the burden of establishing tolerances for pesticide residues in or on minor crops. Few crop group tolerances have been processed in recent years. As a result, insufficient data exist to determine an exact fee. It would be inequitable, however, to base fees for crop group tolerances on the number of raw agricultural commodities involved. Until sufficient empirical data are available, it is proposed that the fee for crop group tolerances be set at 100 percent of the fee of the analogous category for single tolerance that is not a crop group tolerance petition without a charge for each commodity where that would otherwise apply. It is proposed that the fee be codified in paragraph (h) of § 180.33.

In the past the Agency has not charged a fee for processing food additive petitions under section 409 of the Federal Food, Drug and Cosmetic Act (FFDCA). Section 408 of FFDCA refers to raw agricultural commodities and the authority for charging fees is contained in 408(0). There is no mention of fees in section 409. For these reasons, the Agency has not charged fees for food additive petitions in the past and does not propose to do so in this rulemaking. The Agency believes, however, that sufficient authority exists under the Independent Offices Appropriation Act of 1952 (31 U.S.C. 9701), commonly referred to as the User Charge Statute, to charge fees for associated food additive petitions. Currently the Agency is reviewing the appropriateness of establishing user charges for registration actions under the Federal Insectide, Fungicide and Rodenticide Act (FIFRA) and will review fees for associated food additive petitions in that context.

In the past there also has been no fee for inert ingredient exemption requests. Anaysis showed that in 1982 the total cost of processing inert ingredient requests was approximately $197,600. The cost per request varies greatly, however, because the amount of scientific review required per individual request covers a very wide range due to the nature of inert ingredients. The amount and extent of review required by the Agency cannot be known by the petitioner when submitting the request and often it is difficult for the Agency to determine the amount of review upon initial examination. For this reason an equitable fee cannot be established to which the petitioner can respond when submitting a request. It is therefore proposed that no fee be established for processing inert ingredient exemption requests. The costs have been prorated to the other appropriate fee categories for recovery. Public comments are specifically requested on this proposal.

Current § 180.33 (h) and (i) state that the filing of objections under section 408(d)(5) of the Act requires a $1,000 filing fee plus a $10,000 deposit to cover the cost of an advisory committee, plus additional $10,000 advance deposits if necessary. While there is no recent experience concerning tolerance advisory committees to guide fee adjustments in this category, the Agency has had recent experience concerning administrative hearings for pesticide registration actions (e.g., cancellations and suspensions). The costs of these activities are approximately double the current fees now required in this paragraph. Therefore, it is proposed that the fees for this category be doubled to require a $2,000 filing fee plus a $20,000 deposit to cover the committee costs. Additional $20,000 advance deposits will be required as necessary. It is proposed that these fees be codified in paragraphs (i) and (j) of § 180.33.

Current § 180.33(j) requires that the person who files a petition for judicial review of an order under section 408 (d)(5) or (e) of FFDCA shall pay the costs of preparing the record on which the order is based. It is proposed that this requirement be automatically waived for those persons filing a petition who have no financial interest in the petition (e.g., public interest groups) and that it be codified in paragraph (k) of § 180.33.

Current § 180.33(k) provides mailing and payment instructions to the petitioner. The instructions have been updated and explicit statements have been added to make clear that a petition will not be accepted for processing until the required fee has been submitted or a waiver has been granted. A petition for which a waiver of fees has been requested will not be accepted for processing until the fee has been waived or, if the waiver has been denied, the proper fee is submitted after notice of denial. A deposit of $1,000 is required for each waiver request. This deposit will not be required of public interest groups (see the following paragraph). If the waiver is denied, the fee appropriate to the petition type is required, in addition to the initial $1,000. If the waiver is granted, the $1,000 would be returned. It is proposed that these instructions and requirements be codified in paragraph (m) of § 180.33.

Current § 180.33 (l) and (m) provide for waivers or refunds of fees when the Agency determines that it would be in the public interest or if the fees would work a hardship on the petitioner. The Agency, as a matter of policy, does not charge fees for petitions from federal and state governments and their agencies or the federally sponsored Inter-Regional Research Project Number 4 (IR–4 program) which is a nationwide cooperative effort including EPA, USDA Agricultural Research Service, state research services and state experimental stations. The purpose of the IR–4 program is to collect residue data in support of pesticide registrations and tolerances for minor use sites. It is proposed that this policy be formalized in the regulation.

The provisions for waivers or refunds based on public interest (e.g., as based on current Agency policy, important public health use, innovative pest control, significant reduction of a current environmental or human risk from alternative controls, essential part of an integrated pest management program) or hardship will remain with the addition that a fee of $1,000 will be charged for each request for waiver or refund. The $1,000 fee will not be required for waiver requests from public interest groups (non-profit organizations which have no financial interest in the petition). The proposed regulation now specifically states that fees will not be charged for petitions from federal and state governments and their agencies, and the IR–4 program and the $1,000 fee

will not be required for petitions submitted by them. Public interest groups will also not be required to submit the $1,000 fee. If a waiver or refund is granted, any fee charged for request for waiver or refund will be refunded. The fee will not be refunded if the request for waiver is submitted after scientific review has begun on a petition. It is proposed that these fees and requirements be codified in paragraph (l) of § 180.33.

It is proposed that the fee schedule be adjusted annually by the same percentage as the percent change in the federal General Schedule (GS) pay scale. The new fees would be printed in the **Federal Register** as as final rule and would be effective thirty days or more after publication. It is proposed that this addition be codified to a new paragraph (n) of § 180.33.

Finally, 40 CFR Part 180 contains various cross references to § 180.33 and the fee categories contained therein. These cross references will be amended to conform to the new categories when the final rule is issued.

III. Other Statutory Requirements

In order to satisfy requirements for analysis as specified by Executive Order 12291 and the Regulatory Flexibility Act, the Agency has developed a document entitled "Regulatory Impact Analysis of Revising Fees for Tolerances". This document is available for public inspection at the address identified earlier in this preamble.

A. Executive Order 12291

The proposal to increase fees will not change the estimate of annual resource costs incurred ($3.6 million in FY 1982) to process and review tolerance petitions including the cost of processing petitions for which fees are waived (about $1M). Industry now funds approximately $0.75 million of the cost. Under this proposal industry would pay approximately $2.6 million. The net economic effect of this proposal is to shift approximately $1.85 million in costs from taxpayers to the private sector firms that petition for a tolerance. That private sector firms should bear the cost of operating the tolerance setting system is clearly mandated in the Federal Food, Drug and Cosmetic Act. The incremental $1.9 million to be incurred by the pesticide industry as a result of this proposal amounts to less than 0.1 of one percent of producer level revenues and would not have significant impacts on the industry.

EPA must judge whether a regulation is "Major" and therefore subject to the requirement of a Regulatory Impact Analysis. This regulation is not Major because it does not meet any of the criteria set forth and defined in section 1(b) of the Order. This proposed regulation was submitted to the Office of Management and Budget for review as required by Executive Order 12291. No comments were received from OMB.

B. Regulatory Flexibility Act

This rulemaking has been reviewed under the Regulatory Flexibility Act of 1980 (Pub. L. 96–354; 94 Stat. 1165, 5 U.S.C. 60 *et seq.*) and it has been determined that it will not have significant economic impact on a substantial number of small businesses, small governments, or small organizations. This conclusion is based on the Agency's regulatory impact analysis cited above and the following.

Tolerance petitions are submitted primarily by large chemical or pharmaceutical production firms. These large firms account for about 75 percent of petitions submitted. The next most significant volume of submissions come from the federally sponsored Inter-Regional Research Project Number 4 (IR–4 program). IR–4 program and academically sponsored petitions account for about 20 percent of tolerance petitions received. Fees are not charged for petitions in this group. Approximately 5 percent of the petitions received are from firms which may be, but are not definitely, a small business as defined by the Small Business Administration—500 employees or less for chemical product firms. At most 0.1 of one percent of small businesses in the regulated population of pesticide registrants may develop and submit petitions. If any firm can show that fees may cause economic hardship, the firm may request that the fees be waived. Such waiver requests will be judged on a case-by-case basis. Finally small governments and small organizations apparently do not generally involve themselves independently with obtaining a tolerance.

Accordingly, I certify that this regulation does not require a separate regulatory flexibility analysis under the Regulatory Flexibility Act [Section 25(B) Pub. L. 95–396, 92 Stat. 819, 7 U.S.C. 136 *et seq.*].

C. Paperwork Reduction Act

This proposed rule does not contain any information collection requirements subject to OMB review under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

Authority: Federal Food, Drug, and Cosmetic Act (Secs. 408, 701, 68 Stat. 1055, as amended; 21 U.S.C. 346a, 371).

List of Subjects in 40 CFR Part 180

Administrative Practice and Procedures, Definitions and interpretative regulations, Pesticides and pests, Procedural regulations, Specific tolerances, Exemptions from tolerances.

Dated: September 27, 1984.

William D. Ruckelshaus,

Administrator.

PART 180—[AMENDED]

Therefore, it is proposed that 40 CFR 180.33 be revised to read as follows:

§ 180.33 Fees.

(a) Each petition or request for the establishment of a new tolerance or a tolerance higher than already established, shall be accompanied by a fee of $40,000, plus $1,000 for each raw agricultural commodity more than nine on which the establishment of a tolerance is requested, except as provided in paragraphs (b), (d), and (h) of this section.

(b) Each petition or request for the establishment of a tolerance at a lower numerical level or levels than a tolerance already established for the same pesticide chemical, or for the establishment of a tolerance on additional raw agricultural commodities at the same numerical level as a tolerance already established for the same pesticide chemical, shall be accompanied by a fee of $10,000 plus $600 for each raw agricultural commodity on which a tolerance is requested.

(c) Each petition or request for an exemption from the requirement of a tolerance or repeal of an exemption shall be accompanied by a fee of $7,000.

(d) Each petition or request for a temporary tolerance or a temporary exemption from the requirement of a tolerance shall be accompanied by a fee of $16,000 except as provided in paragraph (e) of this section. A petition or request to nenew or extend such temporary tolerance or temporary exemption shall be accompanied by a fee of $2,000.

(e) A petition or request for a temporary tolerance for a pesticide chemical which has a tolerance for other uses at the same numerical level or a higher numerical level shall be accompanied by a fee of $8,000 plus $700 for each raw agricultural commodity on which the temporary tolerance is sought.

(f) Each petition or request for repeal of a tolerance shall be accompanied by a fee of $5,000. Such fee is not required when, in connection with the change sought under this paragraph, a petition

or request is filed for the establishment of new tolerances to take the place of those sought to be repealed and a fee is paid as required by paragraph (a) of this section.

(g) If a petition or a request is not accepted for processing because it is technically incomplete, the fee, less $1,000 for handling and initial review, shall be returned. If a petition is withdrawn by the petitioner after initial processing, but before significant Agency scientific review has begun, the fee, less $1,000 for handling and initial review, shall be returned. If an unacceptable or withdrawn petition is resubmitted, it shall be accompanied by the fee that would be required if it were being submitted for the first time.

(h) Each petition or request for a crop group tolerance, regardless of the number of raw agricultural commodities involved, shall be accompanied by a fee equal to the fee required by the analogous category for a single tolerance that is not a crop group tolerance, i.e., paragraphs (a) through (f) of this section, without a charge for each commodity where that would otherwise apply.

(i) Objections under section 408(d)(5) of the Act shall be accompanied by a filing fee of $2,000.

(j)(1) In the event of a referral of a petition or proposal under this section to an advisory committee, the costs shall be borne by the person who requests the referral of the data to the advisory committee.

(2) Costs of the advisory committee shall include compensation for experts as provided in § 180.11(c) and the expenses of the secretariat, including the costs of duplicating petitions and other related material referred to the committee.

(3) An advance deposit shall be made in the amount of $20,000 to cover the costs of the advisory committee. Further advance deposits of $20,000 each shall be made upon request of the Administrator when necessary to prevent arrears in the payment of such costs. Any deposits in excess of actual expenses will be refunded to the depositor.

(k) The person who files a petition for judicial review of an order under section 408 (d)(5) or (e) of the Act shall pay the costs of preparing the record on which the order is based unless the person has no financial interest in the petition.

(l) The Administrator may waive or refund such fees in whole or in part for activities in this section including paragraphs (i) and (j) of this section when in his/her judgment such action will promote the public interest or that payment of these fees will work a hardship on the petitioner. The request for a waiver or refund must be submitted with the petition and be accompanied by a fee of $1,000. The $1,000 fee will be returned if the waiver or refund is granted. The fee will not be refunded if the request for waiver is submitted after scientific review has begun on a petition. Petitions submitted by federal and state governments and their agencies and the Inter-Regional Research Project Number 4 (IR–4 program) will not require a fee and the $1,000 fee for requesting a waiver or refund will not be required for petitions submitted by them. Public interest groups, nonprofit organizations that have no financial interest in the petition, will not be required to submit the $1,000 fee when requesting a waiver.

(m) All deposits and fees required by the regulations in this part shall be paid by money order, bank draft, or certified check drawn to the order of the Environmental Protection Agency, collectible at par at Washington, D.C. All deposits, fees, and requests for waivers shall be forwarded with the petition to the Environmental Protection Agency, Office of Pesticide Programs, Registration Division, Washington, D.C. 20460. A petition will not be accepted for processing until the required fee has been submitted. A petition for which a waiver of fees has been requested will not be accepted for processing until the fee has been waived or, if the waiver has been denied, the proper fee is submitted after notice of denial.

(n) This fee schedule will be changed annually by the same percentage as the percent change in the federal General Schedule (GS) pay scale. When adjustments are made, the new fee schedule will be published in the **Federal Register** as a Final Rule to become effective thirty days or more after publication, as specified in the Rule.

[FR Doc. 84–28715 Filed 10–9–84; 8:45 am]
BILLING CODE 6560–50–M

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40 CFR Part 721

[OPTS–50520; FRL–2619–7]

Hexamethylphosphoramide and Urethane; Proposed Determination of Significant New Uses

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Pursuant to section 5(a)(2) of the Toxic Substances Control Act (TSCA), EPA is proposing a significant new use rule (SNUR) that would require persons to notify EPA at least 90 days before commencing the significant new uses designated in this proposed rule. This SNUR designates three significant new uses for each of two chemical substances: manufacture, import, and processing for commercial purposes of hexamethylphosphoramide (CAS No. 680–31–9) or urethane (CAS No. 51–79–6). EPA believes this action is necessary because the designated significant new uses have the potential for adversely exposing either humans or the environment to toxic chemical substances. The notice will furnish EPA with the information needed to evaluate an intended use and the opportunity to protect against a potentially adverse exposure to the chemical substance before it can occur.

DATE: Written comments should be submitted by December 10, 1984.

ADDRESS: Comments should bear the docket control number OPTS–50520 and should be addressed to: TSCA Public Information Officer (TS–793), Office of Toxic Substances, Environmental Protection Agency, Rm. E–108, 401 M St., SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS–799), Office of Toxic Substances, Environmental Protection Agency, Rm. E–543, 401 M St., SW., Washington, D.C. 20460, Toll free: (800–424–9065), In Washington, D.C.: (554–1404), Outside the USA: (Operator–202–554–1404).

SUPPLEMENTARY INFORMATION: OMB Control Number 2070–0038.

I. Authority

Section 5(a)(2) of TSCA (15 U.S.C. 2604(a)(2)) authorizes EPA to determine that a use of a chemical substance is a significant new use. This determination is made by rule after consideration of all relevant factors, including those listed in section 5(a)(2). Once a use is determined to be a significant new use, persons must, under section 5(a)(1)(B), submit a notice to EPA at least 90 days before they commence the manufacture, import, or processing of the substance for that use.

Chemical substances subject to proposed or final SNURs are subject to the export reporting requirements of TSCA section 12(b). These requirements appear at 40 CFR Part 707. Chemical substances subject to final SNURs also must comply with TSCA section 13 import certification requirements, which are codified at 19 CFR 12.118 through 12.127 and 127.28 published in the **Federal Register** of August 1, 1983 (48 FR 34734). The EPA policy in support of these requirements appears at 40 CFR

707 published in the **Federal Register** of December 13, 1983 (48 FR 55462).

II Applicability of General Provisions

In the **Federal Register** of September 5, 1984 (49 FR 35011), EPA promulgated general provisions applicable to SNURs (40 CFR Part 721, Subpart A). EPA is proposing that these provisions apply to this SNUR. The general provisions are discussed in detail in the cited **Federal Register** document and interested persons should refer to that notice for further information.

III. Summary of This Proposed Rule

The chemical substances identified in this proposed significant new use rule are hexamethylphosphoramide (HMPA) (CAS registry number 680–31–9) and urethane (CAS registry number 51–79–6). Urethane is also known as ethyl carbamate. EPA is proposing to designate the manufacture, import, and processing of HMPA or urethane for commercial purposes as significant new uses of these chemical substances. Therefore this proposed rule would require persons who intend to manufacture, import, or process HMPA or urethane for commercial purposes to notify EPA at least 90 days before such manufacture, import, or processing.

The notice is generally subject to the same statutory requirements and procedures as a premanufacture notice (PMN) submitted under section 5(a)(1)(A) of TSCA. In particular, these include the information submission requirements of sections 5(b) and (d)(1), and the exemptions authorized by section 5(b). Once EPA has received a SNUR notice, EPA may take regulatory action pursuant to section 5(e), 5(f), 6, or 7 to control the substance. If no action is taken, section 5(g) requires the Agency to explain in the **Federal Register** its reasons for not taking action.

IV Discussion of Chemical Substances

A. HMPA

1. *Production and use data.* EPA has reviewed both the TSCA Chemical Substance Inventory data base and other information sources to identify current manufacturers, importers, and processors of HMPA. The review indicates that commercial manufacture, import, and processing of HMPA ceased in 1982.

The primary use of HMPA was as a process solvent in the manufacture of Kevlar® aramid fiber. Other past end uses include use as a selective solvent for gases, a polymerization catalyst, and a stabilizer for polystyrene against thermal degradation by ultraviolet light. HMPA has been used experimentally as a chemosterilant for insects, an antistatic agent, a flame retardant, and a de-icing additive for jet fuel.

For all uses enumerated above, substitutes for HMPA are available and are being used. The sole remaining use of HMPA is for research and development purposes. The primary reasons for replacing HMPA with other chemical substances are the known adverse toxicological properties of HMPA and the availability of substitutes less expensive than HMPA. All indications are that former commercial manufacturers, importers, and processors of HMPA have no intentions to resume their activities.

2. *Human health and environmental effects.* HMPA is classified by the International agency for Research on Cancer (IARC) as a carcinogen, and by the American Conference of Governmental Industrial Hygienists (ACGIH) as a substance suspect of carcinogenic potential for man. When administered to rats by inhalation, HMPA produced squamous-cell carcinomas of the nasal cavity in approximately 6 to 7 months of exposure at the 4,000 and 400 parts per billion (ppb) levels, 9 months at the 100 ppb level, and 13 months at the 50 ppb level.

The carcinogenicity of HMPA is only one of EPA's concerns about this substance. EPA is also concerned about HMPA's effects on the testes, lungs, and kidneys. Testicular changes were observed in rats following acute, subchronic, and chronic exposures to HMPA. Oral and dermal administration of, and inhalation exposure to, HMPA produced sterility and moderate to severe testicular atrophy in laboratory animals. At comparable and even lower dose levels than used in the reproductive studies, HMPA caused lung and kidney damage. Other reported health effects are: low to moderate responses for acute toxicity, a more severe response in chronic toxicity tests, and positive results in several mutagenic assays.

The known environmental effects of HMPA indicate that it is lethal at relatively high levels to aquatic and terrestrial animals; it may affect the fertility of male terrestrial animals; it is a known chemosterilant in insects; and its calculated bioconcentration factors indicate a low potential for HMPA to bioaccumulate. Soil adsorption and water solubility data indicate that leaching will occur once HMPA is released into soil.

Additional data would be needed for a more complete environmental risk assessment. Presently lacking are studies on HMPA's effects on untested terrestrial and aquatic organisms, its transport and degradation in the environment, and documentation of the amount of HMPA released to the environment.

3. *Past and current exposures.* Individuals have been exposed to HMPA during the production of Kevlar® and during its use as a solvent in organic and organometallic reactions. However, since HMPA is no longer manufactrured, imported, or processed for commercial purposes such exposures no longer exist. Additional human and environmental exposures may have occurred from the past disposal methods for Kevlar® process wastes. EPA has already acted to remove these wastes from a disposal site and to have the wastes incinerated.

Human exposure to HMPA continues to occur in research and development laboratories. However, once this substance is subject to a SNUR, section 5(h)(3) of TSCA will require manufacturers, importers, and processors of HMPA in small quantities solely for research and development to notify these persons of the health risks associated with HMPA. EPA is planning to promulgate regulations under section 5(h)(3) that will provide guidance to those persons responsible for furnishing such notification.

4. *Regulatory background.* HMPA is not subject to any Federal regulation that limits its exposure to humans or the environment. Excluding this proposed SNUR, no Federal regulation has been proposed or promulgated that would allow a governmental entity an opportunity to evaluate the potential human and environmental exposures to HMPA originating from its manufacture, import, and processing, and to protect human beings and the environment from the potentially adverse exposure before they occur. An attempt to limit human exposure to HMPA has been made by the ACGIH. They have suggested (not recommended) a non-mandatory threshold limit value for HMPA in the low ppb range.

B. Urethane

The name urethane is commonly but improperly applied to high molecular weight polyurethanes used as foams, elastomers, and coatings. Such products are not made from the chemical substance urethane, do not generate urethane upon decomposition, and would not be subject to this SNUR.

1. *Production and use data.* Between the years 1975 and 1977, urethane was reportedly produced in the millions of pounds (TSCA Chemical Substance Inventory). A review of these reports reveal that production volumes were

erroneously reported and that commercial production of urethane ceased in 1977. Today, only a small volume of urethane is produced, and all that production is for research and development purposes.

The primary use of urethane was as a chemical intermediate in the preparation of amino resins. Urethane was reacted with formaldehyde to produce N-hydroxy-methyl derivatives which are designed to impart wash and wear properties to fabrics. Other past end uses include use as an intermediate in the production of pharmaceuticals, insecticides, and fungicides, in biochemical research, and in human and veterinary medicine. Urethane was used as an active ingredient in drugs prescribed for the treatment of neoplastic diseases, chronic leukemia, and multiple myeloma; as a hypnotic; as a component of a sclerosing solution for varicose veins; and as a topical bactericide.

Currently urethane is not used for commercial purposes. In the two markets in which urethane was an economic success, medicine and textiles, substitutes for urethane are available and in use.

2. *Human health and environmental effects.* Urethane is well established as a carcinogen. Extensive carcinogenicity testing in several species of experimental animals has been carried out in a large number of laboratories. Malignant tumors have occurred in many species of animals following the administration of urethane by the oral, inhalation, topical, subcutaneous, and intraperitoneal routes. Urethane is also a transplacental carcinogen that readily traverses the placenta and affects the fetus. Teratogenic effects include skeletal defects, cleft palate, eye development defects, and polydactyl and syndactyl malformations. Urethane has also been found to be mutagenic in many organisms.

Due to a paucity of environmental effects testing, these effects are unknown.

3. *Past and current exposures.* Individuals have been exposed to urethane by several routes. Volatile at room temperature, urethane was inhaled by workers involved in its manufacture and processing. Urethane has also been ingested by humans. The preservative diethyl pyrocarbonate, which was once added to aqueous solutions such as wines, fruit juices, and soft drinks, reacted with the acidic beverage to form urethane.

Other internal exposures to urethane occurred when it was used as an anesthetic and in the treatment of leukemia. About 50 percent of all patients taking urethane orally had side effects such as nausea and vomiting. Gastroenteric hemorrhages occurred after prolonged administration and large doses made debilitated patients more prone to hepatitis or fatal hepatic necrosis. Current exposures to urethane occur in research and development laboratories, However, once this chemical substance is subject to a SNUR, section 5(h)(3) of TSCA will require manufacturers, importers, and processors or urethane in small quantities solely for research and development to notify these persons of the health risks associated with urethane. EPA is planning to promulgate regulations under section 5(h)(3) that will provide guidance to those persons responsible for furnishing such notification.

4. *Regulatory background.* Because diethyl pyrocarbonate produces urethane when it is used as a preservative in acidic beverages, the Food and Drug Administration (FDA) prohibited the direct addition of diethyl pyrocarbonate to or its use as human food (21 CFR 189.140). The FDA has also prohibited the use of urethane as both an active and inactive ingredient in drugs (35 FR 13404 and 41 FR 8523). EPA regulates urethane as a hazardous waste pursuant to Resource Conservation and Recovery Act (RCRA) regulations (40 CFR 261.33(f)), and the Department of Transportation regulates the transport of urethane as a hazardous material (49 CFR 172.101). However, excluding this proposed SNUR, no Federal regulation has been proposed or promulgated that would allow a governmental entity an opportunity to evaluate the potential human and environmental exposures to urethane originating from its manufacture, import, and processing, and to protect human beings and the environment from the potentially adverse exposures before they occur.

V. Reasons for Proposing This Rule

In section 5(a)(2) of TSCA, the term "significant new use" describes a use of a chemical substance that is different from current uses and is likely to result in significant human or environmental exposures to that chemical substance. The term "use" describes any activity that potentially exposes human beings or the environment to a chemical substance. Manufacture, import, and processing of a chemical substance are just three of many possible uses of a substance. The term "new" describes a use of a chemical substance that is different from what is currently ongoing and does not describe something that has never yet occurred; and the term "significant" describes a level of potential exposure to a chemical substance that necessitates reviewing a use of that substance pursuant to section 5(a).

As explained in Unit IV of this preamble, both HMPA and urethane are known carcinogens; are not currently manufactured, imported, or processed for commercial purposes; and are not subject to any Federal regulation that would notify EPA of potentially adverse exposures to these chemical substances or provide EPA with a regulatory mechanism that could protect human health or the environment from an adverse exposure before it occurred.

EPA believes that resumption of the manufacture, import, or processing of HMPA or urethane for commercial purposes has the potential to substantially increase human and environmental exposures to these substances. Each one of these activities has a high potential to increase the magnitude and duration of exposure above, and to change the type or form of exposure from, that which currently exists. Given the toxicity of these chemical substances, the reasonably anticipated scenarios of exposure, and the lack of available regulatory controls, individuals who would be involved in the manufacture, import, or processing of HMPA or urethane may be exposed to these substances at levels which may result in adverse effects. Furthermore, these uses or other subsequent activities may result in the environmental release of these substances, thereby creating additional opportunities for adverse effects on human health or the environment.

The consideration of these factors has resulted in EPA's decision to propose that the manufacture, import, and processing of HMPA or urethane for commercial purposes be designated significant new uses of these chemical substances. Thus, persons intending to manufacture, import, or process HMPA or urethane for commercial purposes would be required to notify EPA 90 days before they begin such manufacture, import, or processing. Advance notification of these significant new uses will allow EPA the opportunity to evaluate the intended use and to protect against adverse exposures to HMPA or urethane before they occur.

VI. Test Data

Although EPA has a considerable amount of these data on the potential adverse effects of HMPA and urethane to human health, EPA lacks data on the potential adverse effects of HMPA and urethane to the environment. EPA recognizes that under TSCA section 5, a

person is not required to develop any particular test data before submitting a notice. Rather, a person is only required to submit test data in his/her possession or control and to describe any other data known to or reasonably ascertainable by him/her. However, in view of the potential risks that may be posed by a significant new use of HMPA or urethane, EPA encourages SNUR notice submitters to conduct tests that would permit a reasoned evaluation of the substance's toxic potential to the environment when utilized for an intended use.

SNUR notices submitted with such test data would improve EPA's ability to make a reasoned evaluation of the environmental effects of HMPA or urethane. Test data should be developed in accordance with TSCA good laboratory practices at 40 CFR Part 792, published in the **Federal Register** of November 29, 1983 (48 FR 53923). EPA encourages persons to consult with the Agency before selecting a testing protocol.

Finally, EPA urges persons to submit information on potential benefits of the substance and information on risks posed by the substance compared to risks posed by potential substitutes.

VII. Alternatives

Before proposing this SNUR EPA considered alternative regulatory actions.

1. One alternative would be to promulgate a section 8(a) reporting rule for these substances. Under such a rule, EPA could require any person to report to EPA before manufacturing, importing, or processing the substances. However, in this particular instance, the use of section 8(a) rather than SNUR authority has drawbacks. Small businesses would be exempt from reporting under section 8(a). In addition, if EPA received a report under section 8(a) indicating that a person intended to manufacture, import, or process these substances, the Agency could not take immediate action under section 5(e) or 5(f) as it can under a SNUR, and therefore would not be able to act quickly to protect against an adverse exposure to these substances. Rather, in a situation such as this, EPA would have to consider regulating the substances under TSCA section 6 which would require a separate rulemaking action.

2. The Agency also has the authority to regulate substances under section 6 of TSCA. However, the Agency may regulate under section 6 only if there is a reasonable basis to conclude that the manufacture, processing, distribution in commerce, use, or disposal of a chemical substance or mixture "presents or will present" an unreasonable risk of injury to human health or the environment. There is insufficient information about prospective manufacturing, importation, or processing operations at this time to perform a reasoned evaluation of the health or environmental effects of these substances. Therefore, the Agency cannot state with certainty that these substances present or will present an unreasonable risk and cannot, at this time, regulate the substances under section 6.

VIII. Applicability of Proposal To Uses Occurring Before Promulgation of Final Rule

EPA finds that the intent of section 5(a)(1)(B) is best served by determining whether a use is a significant new use as of the proposal date of the SNUR rather than as of the promulgation of a final rule. If uses begun during the proposal period of the SNUR were not considered significant new uses, it would be extremely difficult for the Agency to establish SNUR notice requirements. Any person could defeat the SNUR by initiating the proposed significant new use before the rule becomes final.

EPA recognizes that the Agency's interpretation of section 5 may disrupt the commercial activities of persons who begin the manufacture, import, or processing of HMPA or urethane for commercial purposes during the proposal period. However, this proposal puts them on notice of the potential disruption, and they proceed at their own risk.

IX. Economic Analysis

The Agency has evaluated the potential costs of establishing reporting requirements for these chemical substances. The only direct costs that will definitely occur as a result of the promulgation of this SNUR will be EPA's costs of issuing and enforcing the SNUR. The estimated cost to the Agency for issuing the SNUR is $42,150. The Agency will also incur enforcement costs, but these costs cannot be quantified at this time.

After promulgation of the SNUR, the Agency believes there are two possible courses of action for a person who intends to engage in a significant new use of HMPA or urethane: (1) file a SNUR notice with information describing the method of controlling exposures that would mitigate health and environmental concerns; or, (2) not manufacture, import, or process the substance for commercial purposes.

In some circumstances it may be cost effective for a person to file a SNUR notice with data that shows there exist means of controlling exposures (i.e. personal protective equipment, engineering controls) that could mitigate EPA's health and environmental concerns. In this case, the company incurs the cost of filing a SNUR notice ($1,375 to $7,950) and possibly the cost of utilizing exposure controls that, without the existence of the SNUR, would not have been used. These costs cannot be quantified at this time, since industrial processes and exposure controls vary among companies.

A person may find the cost of controlling exposures too expensive to justify the manufacture, import, or processing of HMPA or urethane. This outcome does not result in any direct costs, but the prospective manufacturer, importer, or processor may lose benefits that would have been derived from the manufacture, import, or processing of HMPA or urethane. EPA cannot quantify these potential lost benefits because EPA cannot reasonably anticipate the future level of use of these chemical substances, the profit margins of these uses, etc.

The Agency has not attempted to quantify the benefits of the proposed rule or of the outcomes. In general, benefits will accrue if the proposed action leads to the identification and control of unreasonable risks before adverse human health or environmental effects can occur.

X. Judicial Review

When this proposed rule is promulgated, judicial review may be available under section 19 of TSCA in the United States Court of Appeals for the District of Columbia Circuit or in the circuit in which the person seeking review resides or has its principal place of business. To provide all interested persons an equal opportunity to file a timely petition for judicial review and to avoid so called "races to the courthouse," EPA intends to promulgate this rule for purposes of judicial review two weeks after publishing the final rule in the **Federal Register**. The effective date will be calculated from the promulgation date.

XI. Rulemaking Record

EPA has established a record for this rulemaking (docket control number OPTS–50520) which, along with a complete index, is available for inspection in Rm. E–107, 401 M St., SW., Washington, DC 20460, from 8:00 a.m. to 4:00 p.m., Monday through Friday, except legal holidays. The record includes basic information considered by the Agency in developing this proposed rule. EPA will supplement the

record with additional information as it is received. The record now includes the following:

1. Use and substitute analysis of HMPA.
2. Use and substitute analysis of urethane.
3. A chemical hazard information profile for HMPA.
4. A chemical hazard information profile for urethane.
5. IARC Monograph on the evaluation of the carcinogenic risk of chemicals to man: Urethane (Vol. 7, 1974).
6. IARC Monographs on the evaluation of the carcinogenic risk of chemicals to humans: Appendix 2 (Supplement 4, 1982).
7. IARC Monographs on the evaluation of the carcinogenic risk of chemicals to humans: HMPA (Vol. 15, 1977).
8. American Conference of Governmental Industrial Hygienists, Threshold Limit Values Appendix 2.

The Agency will accept additional materials for inclusion in the record at any time between this proposal and designation of the complete record. EPA will identify the complete rulemaking record by the date of promulgation.

XII. Regulatory Assessment Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a regulation is "Major" and therefore requires a Regulatory Impact Analysis. EPA has determined that this proposed rule is not a "Major Rule" because it will not have an effect on the economy of $100 million or more, and it will not have a significant effect on competition, costs, or prices. While there is no precise way to calculate the annual cost of this rule, EPA believes that the cost will be low. Even if EPA received 50 SNUR notices, the direct cost of the rule would be under one million dollars. In addition, because of the nature of the rule and the substances subject to it, EPA believes that there will be few significant new use notices submitted. Further, while the expense of a notice and the uncertainty of possible EPA regulation may discourage certain innovation, that impact will be limited because such factors are unlikely to discourage an innovation that has high potential value.

This regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 605(b), EPA certifies that this proposed rule, if promulgated, will not have a significant impact on a substantial number of small businesses. The Agency cannot determine whether parties affected by this proposed rule are likely to be small businesss. However, because EPA has no evidence of recent commercial manufacture, import, or processing, and substitutes are available for all identified uses of these chemicals, EPA believes that few manufacturers, importers, or processors will submit SNUR notices. Therefore, although the costs of preparing a notice under this rule might be significant for some small businesses, the number of such businesses affected is not expected to be substantial.

C. Paperwork Reduction Act

OMB has approved the information collection requirements contained in the proposed rule under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, and has assigned them the OMB control number 2070–0038.

List of Subjects in 40 CFR Part 721

Environmental protection, Chemicals, Hazardous materials, Recordkeeping and reporting requirements, Significant new uses.

(Sec. 5, Pub. L. 94–469, 90 Stat. 2012 (15 U.S.C. 2604))

Dated: September 27, 1984.

William D. Ruckelshaus,

Administrator.

PART 721—[AMENDED]

Therefore, it is proposed that Part 721 of Chapter I of Title 40 be amended by adding §§ 721.350 and 721.1125 to read as follows:

§ 721.350 Hexamethylphosphoramide.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance hexamethylphosphoramide, Chemical Abstracts Service Registry Number 680–31–9, is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are: manufacture, import, and processing for commercial purposes.

(b) [Reserved].

(Approved by the Office of Management and Budget under control number 2070–0038)

§ 721.1125 Urethane.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance urethane, Chemical Abstracts Service Registry Number 51–79–6, is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are: Manufacture, import, and processing for commercial purpses.

(b) [Reserved].

(Approved by the Office of Management and Budget under control number 2070–0038)

[FR Doc. 84–26716 Filed 10–9–84; 8:45 am]

BILLING CODE 6560–50–M

Notices

Federal Register
Vol. 49, No. 197
Wednesday, October 10, 1984

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.

CIVIL RIGHTS COMMISSION

New York Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the New York Advisory Committee to the Commission will convene at 4:30 p.m. and will end at 6:30 p.m., on November 14, 1984, at the Summit Hotel, 51st Street and Lexington Avenue, New York, New York 10022. The purpose of the meeting is to discuss the followup on bigotry and violence in New York and approval of the Yonkers draft report.

Persons desiring additional information, or planning a presentation to the Committee, should contact the Eastern Regional Office at (212) 264–0400.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., October 4, 1984.

John I. Binkley,

Advisory Committee Management Officer.

[FR Doc. 84–26665 Filed 10–9–84; 8:45 am]

BILLING CODE 6335–01–M

South Dakota Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the South Dakota Advisory Committee to the Commission will convene at 9:00 a.m. and will end at 5:00 p.m., on October 26, 1984, at the Holiday Inn Airport, 1301 W. Russell, Sioux Falls, South Dakota 57104. The purpose of the meeting is to receive information on current civil rights issues and plan for future activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact the Rocky Mountain Regional Office at (303) 844–2211.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., October 4, 1984.

John I. Binkley,

Advisory Committee Management Officer.

[FR Doc. 84–26664 Filed 10–9–84; 8:45 am]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

Office of the Secretary

Current Membership of Departmental Performance Review Board

This notice announces the current membership of the Department Performance Review Board (PRB) in the Department of Commerce. The purpose of the Departmental PRB is to review the performance of appointing authorities and their immediate deputies who are in the SES and members whose ratings are initially prepared by their respective appointing authorities.

Departmental PRB members are appointed for a two year term expiring August 31, 1986. The list of individuals eligible to serve on the Departmental PRB is as follows:

Patent and Trademark Office

Robert F. White, Group Director
Daniel L. Skoler, Chairman, Trademark Trial and Appeal Board

International Trade Administration

Peter Cashman, Acting Deputy Assistant Secretary, Africa, Near East and South Asia
David Diebold, Deputy Assistant Secretary for Trade Development
Gilbert B. Kaplan, Director, Office of Investigations, Trade Administration
Crawford F. Brubaker, Deputy Assistant Secretary for Aerospace, Trade Development
Marjory E. Searing, Director, Office of Industrial Assessment
Peter B. Hale, Director, Office of the European Community, International Economic Policy
Paul L. Guidry, Special Assistant to the Director-General, U.S. and Foreign Commercial Service
James R. Phillips, Deputy Assistant Secretary for Capital Goods and International Construction, Trade Development

Minority Business Development Agency

James Sexton, Jr., Assistant Director for Administration
Herbert S. Becker, Assistant Director for Advocacy, Research and Information
Joseph Cooper, Assistant Director for Field Operations

National Bureau of Standards

Guy W. Chamberlin, Jr., Director, Office of Administration
Edward L. Brady, Associate Director, International Affairs

Economic Affairs Units

John E. Cremeans, Director, Office of Business Analysis
Lucy Falcone, Senior Advisor to the Chief Economist
Allan H. Young, Deputy Director, Bureau of Economic Analysis
C. Louis Kincannon, Deputy Director, Bureau of the Census
Robert Ortner, Chief Economist
Susan G. Stuebing, Deputy Assistant Secretary

Office of the Secretary

Joseph C. Brown, Deputy Director of Personnel
Otto J. Wolff, Deputy Assistant Secretary for Administration
Helen W. Robbins, Executive Assistant to the Secretary of Commerce
Mark R. Policinski, Associate Deputy Secretary
Thomas F. Mefford, Special Assistant to the Deputy Secretary

Office of General Counsel

H. Stephen Halloway, Associate General Counsel for Legislation and Regulation

Economic Development Administration

Paul Bateman, Deputy Assistant Secretary for Economic Development
Travis Dungan, Deputy Assistant Secretary for Finance

National Oceanic and Atmospheric Administration

Robert S. Smith, Director, Eastern Administrative Support Center
Byron K. Burton, Director, Office of Congressional Affairs

Persons desiring any further information about the Departmental PRB or its membership may contact Mr.

Charles E. Patterson, Executive Secretary to the Departmental Performance Review Board, Office of Personnel, Herbert C. Hoover Building, Room 5119, Washington, D.C. 20230, (202) 377-3453.

Dated: October 4, 1984.

Charles E. Patterson,

Executive Secretary, Departmental Performance Review Board, Department of Commerce.

[FR Doc. 84-26710 Filed 10-4-84; 8:45 am]

BILLING CODE 3510-BS-M

International Trade Administration

Importers and Retailers' Textile Advisory Committee; Open Meeting

A meeting of the Importers and Retailers' Textile Advisory Committee will be held on October 22, 1984 at 2:30 p.m., Room 718, #6 World Trade Center, New York, New York 10048 (The Committee was established by the Secretary of Commerce on August 13, 1963 to advise Department officials of the effects on import markets of cotton, wool, and man-made fiber textile and apparel agreements).

Agenda: Review of import trends, implementation of textile agreements, report on conditions in the domestic market, and other business.

The meeting will be open to the public with a limited number of seats available. For further information or copies of the minutes contact Helen L. LeGrande (202) 377-3737.

Dated: October 9, 1984.

Walter C. Lenahan,

Deputy Assistant Secretary for Textiles and Apparel.

[FR Doc. 84-26961 Filed 10-9-84; 11:22 am]

BILLING CODE 3510-DR-M

Export Trade Certificate of Review

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of application.

SUMMARY: The Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce has received an application for an Export Trade Certificate of Review and an application for an amendment to a previously issued certificate. This notice summarizes the conduct for which certification is sought and invites interested parties to submit information relevant to the determination of whether the certificates should be issued.

DATES: Comments on these applications must be submitted on or before October 30, 1984.

ADDRESS: Interested parties should submit their written comments, original and five (5) copies to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 5618, Washington, D.C. 20230.

Comments should refer to these applications as "Export Trade Certificate of Review, application number 84-00032" and "Amendment #1, Export Trade Certificate of Review, application number 84-A0002."

FOR FURTHER INFORMATION CONTACT: George Muller, Acting Director, Office of Export Trading Company Affairs, International Trade Administration, 202/377-5131, or Eleanor Roberts Lewis, Assistant General Counsel for Export Trading Companies, Office of General Counsel, 202/377-0937. These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (Pub. L. 97-290) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing Title III can be found at 48 FR 10596-10604 (Mar. 11, 1983) (to be codified at 15 CFR Part 325). A certificate of review protects its holder and the members identified in it from private treble damage actions and from civil and criminal liability under Federal and state antitrust laws for the export trade, export trade activities and methods of operation specified in the certificate and carried out during its effective period in compliance with its terms and conditions.

Standards for Certification

Proposed export trade, export trade activities, and methods of operation may be certified if the applicant establishes that such conduct will:

1. Result in neither a substantial lessening of competition or restraint of trade within the United States nor a substantial restraint of the export trade of any competitor of the applicant,

2. Not unreasonably enhance, stabilize, or depress prices within the United States of the goods, wares, merchandise, or services of the class exported by the applicant,

3. Not constitute unfair methods of competition against competitors engaged in the export of goods, wares, merchandise, or services of the class exported by the applicant, and

4. Not include any act that may reasonably be expected to result in the sale for consumption or resale within the United States of the goods, wares, merchandise, or services exported by the applicant.

The Secretary will issue a certificate if he determines, and the Attorney General concurs, that the proposed conduct meets these four standards. For a further discussion and analysis of the conduct eligible for certification and of the four certification standards, see "Guidelines for the issuance of Export Trade Certificates of Review," 48 FR 15937f-10 (April 13, 1983).

Request for Public Comments

The Office of Export Trading Company Affairs (OETCA) and the applicant have agreed that this notice fairly represents the conduct proposed for certification. Through this notice, OETCA seeks written comments from interested persons who have information relevant to the Secretary's determination to grant or deny the application summarized below. Information submitted by any person in connection with the application(s) is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552).

The OETCA will consider the information received in determining whether the proposed conduct is "export trade," an "export trade activity" or a "method of operation" as defined in the Act, regulations and guidelines and whether it meets the four certification standards. Based upon the public comments and other information gathered during the analysis period, the Secretary may deny the application or issue the certificate with any terms or conditions necessary to assure compliance with the four standards.

The OETCA has received the following application for an Export Trade Certificate of Review:

Applicant: Quality Exporters, Inc., P.O. Box 1051, Hwy, 51 South Grenada, MS 38901, Telephone: 601/226-7500.

Application No- 84-00032.

Date Received: September 25, 1984.

Date Deemed Submitted: September 27, 1984.

Members in Addition to Applicant: Hankins Lumber Company, Inc., Grenada, MS; Hankins Lumber Sales, Inc., Grenada MS; and Logging Industries, Inc., Grenada, MS.

Summary of the Application

A. *Export Trade.* The applicant expects to trade in wood chips, logs, pulpwood, tree and wood bark, wood shavings, saw dust, treated wood products, all forms of lumber in all grades and all sizes, including all hardwoods and all softwoods. To facilitate Export Trade, the applicant

intends to provide the following Export Trade Services: Consulting; international market research; advertising; marketing; insurance; product research and design, exclusively for export; legal assistance; transportation, including trade documentation and freight forwarding; communication and processing of foreign orders; warehousing; foreign exchange, financing; and taking title to goods.

B. *Export Markets.* Worldwide.

C. *Export Trade Activities and Methods of Operation.* The applicant desires certification to enter into and enforce exclusive contracts with both distributors and suppliers of all the products, including becoming an exclusive agent for domestic manufacturers of the products and providing related services and also becoming an exclusive supplier to other distributors or purchasers of the products including foreign distributors, purchasers or agents. The applicant also seeks certification to respond to overseas bids, either individually or by joint bidding with domestic competitors, other trading companies and other entities engaged in exporting all products and, in so responding, to determine prices, quantities, territories and customers for export sales. Finally, the applicant seeks to enter into reciprocal agreements with domestic competitors whereby information relative to price, volume, delivery dates, or other information might be exchanged in order to obtain and establish the highest price for the above products to be exported.

The OETCA has received an application for an amendment to Export Trade Certificate of Review #84–A0002 which was issued on June 18, 1984 (49 FR 25889, June 25, 1984):

Applicant: Crosby Trading Company, 600 Whitney Building, New Orleans, LA 70130, Telephone: 504/581–7047.

Application No.: 84–A0002

Date Received: September 24, 1984.

Date Deemed Submitted: September 24, 1984.

Controlling Entity: Crosby Trading Company, New Orleans, LA.

Amendment: Crosby Trading Company seeks to amend the certificate issued on June 18, 1984 to add the following firms as members : Georgia-Pacific Corporation, Atlanta, Georgia; Union Camp Corporation, Wayne, New Jersey; Reichhold Chemicals, Inc., White Plains, New York; Hercules Incorporated, Wilmington, Delaware; Westvaco Corporation, New York, New York; SCM Corporation, New York, New York; Monsanto Company, St. Louis, Missouri; National Distillers and Chemical Corporation, New York, New York; Arizona Chemical Company, Bay Lawn, New Jersey.

Note.—The initial certificate name no members and covered only Crosby Trading Company for planning activities pursuant to formulating an export venture that would involve producers of sulfate naval stores. It did not certify the operation of such a venture. The certified activities under the amended certificate would remain limited to the planning stage, but would extend Title III protection during the planning stage to the firms named as members.

The OETCA is issuing this notice in compliance with section 302(b)(1) of the Act which requires the Secretary to publish a notice of the application with **Federal Register** identifying the persons submitting an application and summarizing the conduct proposed for certification. Interested parties have twenty (20) days from the publication of this notice in which to submit written information relevant to the determination of whether a certificate should be issued.

Dated: October 4, 1984.

Irving P. Margulies,

General Counsel.

[FR Doc. 84–26691 Filed 10–9–84; 8:45 am]

BILLING CODE 3510–DR–M

National Oceanic and Atmospheric Administration

Pacific Coast Groundfish Fishery

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

ACTION: Notice of application for experimental fishing permits and request for comments.

SUMMARY: This notice announces the receipt and review of two applications for experimental fishing permits to harvest groundfish with gillnets in the fishery conservation zone north of 38° N. latitude off Washington, Oregon, and California in 1984. The permits, if issued, would allow the harvest of soupfin shark and other groundfish species incidentally caught with fishing gear which is otherwise prohibited by Federal regulation.

DATE: Comments on the applications must be received by October 15, 1984.

ADDRESSES: Send comments to T.E. Kruse, Acting Regional Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way N.E., BIN C15700, Seattle, Washington 98115.

FOR FURTHER INFORMATION CONTACT: T.E. Kruse, Acting Regional Director, National Marine Fisheries Service, 206–526–6150.

SUPPLEMENTARY INFORMATION: The Pacific Coast Groundfish Fishery Management Plan (FMP) provides the basis for regulating foreign and domestic groundfish fisheries in the fishery conservation zone (FCZ) off the coasts of Washington, Oregon, and California. Regulations implementing the FMP became effective on September 30, 1982 (47 FR 43964, October 5, 1982). These regulations specify that experimental fishing permits (EFPs) may be issued to authorize fishing by U.S. vessels which otherwise would be prohibited. Procedures for application and issuance of EFPs are given in the regulations at 50 CFR 663.10 (b) and (c). NMFS announces that two applications for EFPs have been received, which if issued would permit fishing with gillnets for groundfish in the FCZ in 1984.

One EFP application proposes to take and retain soupfin sharks with a drift gillnet that would fish near the surface. The target species for this operation would be thresher sharks, but soupfin and possibly dogfish sharks may also be taken, both of which are managed under the FMP. Thresher shark is not a part of the groundfish FMP management unit and harvest of this species by this method is authorized by State regulation. The size of mesh used would be varied to determine how this might change the species and sizes of fish taken.

The other application proposes to fish for soupfin sharks as the target species using an anchored or set gillnet which would fish very near the bottom. The purpose of using a set net would be to determine the efficiency of such gear in catching soupfin sharks. The mesh size for set nets also would be varied to determine the effect of such changes on the species and size of fish taken.

Both of these EFP applications were discussed at the September 19–20, 1984, meeting of the Pacific Fishery Management Council. The Council recommended allowing the retention of soupfin shark in the drift net fishery for thresher sharks on an experimental basis, and also recommended that the experimental targeting on soupfin sharks with set nets be permitted.

The application for drift net fishing proposes use of one vessel for a 12-month period at various locations in the FCZ. The proposal for a set net operation requests use of up to four vessels for a period of about six months

at various locations in the FCZ from northern California to northern Washington.

(16 U.S.C. 1801 *et seq.*)

Joseph W. Angelovic,

Deputy Assistant Administrator for Science and Technology, National Marine Fisheries Service.

[FR Doc. 84-26688 Filed 10-9-84; 8:45 am]

BILLING CODE 3510-22-M

Availability of Marine Mammal Annual Report

AGENCY: National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of availability of 1983/84 Marine Mammal Annual Report.

SUMMARY: The 1983/84 Annual Report on the Administration of the Marine Mammal Protection Act in the Department of Commerce is available now, on request, from the National Marine Fisheries Service (NMFS).

ADDRESS: Office of Protected Species and Habitat Conservation, National Marine Fisheries Service, U.S. Department of Commerce, Washington, D.C. 20235.

FOR FURTHER INFORMATION CONTACT: Margaret C. Lorenz, Editor, Office of Protected Species and Habitat Conservation, National Marine Fisheries Service, U.S. Department of Commerce, Washington, D.C. 20235; (202) 634-7529.

SUPPLEMENTARY INFORMATION: The Marine Mammal Protection Act of 1972 assigns responsibility for marine mammals of the Order Cetacea (whales and dolphins) and the Suborder Pinnipedia (seals and sea lions), except walrus, to the Department of Commerce.

This report reviews progress made over the past decade under the Act, the permit program for scientific research and public display of marine mammals and the incidental take of these animals in commercial fisheries, the marine mammal stranding networks, international activities, legal actions, and enforcement of the Act. It includes a discussion of the management and research programs for cetaceans and pinnipeds that are carried out at the NMFS Southeast, Southwest, Northeast, Northwest, and Alaska Regional Offices as well as its Southeast, Southwest, Northeast, and Northwest and Alaska Fisheries Centers. This report includes a description and the status of 53 species of interest to the United States and the estimated population numbers of most pinnipeds and cetaceans.

Dated: October 3, 1984.

Richard B. Roe,

Director, Office of Protected Species and Habitat Conservation, National Marine Fisheries Service.

[FR Doc. 84-26746 Filed 10-9-84; 8:45 am]

BILLING CODE 3510-22-M

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

ACTION: Notice.

SUMMARY: The Pacific Fishery Management Council's ad hoc study team will meet in San Francisco, CA, October 18, 1984, to develop a draft research program, taking into account concerns and impacts on the domestic fishing industry if joint ventures for whiting are permitted south of 39°N latitude. For further information contact Joseph C. Greenley, Executive Director, Pacific Fishery Management Council, 525 SW. Mill Street, Portland, OR 97201; telephone: (503) 221-6352.

Dated: October 4, 1984.

Ronald Finch,

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

[FR Doc. 84-26748 Filed 10-9-84; 8:45 am]

BILLING CODE 3510-22-M

DEPARTMENT OF DEFENSE

Department of the Navy

Naval Research Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App.), notice is hereby given that the Naval Research Advisory Committee Panel on Man-in-the-Loop Targeting will meet on October 30-31, 1984, at the Applied Physics Laboratory, Johns Hopkins University, Laurel, Maryland. Sessions of the meeting will commence at 8:00 a.m. and terminate at 4:30 p.m. each day. All sessions of the meeting will be closed to the public.

The purpose of the meeting is to review material and presentations previously received by the Panel and to conduct a working session to finalize the draft report. These matters constitute classified information that is specifically authorized under criteria established by Executive order to be kept secret in the interest of national defense and is in fact properly classified pursuant to such Executive order. The classified and nonclassified matters to be discussed are so inextricably intertwined as to preclude opening any portion of the meeting. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting contact: Commander M. B. Kelley, U.S. Navy, Office of Naval Research (Code 100N), 800 North Quincy Street, Arlington, VA 22217, Telephone number (202) 696-4870.

Dated: October 3, 1984.

William F. Roos, Jr.,

Lieutenant, JAGC, U.S. Naval Reserve, Federal Register Liaison Officer.

[FR Doc. 84-26671 Filed 10-9-84; 8:45 am]

BILLING CODE 3810-AE-M

Naval Research Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App.), notice is hereby given that the Naval Research Advisory Committee will meet on October 30-31 and November 1, 1984, at various command headquarters and field activities in and around Honolulu, including USCINCPAC, CINCPACFLT, CINCPACAF, and Barking Sands. Sessions of the meeting will commence at 8:00 a.m. and terminate at 5:00 p.m. on October 30 and 31, and commence at 8:00 a.m. and terminate at 12:00 noon on November 1, 1984. All sessions of the meeting will be closed to the public.

The purpose of the meeting is to orient NRAC members to C ^{3}I and its interface across unified and specified command levels and discuss the status of ongoing NRAC studies and new topics to be undertaken. These matters constitute classified information that is specifically authorized under criteria established by Executive order to be kept secret in the interest of national defense and is in fact properly classified pursuant to such Executive order. The classified and nonclassified matters to be discussed are so inextricably intertwined as to preclude opening any portion of the meeting. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 522b(c)(1) of title 5, United States Code.

For further information concerning this meeting contact: Commander M.B. Kelley, U.S. Navy, Office of Naval Research (Code 100N), 800 North Quincy Street, Arlington, VA 22217, Telephone number (202) 696-4870.

Dated: October 3, 1984.

William F. Roos, Jr.,

Lieutenant, JAGC, U.S. Naval Reserve, Federal Register Liaison Officer.

[FR Doc. 84-26670 Filed 10-9-84; 8:45 am]

BILLING CODE 3810-AE-M

DEPARTMENT OF ENERGY

Office of the Secretary

Announcement of Public Hearing on the Environmental Impact Statement, Central Waste Disposal Facility for Low-Level Radioactive Waste, Oak Ridge Reservation, Oak Ridge, TN

AGENCY: Department of Energy.

ACTION: Notice of Public Hearing.

SUMMARY: The Department of Energy will hold a public hearing on the Draft Environmental Impact Statement (DOE/EIS-0110-D), Central Waste Disposal Facility for Low-Level Radioactive Waste, Oak Ridge Reservation, Oak Ridge, Tennessee.

DATES: A public hearing will be held in Kingston, Tennessee, on October 17, 1984; written comments should be received at DOE by October 29, 1984, in order to ensure consideration in the preparation of the final environment statement. Oral and written comments will be given equal consideration. Request to speak at the public hearing and written comments on the DEIS should be addressed to: Mr. Doyle R. Brown, Program Manager, Oak Ridge, Radioactive Waste Management Programs, Oak Ridge Operations Office, U.S. Department of Energy, P.O. Box E, Oak Ridge, Tennessee 37831, Phone: (615) 576-4876.

FOR FURTHER INFORMATION CONTACT:

1. Mr. Doyle R. Brown, at address above
2. Dr. Robert J. Stern, Director, Office of Environmental Compliance, Office of the Assistant Secretary for Policy, Safety, and Environment, U.S. Department of Energy, Washington, D.C. 20585, Phone: (202) 252-4600.

SUPPLEMENTARY INFORMATION: The Department of Energy has issued a draft EIS for construction of a Central Waste Disposal Facility for Low-Level Radioactive Waste, Oak Ridge Reservation, Oak Ridge, Tennessee (**Federal Register**, September 14, 1984).

Copies of the DEIS have been distributed to Federal, State, and local agencies, organizations, and to individuals known to be interested in the Central Waste Disposal Facility project. Additional copies may be obtained from Mr. Doyle R. Brown, at the address given above.

Copies of the DEIS are available for public inspection at the following location:

Freedom of Information Reading Room, Room IE-190, Forrestal Building, U.S. Department of Energy, 1000 Independence Ave., SW., Washington, D.C. 20585

Oak Ridge Operations Office, Public Reading Room, Federal Building, Oak Ridge, Tennessee 37831

Oak Ridge Public Library, Civic Center, Oak Ridge Turnpike, Oak Ridge, Tennessee 37831

Clinton Public Library, 118 S. Hicks Street, Clinton, Tennessee 37916

Kingston Public Library, Cumberand St., Municipal Bldg., Kingston, Tennessee 37763

EPA Region IV, Public Reading Room, 345 Courtland Street, NE., Atlanta, GA 30365.

A public hearing will be held on the draft EIS at the Kingston Community Center, Kingston, Tennessee, on October 17, 1984, beginning at 7:00 p.m. Those individuals desiring to make oral comments should mail their requests to Doyle R. Brown at the address listed above.

The DOE will establish procedures governing the conduct of the hearing. The hearing will not be conducted as an evidentiary hearing and those who choose to make statements may not be cross-examined by other speakers. To provide the DOE with as much pertinent information as possible and as many views as can be reasonably obtained, and to provide interested persons with equitable opportunities to express their views, the following procedures will be used:

1. The DOE reserves the right to arrange the time and schedule of presentations to be heard and to establish procedures governing the conduct of the hearing. Interested individuals and organizations should notify DOE of their desire to speak by October 15, 1984. DOE will, in turn, notify prospective speakers before the hearing of the time and schedule for presentation. Requests should include a telephone number for such notification. Those persons wishing to speak on behalf of an organization should identify their affiliation in their request. Persons who have not submitted a request to speak in advance may register to speak at the public hearing and will be called on to present their comments, if time permits. Depending on the number of speakers, DOE reserves the right to place time limits on the speakers.

2. If any speaker desires to provide further information for the record subsequent to the hearing, it must be submitted in writing by October 29, 1984, to Doyle R. Brown at the address listed above.

3. When the final EIS is complete, its availability will be announced in the **Federal Register** and local news media.

4. A transcript of the hearing will be retained by DOE and made available at the locations listed above for the draft E.I.S.

Issued at Washington, D.C. September 28, 1984.

Jan W. Mares,

Assistant Secretary for Policy, Safety, and Environment.

[FR Doc. 84-26758 Filed 10-9-84; 8:45 am]

BILLING CODE 6450-01-M

Economic Regulatory Administration

Bayport Refining Co.; Proposed Remedial Order

Pursuant to 10 CFR 205.192 (c), the Economic Regulatory Administration (ERA) of the Department of Energy hereby gives notice of a Proposed Remedial Order which was issued to Bayport Refining Company, Malcolm M. Turner, Harry F. Mason, Robert H. Houser, and Olene Crumpton. This Proposed Remedial Order alleges pricing violations in the amount of $11,810,639.84 plus interest in connection with the resale of crude oil at prices in excess of those permitted under 10 CFR Part 212 during the time period September 1978 through December 1980.

A copy of the Proposed Remedial Order, with confidential information deleted, may be obtained from Mary Johnson, Economic Regulatory Administration, Department of Energy, 1314 W. Mockingbird Lane, Suite 200E, Dallas, Texas 75247 or by calling (214) 767-7483. Within fifteen (15) days of publication of this notice, any aggrieved person may file a Notice of Objection with the Office of Hearings and Appeals, Department of Energy, Forrestal Building, 1000 Independence Avenue, SW., Room 6E-055, Washington, D.C. 20585, in accordance with 10 CFR 205.193.

Issued in Dallas, Texas on the 20th day of September, 1984.

James O. Neet,

Chief Counsel, Dallas Field Office, Economic Regulatory Administration.

[FR Doc. 84-26759 Filed 10-9-84; 8:45 am]

BILLING CODE 6450-01-M

Office of Energy Research

Health and Environmental Research Advisory Committee; Open Meeting

Pursuant to the provision of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770), notice is hereby given of the following meeting:

Name: Health and Environmental Research Advisory Committee (HERAC).

Date and time: November 7, 1984–9:00 a.m.–5:00 p.m., November 8, 1984–9:00 a.m.–Noon.

Place: Conference Room B, Berkner Hall, Brookhaven National Laboratory, Upton, Long Island, New York 11973.

Contact: David A. Smith, Department of Energy, Office of Health and Environmental Research (ER–72), Office of Energy Research, Washington, D.C. 20545, Telephone: 301/353–2987.

Purpose of the committee: To provide advice on a continuing basis to the Secretary of the Department of Energy (DOE), through the Director of Energy Research, on the many complex scientific and technical issues that arise in the development and implementation of the Health and Environmental Research (HER) program.

Tentative agenda: Briefings and discussions of: *Thursday, November 7, 1984.*

- Presentations by Brookhaven National Laboratory Staff.
- Public comment (10 minute rule). *Friday, November 8, 1984.*
- Discussion of Future Committee Activities.
- Public comment (10 minute rule).

Public participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact David A. Smith at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation on the agenda. The Chairperson of the Committee is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Transcripts: The transcript of the meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 8:30 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC on October 4, 1984.

Howard H. Raiken,

Deputy Advisory Committee Management Officer.

[FR Doc. 84–26757 Filed 10–9–84; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket No. EF84–1011–000]

Alaska Power Administration; Notice of Filing

October 4, 1984.

The filing Company submits the following:

Take notice that on September 25, 1984, the Deputy Secretary of the Department of Energy, by Rate Order APA–6, confirmed and approved, on an interim basis effective October 1, 1984, Rate Schedules A–F9, A–N10, and A–W1 applicable to power from and wheeling by the Alaska Power Administration's Eklutna Project. Rate Schedule A–W1 is introduced as a new schedule for wheeling. The rate schedules replace A–F8 and A–N7 which were confirmed and approved by the Federal Energy Regulatory Commission on August 3, 1981, Docket No. EF80–1011.

The Department suggests that the Commission approve the rates for a 5-year period ending September 30, 1989, with the under-standing that the rates can be raised at an earlier date if needed to comply with cost recovery criteria. The rate schedules are submitted for confirmation and approval on a final basis pursuant to authority vested in the Commission by Delegation Order No. 0204–108.

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 Captiol Street, NE., Washington, D.C. 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 November 1, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84–26729 Filed 10–9–84; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ID–1835–003]

Brian A. Parent; Notice of Application

October 4, 1984.

Take notice that on September 24, 1984, Brain A. Parent filed an application pursuant to Section 305(b) of the Federal Power Act to hold the following positions:

Senior Vice President—Planning and Rates—Atlantic City Electric Company

Treasurer, Assistant Secretary—Deepwater Operating Company

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, D.C. 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 October 19, 1984. 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 proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84–26730 Filed 10–9–84; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP84–717–000]

Columbia Gas Transmission Corp.; Notice of Request Under Blanket Authorization

October 4, 1984.

Take notice that on September 18, 1984, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, SE., Charleston, West Virgina 25314 filed in Docket No. CP84–717–000 a request pursuant to § 157.205 of the Commission's Regulations under the National Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Celotex Corporation (Celotex) under the certificate issued in Docket No. CP83–76–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Specifically, Columbia proposes to transport up to 1.2 billion Btu of natural gas per day for Celotex for a term through June 30, 1985. Columbia states that the gas to be transported would be purchased from Browning and Welch, Inc. (Browning) by Celotex and would be used as boiler fuel in Celotex's plant in Lockland, Ohio. It is indicated the Columbia would receive the gas at existing interconnections with Tennessee Gas Pipeline Company, a

Division of Tenneco Inc., in Montgomery and Greenup Counties, Kentucky.

Columbia states that depending upon whether its gathering facilities are involved, it would charge either (1) its average system-wide storage and transmission charge, currently 40.11 cents per dt equivalent of gas, or (2) its average system-wide storage, transmission and gathering charge, currently 44.93 cents per dt, exclusive of company-use and unaccounted-for gas. Columbia states that it would retain 2.85 percent of the total quantity of gas delivered into its system for company-use and unaccounted-for gas. Columbia states that it is charging the Gas Research Institute Funding Unit.

Columbia further requests flexible authority to add and/or delete sources of gas and/or receipt points. With respect to such flexible authority, Columbia states that it would undertake within 30 days of the addition or deletion of any gas supplies and/or receipt or delivery points, to file with the Commission the following information:

(1) A copy of the gas purchase contract between the seller and the end-user;

(2) a statement as to whether the supply is attributable to gas under contract to and released by a pipeline or distributor, and if so, identification of the parties and specification of the current contract price;

(3) a statement of the Natural Gas Policy Act of 1978 (NGPA) pricing categories of the added supply, if released gas, and the volumes attributable to each category;

(4) a statement that the gas is not committed or dedicated within the meaning of the NGPA section 2(18);

(5) location of the receipt/delivery points being added or deleted. For deletions provide the name of the producer/supplier;

(6) where an intermediary participates in the transaction between the seller and end-user, the information required by § 157.209(c)(i)(ix) of the Commission's Regulations; and

(7) identity of any other pipeline involved in the transportation.

Columbia submits that any changes made pursuant to such flexible authority would be on behalf of the same end-user at the same end-use location and would remain within the daily and annual volume levels proposed herein.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 day after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-26731 Filed 10-9-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ID-1958-001]

Frederick E. Greenman; Notice of Application

October 4, 1984.

Take notice that on September 10, 1984, Frederick E. Greenman filed an application pursuant to Section 305(b) of the Federal Power Act to hold the following positions:

Director—Connecticut Yankee Atomic Power Company
Director—Maine Yankee Atomic Power Company
Clerk—Massachusetts Electric Company
Vice President—New England Power Company
Director—Vermont Yankee Nuclear Power Corporation
Director—Yankee Atomic Electric Company

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, N.E., Washington, D.C. 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 October 19, 1984. 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 proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-26732 Filed 10-9-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ER84-587-000, ER84-588-000, ER84-589-000, ER84-590-000, ER84-591-000, and ER84-592-000]

Indiana & Michigan Electric Co.; Order Accepting for Filing and Suspending Rates, Denying Request To Reject, Denying Motion for Summary Disposition and Motions To Compel Refiling, Granting Waiver of Notice, and Establishing Hearing and Price Squeeze Procedures

Issued: October 4, 1984.

On August 9, 1984, as revised on September 21, 1984,[1] Indiana & Michigan Electric Company (I&M) submitted for filing[2] a proposed two-step rate increase for wholesale service to Michigan Power Company (MPC), Northern Indiana Public Service Company (NIPSCO), Richmond Power & Light Company (Richmond), Indiana Municipal Power Agency (IMPA), twelve municipal wholesale customers,[3] and Wayne County R.E.M. Cooperative and six members of the Wabash Valley Power Association (Wabash).[4] The proposed Step 1 rates, as amended, would increase revenues by approximately $22.7 million (9.8%) for the calendar year 1985.[5]

The proposed Step 2 rates would increase revenues by an additional $35 million, for a total increase of approximately $57.7 million (25%). I&M requests an effective date of October 9, 1984, for the Step 1 rates and an effective date on or about December 1, 1984,[6] for the proposed Step 2 rates. According to I&M, the filing results from the need to reflect the costs of I&M's Rockport Generating Unit No. 1 (Rockport 1) in rates. Additionally, I&M proposes to revise its fuel clause in order to recover spent nuclear fuel disposal costs (SNFDC).

Notices of the filings were published in the **Federal Register** on August 22, 1984, with comments due on or before August 31, 1984.[7] Timely interventions

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[1] As discussed below, I&M recalculated its cost of service and rates to correct for an erroneous calculation of construction-related deferred taxes and an understatement of investment tax credits.

[2] *See* Attachment for rate schedule designations.

[3] The Indiana Cities and Towns of Auburn, Avilla, Bluffton, Columbia City, Garrett, Gas City, Mishawaka, New Carlisle and Warren, and the Michigan Cities of Niles, South Haven, and Sturgis.

[4] Fruit Belt Electric Cooperative, Paulding-Putnam Electric Cooperative, Inc., and the R.E.M. Cooperatives of Jay County, Noble County, United and Whitley County.

[5] The originally proposed Step 1 increase was about $30 million, or $7.3 million higher than the amended increase.

[6] I&M requests that the effective date for the Step 2 rates coincide with the commercial operation date of its new Rockport Generating Unit No. 1.

[7] 49 FR 33,319-19 (1984).

were filed by the City of Dowagiac, Michigan (Dowagiac),[8] NIPSCO, IMPA,[9] Wabash,[10] and the Indiana & Michigan Municipal Distributors Association (IMMDA) and the City of Auburn, Indiana.[11] All but IMPA and Wabash request a five month suspension of Steps 1 and 2. All but NIPSCO and Wabash request consolidation for the reason that the dockets are each based on the same cost information.

In support of their request for a five month suspension, the intervenors have raised many cost of service challenges. These include allegations that I&M has: (1) Failed to demonstrate the exclusion of AFUDC related to pollution control CWIP; (2) overstated certain pollution control CWIP in rate base; (3) overstated demand projections; (4) included in rate base land for which I&M has no definite plan; (5) understated certain revenue credits; (6) improperly included prior-period SNFDC; (7) overstated prepayments, depreciation expense, fuel stock inventory, materials and supplies, purchased power expense, decommissioning expense, and operation and maintenance expense; (8) erroneously computed deferred income tax; (10) included excessive coal "transloading" costs; and (11) used an excessive rate of return. On September 10, 1984, IMPA filed a "clarification" which expanded on its allegation of potential undue earned return.

In addition, Wabash requests that the Commission reject I&M's filing or issue a deficiency letter for the reason that I&M has not submitted adequate workpapers. Further, IMPA has requested summary disposition with respect to two items: I&M's alleged (1) use of contract demands rather than actual coincident peak demands for demand allocation, and (2) erroneous computation of deferred income taxes attributable to certain capitalized construction expenses. IMPA, IMMDA and Auburn, and Wabash also allege a potential price squeeze. Finally, Wabash requests that I&M be required to revise portions of its filing to expressly recognize Wabash as its customer, rather than the six affected cooperatives to which Wabash supplies power.

On September 17, 1984, I&M filed a response in opposition to the requests for maximum suspension, summary disposition, and rejection or revision of its filing. The company acknowledged that it had made an erroneous computation of construction-related deferred taxes, and stated that it would "promptly file with this Commission revisions to its filing to correct for this error." However, I&M asserted that such correction would have no effect on its proposed rate increase. In response to Wabash's stated concern that it had not been properly regarded as I&M's customer, the company acknowledged Wabash's status as a wholesale customer. Finally, I&M generally opposed the cost of service challenges raised by the intervenors, including the use of contract demands for purposes of demand allocation.

On September 20, 1984, Wabash filed a motion requesting that the Commission order I&M to file revised Step 1 and Step 2 rates. Wabash first referred to I&M's admittedly erroneous deferred-tax computation. Because of that error, Wabash asserted that I&M would be forced not only to revise its wholesale cost of service downward, but also to revise its retail cost of service upward. Such revisions, Wabash alleged, would result in a decreased earned retail rate of return. Referring next to I&M's "stated goal" of maintaining equality between retail and wholesale rates of return, Wabash asserted that this goal would require I&M to "reduce the rate of return sought from its wholesale customers in both steps." Wabash submitted that such an adjustment would reduce requested revenues from Steps 1 and 2 by approximately $981,000 each.

On September 21, 1984, I&M submitted its amended filing. In order to maintain wholesale-retail rate of return parity, the company did revise its originally proposed rates downward to correct for two errors in its original filing relating to deferred taxes and investment tax credits. In the event that its amended filing is viewed as having triggered a new notice requirement, I&M has requested waiver of notice.

Discussion

Under Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214), the timely interventions serve to make the entities identified above parties to this proceeding.

Contrary to Wabash's assertions, we find that I&M's submittal substantially complies with the Commission's filing requirements.[12] We shall therefore deny Wabash's request for rejection of I&M's submittal. We also decline to grant IMPA's request for summary disposition of the demand allocation issue, since the matter presents questions of law or fact most appropriately resolved following an evidentiary hearing. I&M's acknowledgement of Wabash's status as a wholesale customer should mitigate Wabash's concerns about this matter. In any event, requiring I&M to revise its submittal here is not warranted.[13] We shall, however, grant the requests to consolidate Docket Nos. ER84-587-000 through ER84-592-000, inasmuch as the prefiled testimony and the cost of service studies are identical, and the dockets present common questions of fact.

Given I&M's voluntary filing to correct for the errors perceived in its original submittal, Wabash's remaining requests for summary disposition or refiling based on these errors will be denied. To the extent that any disagreement remains as to the precise calculations made by I&M to correct for its errors, these matters may be pursued at hearing. Further, we find that good cause exists to waive the notice requirements with respect to I&M's amended submittal.

Our preliminary review of the I&M's filings and the pleadings indicates that the rates proposed by I&M have not been shown to be just and reasonable, and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Accordingly, we shall accept the proposed rates for filing, as modified by I&M, and we shall suspend them as ordered below.

In *West Texas Utilities Co.*, 18 FERC ¶ 61,189, at 61,375 (1982), we noted that rate filings would ordinarily be suspended for one day where preliminary review indicates that the rates may be unjust or unreasonable, but may not generate substantially excessive revenues, as defined in *West Texas*. In this case, our preliminary review indicates that I&M's proposed rates may not generate substantially excessive revenues. Accordingly, we

[8] Dowagiac is a wholesale customer of MPC.

[9] IMPA, a bulk power marketing agent for the Cities of Anderson and Richmond and the Town of Frankton, filed on its own and Richmond's behalf (Docket Nos. ER84-589-000 and ER84-590-000, respectively).

[10] Wabash is the power supplier of I&M's cooperative customers other than Wayne County REMC, in Docket No. ER84-592-000.

[11] IMMDA is an *ad hoc* association of I&M's wholesale customers located in Indiana and Michigan, and it represents I&M's municipal customers other than Auburn, in Docket No. ER84-591-000.

[12] *See Municipal Light Boards* v. *FPC*, 450 F.2d 1341 (D.C. Cir. 1971), *cert. denied* 405 U.S. 989 (1972).

[13] Wabash is correct in stating that we previously required I&M to revise a filing to reflect Wabash as a customer. *Indiana & Michigan Electric Co.*, Docket Nos. ER82-555-000, *et al.*, 20 FERC ¶ 61,079, at 61,171 (1982). In that case, however, I&M had not correctly reflected Wabash's status in the tariff and service agreement. Here, those documents themselves do not require correction. Here, those documents themselves do not require correction. Rather Wabash directs its complaint only to miscellaneous references in the transmittal letter and filed testimony. Such references do not warrant refiling, as requested by Wabash.

shall suspend the Step 1 and Step 2 rates for one day from the proposed effective dates, to become effective, subject to refund, on October 10, 1984, and one day after the date of commercial operation of Rockport 1, respectively.

In light of the price squeeze allegations, we shall institute price squeeze procedures and phase those proceedings, in accordance with Commission policy and practice as established in *Arkansas Power & Light Co.*, 8 FERC ¶ 61,131 (1979).

The Commission Orders

(A) the various motions for rejection, summary disposition, and refiling of I&M's submittal are hereby denied, as discussed above.

(B) Waiver of notice is granted with respect to I&M's amended filing.

(C) I&M's proposed Step 1 and Step 2 rates, as amended on September 21, 1984, are hereby accepted for filing and suspended for one day from the proposed effective dates, to become effective, subject to refund, on October 10, 1984, and one day after the date of commercial operation of Rockport 1, respectively. I&M shall advise the Commission of the implementation of the Step 2 rates within fifteen (15) days after Rockport 1 becomes commercially operational.

(D) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 CFR Chapter I), a public hearing shall be held concerning the justness and reasonableness of I&M's rates.

(E) Docket Nos. ER84–587–000 through ER84–592–000 are hereby consolidated for purposes of hearing and decision.

(F) The Commission staff shall serve top sheets in this proceeding within ten (10) days of the date of this order.

(G) A presiding administrative law judge, to be designated by the Chief Administrative Law Judge, shall convene a conference in this proceeding to be held within approximately fifteen (15) days after service of top sheets, in a hearing room of the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. The presiding judge is authorized to establish procedural dates and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

(H) The Commission hereby orders initiation of price squeeze procedures and further orders that this proceeding be phased so that the price squeeze procedures begin after issuance of a Commission opinion establishing the rate, which, but for conderation of, price squeeze, would be just and reasonable. The presiding judge may modify this schedule for good cause. The price squeeze portion of this case shall be governed by the procedure set forth in § 2.17 of the Commission's regulations as they may be modified prior to the initiation of the price squeeze phase of this proceeding.

(I) The Secretary shall promptly publish this order in the **Federal Register.**

By the Commission.

Kenneth F. Plumb,

Secretary.

Attachment

INDIANA & MICHIGAN ELECTRIC COMPANY DOCKET NOS. ER84–588–000 THROUGH ER84–592–000

[Rate Schedule Designation]

Designation	Other party and Docket No.	Description
(1) Supplement No. 8 to Supplement No. 12 to Rate Schedule FPC No. 25, (Supersedes Supplement, Nos. 6 and 7 to Supplement No. 12).	ER84–587–000 Michigan Power Co	Step I rates.
(2) Supplement No. 9 to Supplement No. 12 to Rate Schedule FPC No. 25, (Supersedes (1) above)	do	Step II rates.
(3) Supplement No. 8 to Supplement No. 9 to Rate Schedule FPC No. 22, (Supersedes Supplement, Nos. 6 and 7 to Supplement No. 9).	ER84–588–000 Northern Indiana Public Service Co	Step I rate.
(4) Supplement No. 9 to Supplement No. 9 to Rate Schedule FPC No. 22, (Supersedes (3) above)	do	Step II rates.
(5) Supplement No. 5 to Supplement No. 10 to Rate Schedule FERC No. 70, (Supersedes Supplement, Nos. 3 and 4 to Supplement, No. 10).	ER84–589–000 City of Richmond	Step I rates.
(6) Supplement No. 6 to Supplement No. 10 to Rate Schedule FERC No. 70, (Supersedes (5) above)	do	Step II rates.
(7) Supplement No. 1 to Rate Schedule FERC No. 74	ER84–590–000 Indiana Municipal Power Agency	Step I rates.
(8) Supplement No. 2 to Rate Schedule FERC No. 74, (Supersedes (7) above)	do	Step II rates.
I FERC Electric Tariff Original Volume No. 4		
Sheet No.		
(9) First Revised Sheet, No. 1 and Original, Sheet No. 1A (Supersedes, Original Sheet No. 1)	ER84–591–000, Municipals	Title page.
(10) Third Revised Sheet No. 5, Second Revised Sheet No. 6, and First Revised Sheet No. 7, (Supersedes Second Revised, Sheet No. 5, First Revised, Sheet No. 6 and Original, Sheet No. 7).	do	Step I rates.
(11) Fourth Revised Sheet No. 5, (Supersedes Third Revised Sheet No. 5)	do	Step II rates.
II FERC Electric Tariff Second Revised Volume No. 3		
(12) First Revised Sheet No. 1, and Original Sheet No. 1A, (Supersedes Original Sheet, No. 1)	ER84–592–000, Cooperatives	Title page.
(13) Third Revised Sheet No. 5, and Second Revised Sheet, No. 6 (Supersedes Second, Revised Sheet No. 5 and, First Revised Sheet No. 6).	do	Step I rates.
(14) Fourth Revised Sheet No. 5, (Supersedes Third Revised, Sheet No. 5)	do	Step II rates.

[FR Doc. 84–26733 Filed 10–9–84; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ID–2128–000]

Jeffrey D. Tranen; Notice of Application

October 4, 1984.

Take notice that on September 7, 1984, Jeffrey D. Tranen filed an application for authorization pursuant to Section 305(b) of the Federal Power Act to hold the following positions:

Vice President—New England Power Company

Director—Connecticut Yankee Atomic Power Company

Director—Maine Yankee Atomic Power Company

Director—Vermont Yankee Nuclear Power Corporation

Director—Yankee Atomic Electric Company

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, D.C. 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 October 19, 1984. 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 proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-26734 Filed 10-9-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ID-1894-001]

Joseph G. Salomone; Notice of Application

October 4, 1984.

Take notice that on September 24, 1984, Joseph G. Salomone filed an application pursuant to Section 305(b) of the Federal Power Act to hold the following positions:

Senior Vice President—Finance Treasurer—Atlantic City, Electric Company

Director—Vice President—Deepwater Operating Company

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, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR Sections 385.211, 385.214). All such motions or protests should be filed on or before October 19, 1984. 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 proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-26735 Filed 10-9-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ID-2129-000]

Matthew Hunter; Notice of Application

October 4, 1984.

Take notice that on September 10, 1984, Matthew Hunter filed an application pursuant to Section 305(b) of the Federal Power Act to hold the following positions:

Chairman, Director—Central Vermont Public, Service Corporation

Director—Vermont Yankee Nuclear Power, Corporation

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, D.C. 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 October 22, 1984. 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 proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-26736 Filed 10-9-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER83-652-001]

Niagara Mohawk Power Co.; Notice of Revised Refund Report

October 4, 1984.

Take notice that on September 21, 1984, Niagara Mohawk (Niagara) submitted for filing its revised refund report pursuant to the Commission's order issued July 3, 1984.

On August 15, 1984, Niagara submitted a compliance report pursuant to the above Commission Order. In that report, Niagara indicated that "subsequent to the Company's order of the refund, PASNY indicated to the Company that it believed the amount tendered by the Company was in excess of the refund due."

Niagara hereby submits its revised compliance report.

The revised refund of $457,846.32 which has been concurred with by PASNY is for a refund of $441,886.96 and interest of $15,959.36. The supporting data showing the development of the refund and interest is attached, as well as the Company's transmittal letter to PASNY.

Any person desiring to be heard or to protest said filing should file comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, on or before October 22, 1984. Comments will be considered by the Commission in determining the appropriate action to be taken. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-26737 Filed 10-9-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP84-692-000]

Northern Natural Gas Co.; Notice of Application

October 3, 1984.

Take notice that on September 4, 1984, Northern Natural Gas Company, Division of InterNorth, Inc., (Northern), 2223 Dodge Street, Omaha, Nebraska 68102 filed in Docket No. CP84-692-000 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon and remove one 251 horsepower compressor unit located in Texas County, Oklahoma, all or more fully set forth in the application which is on file with the Commission and open to public inspection.

Northern states that the Texas County No. 1 gathering station is comprised of one two-staged 395 horsepower compressor unit, one two-staged 678 horsepower compressor unit and one single-staged 251 horsepower compressor unit. Such gathering station compressor gas from the Texas County No. 1 Subsystem, it is explained.

Northern further states that subsequent to the time the compressor unit was installed, volume production from Texas County No. 1 Subsystem has declined from 16,600 Mcf of gas per day in 1977 to 7,900 Mcf of gas per day as required for the 1984/85 heating season. It is asserted that such decline in volume production has resulted in the idling of the 251 horsepower compressor unit since it is no longer required to compress the respective volumes.

Northern asserts that the proposed abandonment of the 251 horsepower compressor unit is the only viable alternative and would serve the public interest since said compressor is no longer needed and consequently serves no useful purpose. It is explained that said unit would be sold to a potential buyer or would be utilized elsewhere on Northern's system.

Any person desiring to be heard or to make any protest with reference to said application should on or before October 23, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All such protests filed with the Commission will be considered by it 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 to a proceding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natual Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Northern to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-26738 Filed 10-9-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ID-1854-005]

Samuel Huntington; Notice of Application

October 4, 1984.

Take notice that on August 13, 1984 Samuel Huntington filed an application for authorization pursuant to Section 305(b) of the Federal Power Act to hold the following positions:

Director—Massachusetts Electric Company
Director—The Narragansett Electric Company
Director—New England Electric Transmission Corporation
Chairman and Director—New England Power Company

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, D.C. 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 October 19, 1984. 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 proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-26739 Filed 10-9-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. EF84-3011-000]

Southeastern Power Administration; Notice of Filing

October 4, 1984.

The filing Company submits the following:

Take notice that on September 26, 1984, the Deputy Secretary of the Department of Energy confirmed and approved, on an interim basis effective midnight September 30, 1984, Rate Schedules GAMF-1-D, GAMF-2-D, ALA-1-D, MISS-1-D, SC-1-D, SC-2-D, CAR-1-E, and CAR-2-D for power from Southeastern Power Administration (SEPA) Georgia-Alabama Projects. The approval extends through September 30, 1985.

The Deputy Secretary states that the Commission, by order issued February 29, 1984, in Docket No. EF83-3011, confirmed and approved Rate Schedules GAMF-1-C, GAMF-2-C, ALA-1-C, MISS-1-C, SC-1-C, SC-2-C, CAR-1-D, and CAR-2-C through September 30, 1984.

SEPA proposes in the instant filing to replace Rate Schedules GAMF-1-C, GAMF-2-C, ALA-1-C, MISS-1-C, SC-1-C, SC-2-C, CAR-1-D, and CAR-2-C with Rate Schedules GAMF-1-D, GAMF-2-D, ALA-1-D, MISS-1-D, SC-1-D, SC-2-D, CAR-1-E, and CAR-2-D, respectively. The rate adjustments will increase annual revenues by $8,744,000, an increase of approximately 20 percent. The increase is due primarily to general inflation at the generating projects, the inclusion of two units at the Richard B. Russell Project, and increased wheeling charges. The interim rate schedules are submitted for confirmation and approval on a final basis pursuant to the authority vested in the Commission by Delegation Order No. 0204-108. Approval is requested for a period ending September 30, 1985.

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, N.E., Washington, D.C. 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 November 1, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-26740 Filed 10-9-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP84-721-000]

Transcontinental Gas Pipe Line; Notice of Request Under Blanket Authorization

October 4, 1984.

Take notice that on September 19, 1984, Transcontinental Gas Pipe Line Corporation (Transco), P.O. Box 1396, Houston, Texas 77251, filed in Docket No. CP84-721-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct and operate offshore pipeline facilities in the Mustang Island Area, offshore Texas, under the certificate issued in Docket No. CP82-426-000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request of file with the Commission and open to public inspection.

Transco proposes to construct and operate 6.69 miles of 20-inch pipeline and associated metering and regulating facilities from the TXP Operating Company A platform in Mustang Island Area, Block A-111, to an interconnection with Transco's existing Central Texas Gathering System at Platform A in Mustang Island Area, Block A-85. It is stated that the proposed facilities are required to attach new gas reserves estimated to be 91,800,000 Mcf which would be

purchased by Transco and Northern Natural Gas Company, Division of InterNorth Inc. from TXP Producing Company in Mustang Island Area, Block A-111.

It is indicated that the proposed facilities would be designed with a maximum capacity of 80,000 Mcf of gas per day and would cost an estimated $9,825,700, which would be financed initially through revolving credit arrangements, short-term loans or funds on hand. It is anticipated that the facilities would be completed and placed in service by mid-1985.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-26741 Filed 10-9-84; 8:45 am]

BILLING CODE 6717-01-M

Office of Hearings and Appeals

Cases Filed; Week of September 7 through September 14, 1984

During the Week of September 7 through September 14, 1984, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20585.

Dated: September 20, 1984.

Thomas L. Wieker,

Acting Director, Office of Hearings and Appeals.

List of Cases Received by the Office of Hearings and Appeals

Week of Sept. 7 through Sept. 14, 1984

Date	Name and location of applicant	Case No.	Type of submission
Sept. 10, 1984	Corum Energy Corporation, Washington, DC	HRD-0234 HRH-0235	Motion For Discovery and Request for Evidentiary Hearing. If granted: Discovery would be granted and an evidentiary hearing would be convened in connection with the Statement of Objections submitted by Corum Energy Corporation in response to the May 18, 1984, Proposed Remedial Order (Case No. HRO-0234) issued to Corum Energy Corporation.
Do	Gordon K. Walz, *et al.*, Washington, DC	HRZ-0221	Interlocutory Order. If granted: The Office of Hearings and Appeals would grant Gordon K. Walz, John Woolsey, James Cross, and Milton E. Walz's motion to strike from the record in the Proposed Remedial Order proceeding involving Revere Petroleum Corporation, *et al.* (Case No. HRO-0125) two letters from the Economic Regulatory Administration dated August 27 and August 28, 1984.
Do	John H. Hnatio, Mt. Airy, MD	HFA-0246	Appeal of an Information Request Denial. If granted: The Decision and Order issued on August 22, 1984 (Case No. HFA-0214) would be amended and the requester would receive access to information contained in Documents 53, 122 and 124.

REFUND APPLICATIONS RECEIVED

[Week of Sept. 7 to Sept. 14, 1984]

Date	Name of refund proceeding/name of refund applicant	Case no.
Sept. 10, 1984	Gulf/Jarvis P. Brown	RF40-93
Do	Willis/Sam Travis Mobil Service	RF41-6
Do	Willis/Blue Bird Coach Lines, Inc	RF41-7
Do	Windham/Stamm Contracting Co., Inc	RF43-1
Sept. 12, 1984	Gulf/Southeast Express, Inc	RF40-94
Sept. 13, 1984	Windham/Charles Chevrolet & Oldsmobile, Inc	RF43-2
Sept. 14, 1984	Gulf/McLean Trucking Co	RF40-95

[FR Doc. 84-26786 Filed 10-9-84; 8:45 am]

BILLING CODE 6450-01-M

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, DOE.

ACTION: Notice of implementation of special refund procedures and solicitation of comments.

SUMMARY: The Office of Hearing and Appeals of the Department of Energy solicits comments concerning the appropriate procedures to be followed in refunding to eligible claimants a total of $14,000,000 (plus accrued interest) obtained by the DOE under the terms of a consent order entered into with Conoco, Inc. The funds are being held in escrow following settlement of all claims and disputes arising from an audit by the Office of Special Counsel.

DATE AND ADDRESS: Comments must be filed within 30 days of publication of this notice in the **Federal Register** and should be addressed to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585. All comments should display conspicuously a reference to case numbers HEF-0010 and HEF-0484.

FOR FURTHER INFORMATION CONTACT: Richard T. Tedrow, Deputy Director, Lawrence Rudolph, Deputy Assistant Director, Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252-5510.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(b) of the procedural regulations of the Department of Energy, 10 CFR 205.282(b), notice is hereby given of the issuance of the Proposed Decision and Order set out below. The proposed Decision and Order tentatively establishes procedures to distribute to eligible claimants $14,000,000 obtained by the DOE under the terms of a consent order entered into with Conoco, Inc.

(Conoco) on July 2, 1982. The funds were provided to the DOE by the firm in order to settle all claims which the Office of Special Counsel could have pursued under the DOE price and allocation regulations relating to transactions by Conoco involving the production, refining, processing, reselling, and marketing of crude oil and petroleum products during the period from January 1, 1973 through January 27, 1981.

The Proposed Decision and Order sets forth the procedures and standards that the DOE has tentatively formulated to distribute the contents of the escrow account by Conoco. The DOE has tentatively decided that Applications for Refund should be accepted from firms and individuals who purchased refined petroleum products and crude oil from the firm during the consent order period January 1, 1973 through January 28, 1981. The Proposed Decision and Order provides that in order to be entitled to receive any portion of the settlement funds, a purchaser must furnish the DOE with evidence which demonstrates that the claimant was injured by the alleged unlawful prices for covered products charged by Conoco, including specific documentation concerning the date, place, price and volume of product purchases, whether the increased costs were absorbed by the claimant or passed through to other purchasers, and the extent of any injury alleged to have been suffered.

The Proposed Decision and Order also refers to the distribution in a second-stage proceeding of any funds remaining after all valid claims are paid. The DOE solicits comments on any proposals that claimants may suggest for the distribution of any funds remaining after first-stage claims have been paid.

It should be pointed out that until final procedures are adopted, no claims for refunds will be accpted. Applications for Refund, therefore, should *not* be filed at this time. Appropriate public notice, including notice published in the **Federal Register**, will be provided prior to the acceptance of claims.

Any member of the public may submit written comments regarding the proposed refund procedures. Commenting parties are requested to submit two copies of their comments. Comments should be submitted within 30 days of publication of this notice in the **Federal Register**, and should be sent to the address set forth at the beginning of this notice. All comments received in this proceeding will be available for public inspection in the Public Docket Room of the Office of Hearings and Appeals, Room 1E-234, 1000 Independence Avenue, SW., Washington, D.C. between the hours of 1:00 to 5:00 p.m., Monday through Friday, except Federal holidays.

Dated: August 13, 1984.

George B. Breznay,

Director, Office of Hearings and Appeals.

Proposed Decision and Order of the Department of Energy

Special Refund Procedures

Name of Firm: Conoco Inc.
Date of Filing: Dec. 23, 1982.
Case Number: HEF-0010; HEF-0484.

The regulations of the Department of Energy (DOE) permit the Economic Regulatory Administration's Office of Special Counsel (OSC) to request the Office of Hearings and Appeals (OHA) to formulate and implement procedures for distributing funds received as a result of an enforcement proceeding involving alleged violations of the DOE regulations. *See* 10 CFR Part 205, Subpart V. In accordance with those regulatory provisions, the OSC filed two Petitions for the Implementation of Special Refund Procedures in connection with a Consent Order entered into with Conoco Inc. (Conoco). Each of the petitions concerns funds received from Conoco pursuant to different provisions of that Consent Order, *i.e.*, paragraphs 402 and 403. Under the terms of the Consent Order, Conoco agreed to make refunds for alleged violations of the DOE price and allocation regulations in the following amounts: (i) $3 million to be paid to DOE for disposition according to DOE's determination (¶ 402), and (ii) a quantity of foreign crude oil valued at $11 million to be delivered to the Strategic Petroleum Reserve of the United States or, in the alternative, to pay to DOE the amount of $11 million in lieu of delivering crude oil to the Strategic Petroleum Reserve (¶ 403). On November 24, 1982, Conoco remitted to DOE $3 million in accordance with ¶ 402 of the Consent Order. On October 26, 1983, Conoco elected to pay $11 million in funds directly to DOE in accordance with ¶ 403 of the Consent Order. These funds, totalling $14 million, are now being held in an escrow account under the jurisdiction of the DOE pending receipt of instructions from the OHA regarding their final distribution. (*1*)

I. Background

Conoco is a "producer" of crude oil and a "refiner" as those terms were defined in 10 CFR 212.31. During the relevant time periods, Conoco was engaged in the production, refining, processing, reselling, and marketing of crude oil and petroleum products, and was subject to the Mandatory Petroleum Price Regulations set forth at 10 CFR Part 212.

As a part of its enforcement activities, the OSC audited Conoco's price and allocation practices, including the manner in which the firm applied the federal petroleum price and allocation regulations with respect to its important, refining, and sale of crude oil and covered petroleum products during the period January 1, 1973 through January 27, 1981 (hereinafter referred to as the "Consent Order period"). In order to settle all claims and disputes between the parties during this period, Conoco and DOE entered into a Proposed Consent Order whereby Conoco agreed to remit $3 million to the DOE, and deliver $11 million worth of foreign crude oil to the Strategic Petroleum Reserve. Notice of the Proposed Consent Order was published in the **Federal Register** at 47 FR 30563 (July 14, 1982), and interested persons were invited to submit comments and written notification of potential claims against the settlement funds. Comments were received from numerous parties.(*2*) The Proposed Consent Order was finalized without modification and published in the **Federal Register** at 47 FR 49700 (November 2, 1982).

II. Jurisdiction To Fashion Refund Procedures

The OSC filed two Petitions for the Implementation of Special Refund Procedures under Subpart V in connection with the Conoco Consent Order. The first Petition involves the $3 million in settlement of alleged violations of the refiner price rule, and was filed on December 23, 1982. The second Petition involves the $11 million in settlement of alleged violations of the crude oil producer regulations, and was filed on November 14, 1983. The Subpart V process is used in situations where the DOE is unable to readily identify the persons who may be eligible to receive refunds as a result of enforcement proceedings or to readily ascertain the amounts that such persons should receive. 10 CFR 205.280. Subpart V also authorizes the OHA, upon request by an appropriate DOE enforcement official, to fashion special procedures to distribute moneys obtained as part of a settlement agreement. 10 CFR 205.281-.282.

After reviewing the Petitions submitted in this proceeding, we have concluded that the implementation of Subpart V proceedings is appropriate. As stated by the OSC, that office was unable to identify any specific purchasers who may have been injured by the alleged overcharges.(*3*) Moreover, even in cases where an injured person

can be identified, it is difficult to ascertain the level of refunds that such persons should receive. The Office of Hearings and Appeals, therefore, has decided to exercise Subpart V jurisdiction over the funds received from Conoco in settlement of the enforcement proceedings which led to the Petitions for Implementation of Special Refund Procedures filed by the OSC in this matter.

III. Proposed Refund Procedures

The procedures to be devised in this case are designed to provide for the distribution of the refund amounts to the parties who bore the effects of the alleged overcharges. This also serves to fulfill the objectives expressed in the applicable statutes and regualtions discussed above. *See Citronelle-Mobile Gathering* v. *Edwards*, 669 F.2d 717, 723 (Temp. Emer. Ct. App. 1982), *cert. denied*, 103 S.Ct. 172 (1982).

In this proceeding, we must first determine whether the $14 million in Consent Order funds obtained from Conoco should be allocated between crude oil and the refined petroleum product claimants in the proportion suggested by OSC, *i.e.*, $3 million to persons whose claims are based on purchases from Conoco of covered products other than crude oil or refined product allocation disputes, and the remaining $11 million presumably to those claimants involved in crude oil transactions, or whether a different allocation is warranted. One commenter has argued that most, if not all, of the Conoco Consent Order funds should be distributed to purchasers of refined products, an allocation based on an analysis of the type and amount of alleged violations in the underlying enforcement proceedings.(*4*) Another commenter suggests that regardless of our disposition of the $11 million paid by Conoco, we should calculate any per gallon rate of refund based on the full $14 million available, thus enabling a higher per gallon refund for potential claimants.(*5*)

Although we do not reject at this time either of the foregoing suggestions, we note that the allegations in the enforcement proceedings pending against Conoco at the time the Consent Order was executed afford no basis upon which to allocate refund monies, and constitute nothing more than "unproven assertions in preliminary DOE enforcement documents." *Amoco*, at 88,198.(*6*) We also note that the **Federal Register** notices published by OSC concerning the adoption of the Conoco Consent Order inferred payments of $3 million in cash and $11 million worth of foreign crude oil in settlement of refiner pricing and crude oil violations, respectively.

Because of the questions raised by commenters in this proceeding regarding the allocation of Consent Order funds, however, and our own concerns on this issue, we asked the Economic Regulatory Administration (ERA) to provide us with a further explanation regarding the allocation it proposed in the Petitions for the Implementation of Special Refund Procedures filed with OHA. On July 26, 1984, we received a memorandum from Leslie W. Adams, Deputy Solicitor of the ERA. In that memorandum, which we have placed in the record, ERA states in part that:

> The allocation between the two areas, rjefiner pricing and cruide oil, reflects the basis on which the negotiations [involving the Conoco Consent Order] were conducted. Because each regulatory area utilizes different pricing mechanisms, requires different remedies in light of the different markets and the operation of the regulations, and have different litigation histories, we segregated the two areas throughout the negotiations. Thus, the areas were identified separately at the inception of negotiations, throughout the discussions, in our litigation risk analyses, and for the purposes of reaching settlement and identifying the remedy.
>
> In Conoco's case, the $11 million reflects our determination of a suitable recovery for the crude oil issues after considering the factual matters submitted by Conoco and assessing the litigation risk for the issues involved. Similarly, the $3 million refiner pricing recovery was accepted after considering the factual background and litigation risk of each of the refiner cost allocation issues and the overrecoveries which resulted when the challenged costs and cost recoveries were compared to Conoco's available banks.

Based on these representations by ERA, we have tentatively concluded to make available $3 million of the Conoco Consent Order funds to those claimants who purchased refined petroleum products, and $11 million to those involved in crude oil transactions. We believe that, under the circumstances, this is an appropriate disposition of the refund monies to be distributed in this proceeding.

With respect to the calculation of actual refunds of either refined product or crude oil claimants, we propose that refunds be calculated according to a volumetric method. Under this method, refunds are computed by multiplying an applicant's total purchase volumes by a volumetric amount which is computed by dividing the settlement amount by the total volume of covered petroleum products sold by the consent order firm during the consent order period. although it has been suggested that the calculation of any per gallon rate of refund for refined product claimants be based on the full $14 million available, we believe that a volumetric calculation based on the proposed allocation for each respective group of claimants (refined product and crude oil purchasers) is more appropriate, particularly in view of the restitutionary purpose of our refund proceedings. Under these circumstances, therefore, we propose the following procedures for each group of potential claimants.

A. Refined Products Transactions

1. Refunds to Identifiable Purchasers

During the first stage in this refund process, the refined products pool of Consent Order funds should be distributed to claimants who satisfactorily demonstrate that they have been adversely affected by the alleged overcharges in sales of covered products by Conoco. We note that the first purchasers of the relevant refined products from the firm are likely to be claimants in this proceeding.

To the extent that first purchasers who are resellers can establish that they absorbed the alleged overcharges rather than passed them on to their customers, they will be entitled to receive a portion of the consent order funds. In order to qualify for a refund, these first purchsers will be required to demonstrate that during the period covered by the consent order they were not able to pass through the alleged overcharges to their customers. While there are a variety of means by which a claimant could make this showing, these purchasers generally should demonstrate that at the time they purchased covered products from their supplier, market conditions would not permit them to increase their prices to pass through the additional costs associated with the alleged overcharges. In addition, a reseller of petroleum products must show that it maintained a "bank" of unrecovered costs, in order to demonstrate that it did not subsequently recover these costs by increasing its prices.

With respect to first purchasers who are end-users and ultimate consumers, the above showing is not necessary in order for a firm to qualify for a refund. Examples of the types of organizations and individuals in this group include home owners, schools, religious institutions, federal, state, and local government entities, and research foundations. In order to establish a claim, this type of first purchaser need demonstrate only that it purchased a specific quantity of product which was sold by Conoco during the Consent Order period.

In addition, refund applications from firms regulated by a governmental agency or by the terms of a cooperative agreement will not be required to demonstrate that the firm absorbed the alleged Conoco overcharges. In the case of regulated firms, *e.g.*, public utilities, any overcharges incurred as a result of Conoco's alleged violations of the DOE regulations would routinely be passed through to their customers. Similarly, any refunds received by such firms would be reflected in the rates they were allowed to charge their customers. Refunds to agricultural cooperatives will likewise directly influence the prices charged to their member customers. Consequently, such firms will be added to the class of claimants that are not required to show that they did not pass through to their customers cost increases resulting from alleged overcharges. *See, e.g., Office of Special Counsel (Tenneco),* 9 DOE ¶ 82,538 (1982); and *Office of Special Counsel Pennzoil*), 9 DOE ¶ 82,545 at 85,244 (1982). Instead, those firms should provide with their application a full explanation of the manner in which refunds would be passed through to their customers and how the appropriate regulatory body or membership group will be advised of the applicant's receipt of any refund money.

Firms and individuals who purchased products from the first purchaser also may be eligible to receive a portion of the funds. In order to obtain a refund, a person claiming to be an injured party must satisfactorily demonstrate that it purchased, during the Consent Order period, a specific quantity of refined products which were sold by Conoco. Privity with either Conoco or one of its first purchasers need not be established; evidence need only be presented that the products purchased by the claimant flowed through a chain of distribution leading back to Conoco. In addition, unless the purchaser is an ultimate consumer, it should generally be able to demonstrate that it did not pass through the cost increases resulting from the alleged overcharges to its own customers. For example, a purchaser who resold the identified product should be in a position to show that market conditions did not permit it to raise prices charged to downstream customers, and that consequently it was forced to absorb the cost increases that are represented by the alleged overcharges. In the absence of that showing we could conclude that the claimant was not injured in a monetary sense by the alleged overcharge.

In the *Vickers* decision, we also noted that the nature of the showing required could be too complicated for those individuals and firms—both direct and indirect purchasers—who might otherwise be entitled to apply for refunds and who purchased relatively small amonts of products. We also observed that many of those purchasers might lack the type of records required to support such a showing. We therefore established a 50,000 gallon per month (or 600,000 gallons per year) threshold level of purchases under which applicants, primarily smaller firms and individuals, were not required to make a detailed showing of actual injury. For those applicants who claimed less than that level of purchases, we required only proof of the amount of product purchased by the applicant during the consent order period. We have decided to use the same type of presumption for smaller claimants in this proceeding. *See Vickers; Office of Special Counsel for Compliance,* 4 DOE ¶ 82,511 at 85,043–44 (1979); and *Office of Special Counsel,* 9 DOE ¶ 82,545 at 85,245 (1982). Our experience in these refund proceedings continues to indicate that businesses with a relatively low level of sales do not generally maintain sophisticated recordkeeping systems. A requirement that such a firm compile eight years of old data could be overly burdensome. We are also concerned that the expense of preparing an application not be grossly disproportionate to the potential refund to be gained. Accordingly, we propose to set the threshold figure in this proceeding at 50,000 gallons per month or 600,000 gallons annually.[7]

In addition, as in previous cases, we propose that there is a class of potential claimants who may be presumed to have suffered no injury from Conoco's regulatory practices. Those parties are firms who made spot purchases of Conoco products. As we stated in *Vickers:*

> [T]hese customers tend to have considerable discretion in where and when to make purchases and would therefore not have made spot market pruchases of Vickers motor gasoline at increased prices unless they were able to pass through the full amount of Vickers' quoted selling price at the time of purchase to their own customers.

Vickers, 8 DOE at 85,396–97. We believe that the same rationale applies in this case. Consequently, we propose to establish a rebuttable presumption that spot purchasers were not injured by Conoco's pricing practices. As we observed in the *Amoco* Decision, spot purchasers tend to have considerable discretion in making purchases and were therefore not likely to have made spot market purchases at higher prices were they not able to pass through those higher prices to their own customers. *Amoco* at 88,200. Thus spot purchaser claimants will be required to submit additional evidence sufficient to establish that they were unable to recover the prices they paid to Conoco.

Any purchaser claiming a poriton of the refund amount should file an Application for Refund pursuant to 10 CFR § 205.283. Applications should provide all relevant information necessary to establish, a claim, including specific documentation concerning the date, place, price, and volume of product purchased, the retention of increased costs, and the extent of any injury alleged. Detailed procedures for filing applications will be provided in a final Decision and Order. *See Vickers.* Before disposing of any of the funds received as result of the Consent Order involved in this proceeding, we intend to publicize widely the distribution process and to provide an opportunity for any affected party to file a claim. In addition to publishing notice in the **Federal Register** notice will be provided in publications in the area in which Conoco marketed its products during the consent order. As a final matter, we noted that refunds applications filed on behalf of groups of claimants identifying themselves as adversely affected purchasers also will be considered. Such applications will be evaluated on a case-by-case basis.

2. Distribution of the Remainder of the Refined Product Pool

After all meritorious claimants have received their appropriate share of the refined product pool of Consent Order funds, the amount of monies remaining, while diminished, may not be exhausted. Any remainder of these funds should be distributed during a second stage of the refund process in furtherance of the goals set forth in the DOE's enabling legislation and implementing regulations. However, we wish to emphasize that any consideration of the second-stage procedure at this point in time involves a number of uncertainties. As we noted in *Vickers:*

> [Such] a step would be difficult to justify before the analysis and processing of Applications for Refund filed in the first stage of the distribution of the Consent Order funds to claimants, since the amount remaining after all meritorious claims have been paid directly affects the appropriateness of the second-stage distribution scheme.

8 DOE at 85,397. We will consider any comments received regarding second-stage alternatives and then issue a final Decision and Order establishing

procedurs for the first stage. In that decision, we will summarize and address briefly the comments received concerning second-stage procedure, and will solicit another round of comments on the distribution of the funds that may remain after payment of claims in the first stage. In this way, we will have adequate opportunity to consider the outstanding issues before reaching a final decision on the second stage.

B. Crude Oil Transactions

We have previously established refund procedures for consent orders involving the same type of crude oil-related violations as those allegedly committed by Conoco in the underlying enforcement proceedings. In *Office of Enforcement: In the Matter of Alfred B. Alkek,* 9 DOE ¶ 82,521 (1982) (hereinafter cited as *Alkek*) and *Office of Enforcement: In the Matter of Adams Resources and Energy, Inc.,* 9 DOE ¶ 82,553 (1982) (hereinafter cited as *Adams),* which involved consent orders and remedial orders with 58 firms, we established a two-stage refund procedure for consent order and remedial order funds received as a result of alleged crude oil regulatory violation. (*8*) We noted in *Alkek* that "the benefits associated with the moneys received as refunds for possible overcharges should be distributed in a manner that will inure to the maximum extent possible to those who were actually injured by the alleged overcharges." *Alkek* at 85,135. We stated that any party that believed it could prove an injury resulting from the alleged violations may file an Application for Refund, but cautioned that a claimant must affirmatively demonstrate that it has been injured by the alleged violation and should consequently receive a refund. *Id.* We suggested some kinds of evidence which would tend to demonstrate that a party was injured by a consent order firm's pricing or certification practices. *Id.* at 85,137.

However, in both *Adams* and *Alkek,* we point out that refiners which purchased crude oil directly from consent order firms and other refiners which participated in the Entitlements Program, 10 CFR 211.67, might not be appropriate recipients of the total pool of refund moneys available. Because of the way the Entitlements Program was set up, it had the effect of dispersing overcharges resulting from miscertifications of crude oil throughout the domestic crude oil refining industry. As we noted in *Alkek* :

> Miscertifications cause price-controlled crude oil to disappear. This disappearance caused the volume of old oil to be distributed through the Entitlements Program to decline and caused the DOSR [Domestic Crude Oil Supply Ratio] to be reduced. Thus, refiners who included more than the national average percentage of price-controlled oil in their crude oil receipts and runs to stills had to purchase a *greater* number of entitlements. Similarly, refiners with less thatn the national average percentage of price-controlled crude oil had *fewer* entitlements to sell. As a result, every refiner's cost of crude oil was increased. Thus, all refiners were affected by the alleged miscertification violations involved in the Consent Orders.

Alkek at 85,133 (citations omitted). These cost increases were treated by refiners exactly like other crude oil cost increases such as an OPEC price increase or an increase in a domestic posting for crude oil. To the extent they could increase their prices for refined petroleum products to reflect these cost increases, refiners were able to shift the effects of these cost increase to their customers. *Tenneco Oil Company/ Plateau, Inc.,* 10 DOE ¶ 85 ,015 (1982). If these cost increases were entirely passed through by a refiner, it incurred no injury as a result of miscertifications of crude oil. If the passthrough were less than complete, that refiner would likely have incurred some injury. However, because of such factors as the accumulation of refiners banks of increased costs, and changes in prevailing crude oil costs and price levels during the relatively lengthy period covered by the consent orders, it would be extremely burdensome to compute with precision the degree to which each refiner absorbed any increases in costs engendered by miscertifications, assuming such costs were absorbed.

We did note, however, that certain identifiable parties might be able to show demonstrable injury from the alleged violations. One such class of potentially injured parties was the group of resellers or refiners that obtained crude oil directly from the parties wich entered into consent orders in which an improper computation of the base price for crude oil was alleged. We noted that because this oil appeared to be properly certified, the alleged overcharges were not passed through the mechanisms of the Entitlements Program. As a result, theses direct purchases and refiners may have borne the effect of such overcharges and may be eligible for refunds to the extend that they could show that the alleged overcharges were not passed through to subsequent purchasers. *Alkek* at 85,133–34.

The second class of potentially injured parties which should be able to demonstrate injury consists of refiners that obtained crude oil from parties that entered into consent orders concerning violations alleged to have occurred before the commencement of the Entitlements Programs on November 1, 1984. As we noted in *Alkek,* because the effects of these overcharges were not passed through the Entitlements Program, these refiners were directly affected and may have absorbed the effects of the alleged overcharges. Thus we concluded that refiners in this class, like those that purchased crude oil for which the base price was improperly computed, would be eligible for refunds to the extent they could show that they did not pass these increased costs on to to subsequent purchasers. *See Tenneco Oil Company/Pleateua, Inc.,* 10 DOE ¶ 85,015 (1982).

A third class of claimants that may be able to demonstrate that injury resulting from a consent order firm's alleged violations consists of purchasers which used crude oil as industrial boiler fuel. These end-users of crude oil would also be eligible to file claims for refunds in these cases.

Despite our concern that it would be extremely difficult for refiners to demonstrate that they absorbed, rather than passed through, the injurious effects of a consent order firm's alleged violations, refiners are not foreclosed from submitting applications for refund in this proceeding. For periods subsequent to November 1, 1974, both refiners and subsequent purchasers that obtained crude oil or refined products produced or sold by the parties that entered into the consent orders involved in the proceeding could be eligible for refunds if they can show that the Entitlements Program did not negate the adverse effects caused by the alleged violations and could accurately calculate the impact of those effects on them. *Alkek* at 85,136–37.

As noted above, because the types of alleged violations that underlie the present proceeding are substantially the same as those that were the subject of the *Alkek* and *Adams* proceedings, we have determined that it is appropriate to formulate a two-stage refund proceeding modeled after those proceedings. We therefore propose to establish first-stage refund procedures for the distribution of the $11 million crude oil pool of Consent Order funds in the same manner and using the same principles as those refund applications that were filed pursuant to the *Alkek* and *Adams* determinations. We noted in *Alkek,* however, that if our tentative conclusions were correct, the effects of the alleged overcharges were spread among all refiners by the Entitlements Program and were largely passed on by

them and subsequent purchasers to ultimate consumers. Consequently, we believe that it would be premature for consumers and consumer groups to file Applications for Refund with respect to the crude oil pool of Consent Order funds until the refiners' and resellers' claims have been resolved. *Alkek* at 85,136.

Because of the difficulty inherent in establishing the level of injury to parties in the majority of these crude oil refund cases, there is likely to be a substantial portion of crude oil refund moneys remaining after all successful first-stage claimants have been paid. As in previous cases, we shall hold in abeyance our determination as to appropriate second-stage procedures for this crude oil pool of Consent Order funds until we know how much money will remain after first-stage claims are paid. *See Office of Enforcement*, 9 DOE ¶ 82,508 (1982). Our views concerning possible second-stage resolutions are contained in *In Re Stripper Well Exemption Litigation*, No. HEF-0025, 48 FR 57608 (1983).

It is Therefore Ordered That:

The Petitions for Implementation of Special Refund Procedures filed by the Office of Special Counsel on December 23, 1982 and November 14, 1983, In the Matter of Conoco Inc. (Conoco), are hereby granted. The refund amounts, plus accrued interest, remitted to the Department of Energy by Conoco pursuant to the Consent Order executed on July 2, 1982, will be distributed in accordance with the foregoing Decision.

Footnotes

(*1*) As of July 31, 1984, the $14 million principal deposited in Conoco's Consent Order Account had accrued $887,002.28 in interest, bringing the total amount in the account at that time to $14,887,002.28.

(*2*) The following either submitted comments to the Proposed Consent Order or subsequently expressed an interest in this proceeding:

Air Transport Association of America
State of Alabama
American Bus Association
Truman Arnold Distributing Company
Association of American Railroads
Atchison, Topeka and Santa Fe Railway Company
Atteberry Oil Company, Inc.
State of California
Commmonwealth Oil Refining Company, Inc.
State of Connecticut
Crockett Oil Company
D.C. Energy Office
Harold Dickery Oil
E-Z Serve, Inc.
Sylvester Endres
Saxon Farmer
Forde Johnson Oil Company
Franklin Oil Company
Hillger Oil Company
Hoover Oil Company
State of Illinois
Illinois Department of Energy and Natural Resources
State of Indiana
Jameson Oil Company
Bill Keeling Oil Company, Inc.
State of Maine
Major Oil Company
The Mason and Dixon Lines, Inc.
Massachusetts Executive Office of Energy Resources
E.L. Morgan Company
National Consumer Law Center
National Council of Farmer Cooperatives
National Oil Jobbers Council
NERCO, Inc.
State of New Jersey
State of New York
NOJC Conoco Brand Committee
Parker Oil Company
Red Band Oil Company
Reed Distributing Company, Inc.
Reed-Weitzel, Inc.
Robinson Oil Company
System Fuels, Inc.
Thornhill Oil Company, Inc.
State of Vermont
Western Marketing Inc.
York Oil Company
Zephyr, Inc.

(*3*) Petition for Implementation of Special Refund Procedures, filed December 23, 1982, at 2; Petition for Implementation of Special Refund Procedures, filed November 14, 1983, at 3.

(*4*) *See* Response of Zephyr, Inc., to Petition for Implementation of Special Refund Procedures, filed February 24, 1984, and Supplemental Comments, filed February 28, 1984.

(*5*) *See* Comments of Douglas B. Mitchell, filed November 3, 1983, on behalf of National Oil Jobbers Council (NOJC) Conoco Brand Committee. NOJC also argues that although Conoco's prices to its jobbers were consistently higher than the prices of other major branded refiners serving the same class of trade, Conoco's Kayo stations and commercial sales unit sold Conoco products at extremely low prices. Consequently, NOJC suggests that Conoco jobbers were more likely to have been overcharged and less likely to have passed those overcharges through to their customers. Data in support of this argument were submitted to OHA on November 17, 1983, December 2, 1983, December 13, 1983, and January 5, 1984. In view of this material, NOJC concludes that Conoco jobbers should be allowed a presumption of injury on every gallon purchased by claimants, not just a threshold amount as generally applied in other Subpart V proceedings. We invite those interested parties who may agree or disagree with NOJC's suggestion to comment on its proposal. At the present time, however, we are inclined to treat jobbers and other direct or indirect purchasers in the distribution chain equally.

(*6*) The Comments of Zephyr, Inc., filed February 24, 1984, analyze the twenty separate enforcement proceedings pending against Conoco on the date of the Consent Order, and conclude that the dollar amount of alleged violations in eighteen of those cases (involving refined products) is approximately $262.9 million, where the only enforcement action involving crude oil sales specifies approximately $23.8 million in alleged violations. We note, however, that many of the refined product enforcement actions involved the recalculation of cost banks, which does not automatically result in a dollar-for-dollar liability with respect to overcharges.

(*7*) At our request, and pursuant to a letter agreement between the DOE and Conoco, dated July 2, 1982, Conoco is compiling the volume data necessary for calculation of the pro rata amount of refund per gallon of covered product. Since we have not yet received this information, the calculation of the amount of refund per gallon for either a crude oil or refined products claimant is not possible at the time of issuance of this Proposed Decision and Order. We do intend, however, to limit the minimum amount of refund that will be distributed to potential claimants. In prior refund cases, we have not granted refunds for less than $15.00 (the approximate cost to the government of issuing refund checks) because the cost of issuing such small refunds exceeds the restitutionary benefits which may be achieved. *See* Office of Special Counsel, 10 DOE ¶85,048 at 88,214 (1982). We will utilize the same threshold here.

(*8*) We subsequently added to the Alkek/Adams "pools" the portion of the Amoco consent order funds that was allocated for crude oil claims. *See* Office of Special Counsel, 10 DOE ¶85,048 at 88,203. We have also discussed the potential distribution of crude oil overcharge funds in In Re Stripper Well Exemption Litigation, Case No. HEF-0025, 48 FR 57608 (1983).

[FR Doc. 84-26781 Filed 10-9-84; 8:45 am]
BILLING CODE 6450-01-M

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, DOE.

ACTION: Notice of Implementation of Special Refund Procedures and Solicitation of Comments.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy solicits comments concerning the appropriate procedures to be followed in refunding approximately $40,000 in consent order funds to members of the public. This money is being held in escrow following the settlement of enforcement preceedings involving Vangas, Inc., a reseller-retailer of propane whose main office is located in Fresno, California.

DATE AND ADDRESS: Comments must be filed within 30 days of publication of this notice in the **Federal Register** and should be addressed to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue,

SW., Washington, D.C. 20585. All comments should conspicuously display a reference to case number HEF–0189.

FOR FURTHER INFORMATION CONTACT: Thomas O. Mann, Deputy Director, Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252–2094.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(b) of the procedural regulations of the Department of Energy, 10 CFR 205.282(b), notice is hereby given of the issuance of the Proposed Decision and Order set out below. The proposed Decision relates to a consent order entered into by Vangas, Inc., which settled possible pricing violations in the firm's sales of propane and charges for storage tank rental to customers of its California retail division during the September 1, 1973 through October 31, 1977 audit period.

The Proposed Decision sets forth the procedures and standards that the DOE has tentatively formulated to distributed the contents of an escrow account funded by Vangas pursuant to the consent order. The DOE has tentatively established procedures under which retail customers who rented storage tanks from Vangas in California during the audit period may file claims for refunds from the consent order fund. Applications for Refund should *not* be filed at time. Appropriate public notice will be given when the submission of claims is authorized.

Any member of the public may submit written comments regarding the proposed refund procedures. Commenting parties are requested to submit two copies of their comments. Comments should be submitted within 30 days of publication of this notice in the **Federal Register**, and should be sent to the address set forth at the beginning of this notice. All comments received in this proceeding will be available for public inspection between the hours of 1:00 to 5:00 p.m., Monday through Friday, except federal holidays, in the Public Docket Room of the Office of Hearings and Appeals, located in Room 1E–234, 1000 Independence Avenue, S.W., Washington, D.C. 20585.

Dated: September 28, 1984.

George B. Breznay,

Director, Office of Hearings and Appeals.

Proposed Decision and Order of the Department of Energy

Implementation of Special Refund Procedures

Name of Case: Vangas, Inc.
Date of Filing: October 13, 1983.
Case Number: HEF–0189.

This proceeding involves a Petition for the Implementation of Special Refund Procedures filed by the Economic Regulatory Administration (ERA) with the Office of Hearings and Appeals (OHA) pursuant to the provisions of 10 CFR Part 205, Subpart V. Under those procedural regulations, ERA may request that OHA formulate and implement special procedures to make refunds in order to remedy the effects of actual of alleged violations of the Department of Energy (DOE) regulations. ERA filed the petition in this case in connection with a consent order that it entered into with Vangas, Inc.

Vangas marketed petroleum products to resellers and end-users during the period of federal price controls, and was therefore subject to the Mandatory Petroleum Price Regulations set forth at 10 CFR Part 212, Subpart F. Its main office is in Fresno, California. A DOE audit of Vangas's records revealed possible violations of DOE price regulations with respect to the rental of liquid propane gas storage tanks to consumers through its California retail division during the period commencing September 1, 1973 and ending October 31, 1977 (hereinafter referred to as the audit period).

In order to settle all claims and disputes between Vangas and the DOE regarding the firm's sales of propane and charges for storage tank rental during the audit period, Vangas and the DOE entered into a consent order on July 30, 1980. Under the terms of the consent order, Vangas agreed to refund $403,628, plus interest, "to tank rental customers in the California retail division by setting prices for propane two cents ($.02) per gallon below each branch's maximum lawful selling prices or each branch's market prices, whichever are lower, until the total amount has been refunded." The consent order provided that, in the event that the pricing of propane was exempted from the DOE petroleum price regulations before the total amount was refunded, the unrefunded balance would be turned over to the DOE. At the time of decontrol, Vangas had refunded all but $30,362, including interest, which the firm subsequently remitted to the DOE. That sum is being held in an interest-bearing escrow account established with the United States Treasury pending a determination of its proper distribution. As of July 31, 1984, the Vangas escrow account had earned $12,956.28 in interest.

This Proposed Decision discusses the establishment of procedures for distribution of the $30,362 that was deposited into the escrow account, plus the accrued interest. We will describe the information that a claimant should submit in order to demonstrate that it is eligible to receive a portion of the consent order funds. We will not, however, propose procedures at this time for the disposition of funds that may remain in the escrow account after all claims have been paid.

I. Jurisdiction

We have considered ERA's Petition for the Implementation of Special Refund Procedures and determined that it is appropriate to establsih such a proceeding with respect to the Vangas consent order fund. The Subpart V regulations set forth guidelines by which OHA may formulate and implement a plan of distribution for funds received as a result of an enforcement proceeding. 10 CFR Part 205, Subpart V. The Subpart V process may be used in situations where the DOE is unable readily to ascertain the persons who were injured or the amounts such persons may be eligible to receive as a result of enforcement proceedings. *See, e.g., Office of Enforcement*, 9 DOE ¶ 82,553 at 85,284 (1982). In other recent decisions, we have discussed at length our jurisdiction and authority to fashion special refund procedures. *Id.* ERA indicated in its present Petition that it is unable to identify injured customers in this case, and there is nothing in the record to indicate that ERA is incorrect. We will therefore grant ERA's petition and assume jurisdiction over the distribution of the Vangas consent order funds.

II. Refund Procedures

A. Refunds to Injured Purchasers

We propose that the Vangas consent order funds be distributed to claimants who satisfactorily demonstrate that they have been injured by Vangas's alleged violations. The information available to us at this time regarding Vangas operations does not provide the names and addresses of the firm's customers. However, the consent order limits the universe of potential refund recipients to those who rented propane tanks through the California retail division. Therefore, the pool of eligible claimants will comprise consumers who rented such tanks from a Vangas branch located within the State of California (or in Sparks, Nevada) during the period September 1, 1973 through October 31, 1977.

The ERA audit materials indicate that charges for tank rentals were assessed yearly and increased with the capacity of the tank rented. In order to receive a refund, each claiment will be required to

establish the length of time during the consent order period that it rented its tank or tanks from Vangas. In addition, it must establish the total volume capacity of the tank or tanks it rented for that period.

As stated above, the consent order provides that refunds be made to only one class of purchasers: customers of the firm's California retail division. Therefore, by definition, these potential claimants being ultimate consumers of Vangas petroleum products, were injured by the alleged violations because they had no opportunity to pass on the costs associated with the alleged overcharges. Consequently, applicants will not be required to submit any proof of injury other than evidence of storage tank rental, in order to qualify for a refund. *See Standard Oil Co. (Indiana)/Union Camp Corp.*, 11 DOE ¶ 85,007 (1983); *Standard Oil Co. (Indiana)/Elgin, Joliet, and Eastern Railway*, 11 DOE ¶ 85,105 (1983) (end-users of various refined petroleum products granted refunds solely on the basis of documented purchase volumes). In this proceeding an end-user/consumer need only document the capacity of the propane storage tanks that it rented from Vangas and the length of time it rented them during the audit period in order to prove that it was injured and receive a refund.

A successful refund applicant will receive a refund based upon a volumetric method of allocating refunds. Under this method, a volumetric refund amount is calculated by dividing the settlement amount by an estimate of the total storage capacity of Vangas's rental propane tanks during the period covered by the consent order. (*1*) In the present case, based on the information available to us at this time, the volumetric refund amount is $.000539 per gallon of storage capacity rented per year ($30,362 received from Vangas, Inc., divided by 56,249,991 gallons (*2*), the firm's total storage capacity that was rented to California consumers during the audit period), exclusive of interest.

Successful claimant's refunds will be calculated by multiplying the capacity of the tanks that they rented by the number of years (or fractions of years) during which they rented from Vangas, then multiplying the result by the per-gallon refund amount. Successful claimants will also receive a proportionate share of the interest accrued on the consent order fund since it was remitted to DOE. As of July 31, 1984, accrued interest will increase the per-gallon refund amount to $.000770. Although we have proposed a volumetric method for allocating refunds, a claimant may submit additional evidence if it claims that it bore a disproportionate percentage of the alleged overcharges, resulting in a level of economic injury greater than the volumetric figure.

As in previous cases, we will establish a minimum refund amount of $15.00 for first stage claims. We have found through our experience in prior refund cases that the cost of processing claims in which refunds are sought for amounts less than $15.00 outweighs the benefits of restitution in those situations. *See, e.g., Uban Oil Co.*, 9 DOE ¶ 82,541 at 85,225 (1982); *see also* 10 CFR 205.286(b).

Detailed procedures for filing applications will be provided in a final Decision and Order. Before disposing of any of the funds received as a result of the consent order involved in this proceeding, we intend to publicize widely the distribution process, to solicit comments on the proposed refund procedures, and to provide an opportunity for any affected party to file a claim. In addition to publishing notice in the **Federal Register**, we will provide announcements that summarize the refund proceeding to the local media serving the areas in which Vangas's California retail division rented propane tanks. We solicit comments regarding any additional methods for advising potential claimants of this proceeding.

B. Distribution of the Remainder of the Consent Order Funds

In the event that money remains after all claims by eligible consumers have been disposed of, undistributed funds could be distributed in a number of different ways. However, we will not be in a position to decide what should be done with any remaining funds until the refund procedure described above is completed. We will accept comments containing proposals for alternative distribution of the remaining funds upon proper notice to the parties and the interested public.

It Is Therefore Ordered That:

The refund amount remitted to the Department of Energy by the Vangas, Inc. pursuant to the consent order executed on July 30, 1980 will be distributed in accordance with the foregoing Decision.

Footnotes

(*1*) Volumetric refund amounts are usually calculated dividing the settlement amount by the total gallonages of products covered by the consent order. In the present case, however, in which the consent order specified that all alleged overcharges were due to tank rental and not due to the pricing of any product, we have determined that the proposed method will result in the most equitable distribution to injured parties.

(*2*) This figure is equal to 13,500,000 gallons per year multiplied by 4⅛ years (50 months). We determined that the California retail division rented an estimated average of 13,500,000 gallons of storage capacity in each year of the consent order period by considering the actual storage capacity figures supplied by the firm for the years 1976 and 1977, extrapolating estimates for the earlier years based on those figures, and taking an average of the estimated and actual yearly figures.

[FR Doc. 84-26760 Filed 10-9-84; 8:45 am]

BILLING CODE 6450-01-M

Issuance of Decisions and Orders; Week of August 20 Through August 24, 1984

During the week of August 20 through August 24, 1984, 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.

Appeal

John Hnatio, 8/22/84; HFA-0214

John Hnatio filed an Appeal under the Freedom of Information Act in which he sought an undeleted version of a document entitled "Talking Points for Meeting with Mr. Christy, dated June 17, 1983." In considering the Appeal, the Office of Defense Programs advised the Office of Hearings and Appeals that certain portions of the document initially withheld pursuant to Exemption 1, which related to corrected security deficiencies at DOE facilities, were no longer classified, and could therefore be released. Accordingly, the Office of Hearings and appeals directed the release of the unclassified portions of the document.

Remedial Order

Starks Shell Service, 8/22/84; HRO-0005

Starks Shell Service objected to two Proposed Remedial Orders which the Economic Regulatory Administration issued to the firm on May 29, 1981. In the Proposed Remedial Orders, the ERA found that the firm had sold motor gasoline from its two retail outlets at prices in excess of the firm's maximum lawful selling prices under the Mandatory Petroleum Price Regulations. After considering the firm's Statement of Objections, the DOE concluded that the Proposed Remedial Orders should be issued, with certain modifications, as final Orders.

Request for Exception

Petro-Wash, Inc., 8/24/84; HEE-0094

Petro-Wash, Inc. filed an Application for Exception from the EIA reporting requirements in which the firm sought to be relieved of the responsibility to submit Form EIA-782B, entitled "Reseller/Retailers' Monthly Petroleum Product Sales Report." In

considering the request, the DOE found that the firm had failed to show that it was difficult for it to compile the required information or that preparation of the Form placed an unreasonable burden upon it. Accordingly, exception relief was denied.

Interlocutory Order

Economic Regulatory Administration (RFB Petroleum, Inc.), 8/21/84: HRZ-0159

The Economic Regulatory Administration filed a motion to join three additional parties to a Proposed Remedial Order that was issued to RFB Petroleum, Inc. In considering the request, the DOE stated that it need not at this time reach a decision on liability, but only whether the ERA has established a *prima facie* case. The DOE granted the motion. In doing so, the DOE found that RFB Trading Company, Inc. and Robert F. Brown, an individual, should be joined with respect to the actual transactions engaged in by RFB Trading and by Brown, through a sole proprietorship. The DOE also found that there was suffcient evidence to warrant joining Brown, who is the principal shareholder and officer of RFB Trading and RFB Petroleum, with respect to the transactions carried out by these corporate entities. CMC Oil Company was also joined as a party to the proceeding on the ground that it was a joint venturer in some of the transactions at issue.

Supplement Order

Atlantic Richfield Co./OSC, 8/21/84: HRX-0103

This supplemental remedial order concerns submissions filed by Atlantic Richfield Company (Arco) and the Office of Special Counsel for Compliance (OSC) pursuant to a final remedial order issued to Arco by the Office of Hearings and Appeals (OHA) on March 22, 1984. In the March 22 Remedial Order, the OHA retained jurisdiction over portions of the Proposed Remedial Order issued to Arco in 1979, including paragraphs pertaining to the St. Mary Parish Lease, and the State 3242 and 3120 Leases. The Remedial Order required the OSC to submit revised calculations of the overcharges for the St. Mary Parish Lease, and required Arco to submit documentation indicating the percentage royalty interests held by the State of California on State 3120 and 3242 Leases. In the present decision, the OHA accepted the submissions of the parties, and held that the total amount of overcharges for the St. Mary Parish Lease and the State 3242 Lease is $3,836,296.99. Accordingly, Arco is ordered to deposit that amount plus interest in the interest bearing account set up pursuant to the March 22, 1984 remedial order.

Implementation of Special Refund Procedures

Amtel, Inc., 8/24/84: HEF-0027

The Office of Hearings and Appeals (OHA) issued a final Decision and Order implementing special refund procedures to distribute $1,250,000 received as a result of a consent order entered into by Amtel, Inc. and the Office of Enforcement on February 7, 1980. In this Decision, the OHA determined that a two-stage refund process is the most efficacious way to distribute the consent order monies. The Decision therefore initiated the first step of the refund process by inviting applications for refund from injured purchasers of gasoline and/or middle distillates from Amtel or its subsidiaries. The Decision noted that the OHA will not determine procedures for the second stage until all meritorious first-stage claims have been paid.

Webster Oil Company, Inc., 8/20/84: HEF-0195

The Office of Hearings and Appeals issued a final Decision and Order setting forth procedures to be used in filing applications for refund for a portion of the settlement funds obtained as the result of the consent order which the DOE entered into with Webster Oil Company, Inc. The funds will be available to customers which purchased propane, motor gasoline, or Nos. 1 and 2 fuel oils from Webster Oil Company, Inc., Webster Oil and Gas Company, Inc., Webster Hydro Gas Company, Inc., Sac-Osage Oil and Gas Company, Inc., or Tri-Lakes Oil and Gas Company, Inc. during the period November 1, 1973 (October 1, 1973 for propane) through May 20, 1974. Applications for refund must be postmarked within 90 days of the publication of the decision in the **Federal Register**. Specific information to be included in refund applications is discussed in the decision.

Refund Applications

OKC Corporation/Curt's Oil Company, 8/21/84: RF13-19

The DOE issued a Decision and Order concerning an Application for Refund filed by Curt's Oil Company (Curt's). Curt's sought a portion of the settlement fund obtained by the DOE through a consent order entered into with OKC Corporation. Curt's is an independent retailer of petroleum products which purchased motor gasoline from OKC during the period covered by the Consent Order. In analyzing Curt's refund application, the DOE noted that a demonstration of the existence of unrecouped product cost "banks" is a necessary prerequisite to establishing eligibility for a refund based on a purchase level exceeding 50,000 gallons per month of a covered product. The DOE found tht since Curt's failed to maintain, and could not therefore submit, cost bank data in support of its refund request, the applicant had not made a sufficient demonstration of injury due to OKC's pricing practices to warrant a refund in excess of the threshold level. Accordingly, the DOE limited Curt's refund to the threshold level. The refund granted totalled $11,777 plus interest.

Standard Oil Company (Indiana)/E.P. Nisbet Company, 8/20/84: RF21-12346

The DOE issued a Decision and Order concerning an Application for Refund filed by a reseller of middle distillates, E.P. Nisbet Company (E.P. Nisbet). As a reseller of middle distillates, E.P. Nisbet's refund was calculated based on the presumption of injury methodology outlined in *Office of Special Counsel*, 10 DOE ¶ 85,048 (1982). Pursuant to this methodology, the refund granted to E.P. Nisbet totalled $17,704.

Dismissals

The following submissions were dismissed:

Company	Case No.
Bates & Virginia Standard	RF21-8083.
Carondelet Amoco	RF21-8082.
Southside Standard	RF21-8084.
Jamestown Garage & Service	RF21-7155.
West End Amoco Inc	RF21-7883.
Self Fill & Fix	RF21-7984.
Johnny's Ford Service	RF21-8047.
Fred Evans Standard	RF21-7700.
George Koenig	RF21-12159.
Linck's Amoco Service	RF21-7901.
Stillwater Standard	RF21-11999.
George Manoff	RF21-7690.
Broadway Standard Station	RF21-4810.
Timberlaine Brothers	RF21-8316.
O'Loughlin Oil Company	RF21-7657.
Joe Rickman's Standard Service	RF21-7644.
Dick's Ephrain Standard	RF21-7852.
William K. Kmudsen	RF21-7599.
Richard Balota	RF21-7241.
Mel-Burn Servicenter No. 6	RF21-6960.
Benton Amoco	RF21-6816.
Moger's Auto Repair Service	RF21-7578.
Resources Extraction and Processing Co	HRD-0121 HRD-0129 HRH-129
Two Brothers Amoco Service	RF21-7763.

Copies of the full text of these decisions and orders are available in the Public Docket Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. they are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

Dated: September 19, 1984.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 84-26762 Filed 10-9-84; 8:45 am]

BILLING CODE 6450-01-M

Issuance of Decisions and Orders; Week of August 27 through August 31, 1984

During the week of August 27 through August 31, 1984, the decisions and orders summarized below were issued with respect to appeals and applications for 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

Casson, Calligaro & Mutryn, 8/31/84: HFA-0237

Casson, Calligaro & Mutryn filed an Appeal from a denial of a request for information submitted under the Freedom of Information Act. The firm requested access to certain documents related to the definition of "produced" in the Windfall Profits Tax Act. Because all of the documents were either drafts or intra-agency memoranda concerning drafts, the DOE concluded that they had been properly withheld from disclosure under Exemption 5 of the Freedom of Information Act, and the Appeal was denied.

Merit Petroleum, Inc., 8/27/84; HFA–0235

Merit Petroleum, Inc. filed an Appeal from a denial by the Office of Fuels Programs of the Economic Regulatory Administration of a Request for Information which was submitted under the Freedom of Information Act (the FOIA). The requester sought release of 182 specifically enumerated documents. In considering the Appeal, the DOE found that the Denying Official had properly withheld most of the documents pursuant to Exemption 5 of the FOIA. The DOE found, however, that certain documents contained segregable factual material that could not be withheld under Exemption 5. That material was ordered released. The DOE further held that it was necessary to remand certain documents for a more adequate explanation of the reasons for withholding those documents. Accordingly, the Appeal was granted in part and denied in all other respects.

Motion for Discovery

Warrior Oil Co., 8/29/84; HRD–0182, HRH–0182

On October 17, 1983, the ERA issued a PRO to Warrior Oil Company (Warrior) alleging that the firm charged prices for crude oil in excess of its maximum legal selling price (MLSP) in violation of 10 CFR 212.10 and 212.93. Warrior sought extensive audit related discovery in order to support its claim that the ERA had not supplied it with sufficient information to understand the allegations in the PRO. The firm also sought both discovery and an evidentiary hearing for the purpose of showing that the product it sold was not crude oil as defined in 10 CFR 212.31. Specifically, Warrior contended that the product was virtually solid upon extraction and could not have been fairly considered a liquid at atmospheric pressure as described in § 212.31.

The OHA examined both the Attachments to the PRO and the audit workpapers supplied to the firm, and found that they contained all the information necessary to understand and challenge the allegations made in the PRO. Specifically, the OHA tracked the ERA's calculation of Warrior's MLSP, explaining in detail the various components of that calculation and how those components interrelate. The OHA determined, however, that an evidentiary hearing should be convened in order to allow the firm to present evidence regarding the physical characteristics of the product it sold. Accordingly, the Motion for Discovery was denied, and the Motion for an Evidentiary Hearing was granted.

Motion for Evidentiary Hearing

Marathon Petroleum Co., Marathon Oil Co.; 8/28/84; HRH–0021

On October 3, 1983, Marathon Petroleum Company/Marathon Oil Company (Marathon) filed a Motion for Evidentiary Hearing in connection with a Statement of Objections to a Proposed Remedial Order that was issued to the firm by the Economic Regulatory Administration (ERA) on July 23, 1980. In considering the motion, the DOE determined with respect to the purported factual issues presented by Marathon that a number of the issues should be deemed admitted by the ERA, that many of the issues were actually legal in nature, and that many of the remaining asserted issues were either vague or irrelevant. The DOE determined, however, that Marathon had presented one disputed issue of fact that was appropriate for resolution in the context of an evidentiary hearing. Accordingly, Marathon's Motion for Evidentiary Hearing was granted in part.

Interlocutory Orders

Economic Regulatory Administration, 8/27/84; HRZ–0210

The Economic Regulatory Administration filed a motion to join Hudson Refining Company, Inc. (Hudson Refining) as a party respondent in a pending Proposed Remedial Order (PRO) proceeding involving Hudson Oil Company, Inc. In considering the motion, the Office of Hearings and Appeals determined that there was good cause to join Hudson Refining, that Hudson Refining would not be unduly prejudiced by the joinder, and that joinder would not unduly delay the PRO proceeding. The Office of Hearings and Appeals also determined that Hudson Refining should be permitted to raise its objections to the PRO issued to Hudson Oil Co. Accordingly, the ERA Motion was granted.

Texakota, Inc., 8/31/74; HRZ–0218

Texakota, Inc. filed a motion to dismiss a Proposed Remedial Order (PRO) issued to it by the Office of Special Counsel of the Economic Regulatory Administration (OSC). Texakota argued that the PRO fails to meet regulatory and due process requirements because it contains many erroneous factual allegations. The OSC opposed the motion on the grounds that it was merely an effort to delay the filing of the firm's Statement of Objections, and the factual issues raised should be argued in the Statement of Objections. The Office of Hearings and Appeals held that the PRO issued to Texakota satisfies the regulatory requirements for a PRO and establishes a prima facie case. The OHA further held that challenges to facts alleged in the PRO should be presented as defenses in Texakota's Statement of Objections. Accordingly, the motion to dismiss was denied.

Implementation of Special Refund Procedures

U.S. Compressed Gas Co., 8/28/84; HEF–0188

The Office of Hearings and Appeals issued a final Decision and Order setting forth procedures to be used in filing applications for refunds of a portion of the settlement funds obtained as the result of a consent order which the DOE entered into with U.S. Compressed Gas Company. The funds will be available to customers who purchased propane from U.S. Compressed Gas during the period November 1973 through September 1976. Applications for refund must be postmarked within 90 days of the publication of the decision in the **Federal Register**. Specific information to be included in refund applications is discussed in the decision.

Windham Gas and Oil Co., 8/27/84; HEF–0198

The Office of Hearings and Appeals issued a final Decision and Order setting forth procedures to be used in filing applications for refund for a portion of the settlement funds obtained as the result of the consent order which the DOE entered into with Windham Gas and Oil Company. The funds will be available to customers which purchased motor gasoline from Windham during the period March 1, 1979 through August 31, 1979. Applications for refund must be postmarked within 90 days of the publication of the decision in the **Federal Register**. Specific information to be included in refund applications is discussed in the decision.

Refund Applications

Belridge Oil Co./New York, Palo Pinto Oil and Gas/New York, 8/27/84; RQ8–108, RM5–1

The State of New York filed applications for refund in connection with settlement funds obtained as the result of the consent order which the DOE entered into with Belridge Oil Company and Palo Pinto Oil and Gas. The Palo Pinto refund had been prevously approved, and New York's present application was to modify its utilization plan in that proceeding in accordance with the proposed utilization plan in the Belridge proceeding. The revised New York plan proposes to use both refunds to expand its Local Ridesharing Service Program. The DOE found that New York's plan in both proceedings adequately benefits that class of individuals which was affected by the alleged overcharges. Accordingly, the Palo Pinto request was approved and the Belridge refund was granted.

OKC Corp./E–Z Serve, Inc., 8/29/84; RF13–21

The DOE issued a Decision and Order concerning an Application for Refund filed by E–Z Serve, Inc. E–Z Serve sought a portion of the settlement fund obtained by the DOE through a consent order entered into with OKC Corporation. E–Z Serve is an independent retailer of petroleum products which purchased motor gasoline from OKC during the consent order period. Upon evaluating E–Z Serve's refund request, the DOE concluded that E–Z Serve was injured by OKC's pricing practices during the consent order period and was therefore eligible for a refund. However, before granting E–Z Serve's refund request, the DOE adjusted downward the volume of OKC gasoline purchased by E–Z Serve which was eligible for refund consideration to reflect periods when OKC gasoline was competitively priced.

Standard Oil Co. (Indiana)/Cedar Valley Standard, et al., 8/31/84; RF21–04059 et al.

The DOE issued a Decision and Order concernig 24 Applications for Refund filed by retailers of Amoco motor gasoline. All of these firms elected to apply for a refund based upon the presumption of injury and the formulae outlined in *Office of Special Counsel,* 10 DOE ¶ 85,048 (1982). In considering these applications, the DOE concluded that each of the 24 applicants should receive a refund based upon the total volume of their Amoco motor gasoline purchases. The refunds granted in this proceeding total $19,958.

Standard Oil Co. E.P. Nisbet Co., 8/30/84; RF21-12356

A Decision and Order has been issued to E.P. Nisbet Company in which a refund granted to the firm was incorrectly calculated. In this Decision, therefore, the correct refund amount was calculated, and the DOE granted E.P. Nisbet a refund in the amount of $6,728.

Dismissals

The following submissions were dismissed:

Company name	Case No.
A.L. Scongno's Amoco	RF21-7370
American Wash System	RF21-12227
Amoco Kwik Shop	RF21-11363
Bernard Johnson	RF21-22670
Bill Drenmen	RF21-11668
Bill's Standard	RF21-11852
Billy D. Cagle	RF21-6900
Bob Booth	RF21-11683
Carol Wiechen	RF21-11851
Clarence's Standard Service	RF21-11420
Donaldson's Standards	RF21-11861
Earl Humphrey	RF21-11686
Fred Bahls	RF21-11859
George Fawns	RF21-11854
Gillespie Standard Service	RF21-11316
Gregory D. Hobbs	RF21-11871
H.C. Billingsley	RF21-11684
Herbert Vinson	RF21-11672
Houma Oil Company, Inc.	HRO-0206
Jeff Streeter	RF21-11870
Jim Seifert	RF21-11865
Joe Stefko	RF21-11879
	RF21-11880
	RF21-11881
Joseph Zigmians	RF21-0857
Liggins Standard	RF21-11058
Mack Hood	RF21-11868
Neck-Pike Service Station	RF21-10713
Raymond J. Herbst Standard	RF21-11050
Roy DeJarnett	RF21-11877
	RF21-11878
Sher's Automotive Center	RF21-11013
Standard Oil Station	RF21-3535
	FR21-3536
Stressman Service	RF21-11090
Swigert & Robinson Standard	RF21-11680
Texakota, Inc.	HRS-0045
	HRT-0045

Copies of the full text of these decisions and orders are available in the Public Docket Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

Dated: September 19, 1984.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 84-26763 Filed 10-9-84; 8:45 am]

BILLING CODE 6450-01-M

Issuance of Decisions and Orders; Week of September 10 through September 14, 1984

During the week of September 10 through September 14, 1984, the decisions and orders summarized below were issued with respect to appeals and applications for 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.

Copies of the full text of these decisions and orders are available in the Public Docket Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

Dated: September 26, 1984.

George B. Breznay,

Director, Office of Hearings and Appeals.

Appeals

John Wilson, 9/10/84; HFA-0236

John Wilson filed an Appeal from a partial denial by the Office of General Counsel of the Bonneville Power Administration (BPA) of a Request for Information which he had submitted under the Freedom of Information Act. The information request had been denied on the ground that the information sought fell within Exemption 5 of the Act, either because it was predecisional and deliberative, or because it was attorney work-product which had been prepared in anticipation of litigation. In considering the Appeal, the DOE found that certain of the documents were not properly withheld and that others contained some segregable factual portions which could be released. Accordingly, the Appeal was granted in part.

Sutherland, Asbill & Brennan, 9/11/84; HFA-0239

Sutherland, Asbill & Brennan filed an Appeal from a denial by the Economic Regulatory Administration of a Request for Information which the firm had submitted under the Freedom of Information Act. In considering the Appeal, the DOE determined that release of the names of crude oil resellers in connection with information from Schedule IV of Form ERA-69 would not cause harm to the competitive positions of the resellers. In this regard, the DOE found that the information, which was obtained prior to decontrol, had very little predictive value regarding current business practices. The DOE therefore concluded that the information was not exempt from mandatory disclosure pursuant to 5 U.S.C. 552(b)(4). Accordingly, the Appeal was granted.

Remedial Order

Echo Drilling, 9/11/84; HRO-0140

Echo Drilling, Inc. objected to a Proposed Remedial Order that the Economic Regulatory Administration (ERA) of the Department of Energy issued to the firm on November 5, 1982. In the Proposed Remedial Order, ERA alleged that during the period June 1, 1974 through January 31, 1981, Echo resold crude oil at prices that exceeded the maximum price levels applicable to crude oil resellers. In considering the firm's Statement of Objections, the DOE found that, contrary to the firm's assertion, Echo was a reseller and that it had improperly raised its transportation fees, thereby increasing the prices of the crude oil it resold to levels above those permitted under Subparts F and L of the DOE price regulations. Accordingly, the DOE concluded that the Proposed Remedial Order should be issued as a final Remedial Order of the Department of Energy.

Request For Stay

Traco Petroleum Co, 9/14/84; HRS-0044

Traco Petroleum Company requested that the Office of Hearings and Appeals stay the deadline by which Traco was required to file its Statement of Objections to a Proposed Remedial Order. Traco asserted that it needed more time to consider information which it had requested from the Economic Regulatory Administration. The DOE denied the Application for Stay because it found that Traco did not satisfy any of the criteria specified in 10 CFR 205.125(b). Specifically, the DOE held that Traco could attempt to obtain additional information by filing a Motion for Discovery in conjunction with its Statement of Objections.

Motion For Discovery

Merit Petroleum, Inc., 9/14/84; HRD-0174; HRH-0174

Merit Petroleum, Inc. filed a Motion for Discovery and a Motion for Evidentiary Hearing in connection with its Statement of Objections to a Proposed Remedial Order that was issued to the firm. In its motions, Merit sought discovery of information pertaining to (i) the audit of the firm, (ii) various rulemakings applicable to crude oil resellers, and (iii) the DOE's contemporaneous construction of portions of the crude oil reseller regulations. The DOE found that Merit's Motion for Discovery should be denied since it would not elicit evidence relevant and material to the issues raised in the firm's Statement of Objections. In this regard, the DOE found that (i) discovery concerning the audit was not warranted since the firm would already have information concerning the manner in which the overcharges alleged in the PRO were calculated and since the adequacy of the PRO would be determined on the basis of the PRO itself and other submissions filed in this proceeding; (ii) no special circumstances existed in this case that would warrant discovery pertaining to rulemakings; (iii) Merit had not made a sufficient preliminary showing of bad faith conduct sufficient to warrant probing the mental processes of agency officials; and (iv) Merit had failed to show that the regulations were sufficiently ambiguous to warrant contemporaneous construction discovery.

Refund Applications

Standard Oil Co. (Indiana)/Bona Fide General Agency, Detroit Edison Co., 9/13/84; RF21-12339, RF21-12350

The DOE issued a Decision and Order concerning Applications for Refund filed by Bona Fide General Agency and Detroit Edison Company in connection with their

purchases of Amoco motor gasoline for ultimate consumption. Both applicants elected to apply for a refund based upon the presumptions of injury and the formula outlined in *Office of Special Counsel*, 10 DOE ¶ 85,048 (1982) (*Amoco*). In considering the applications, the DOE concluded that the applicants should receive refunds based upon the total volume of their eligible Amoco motor gasoline purchases. The refunds granted in this proceeding total $13,368.

Willis Distributing Co., Inc./Gene's Transmission et al., 9/12/84; RF41-2, et al.

The DOE issued a Decision and Order concerning three Applications for Refund filed by purchasers of motor gasoline from Willis Distributing Company, Inc. These firms elected to apply for a refund based upon the presumption of injury outlined in *Willis Distributing Company, Inc.*, 12 DOE § 85,062 (1984). In considering these applications, the DOE concluded that each of the applicants should receive a refund based upon the total volume of its Willis motor gasoline purchases. The refunds granted in this proceeding total $4,248.

Dismissals

The following submissions were dismissed:

Name	Case No.
Armstrong Propane	RF26-18.
B&J Standard	RF21-11396.
Detroit Edison Co	RF21-12351.
James Buttney	RF21-11678.
Penberthy Electromelt International Inc.	HFA-0234
Sauganash Standard Service	RF21-7254.

[FR Doc. 84-26765 Filed 10-9-84; 8:45 am]

BILLING CODE 6450-01-M

Issuance of Decisions and Orders; Week of July 30 through August 3, 1984

During the week of July 30 through August 3, 1984, 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.

Appeal

International Brotherhood of Electrical Workers, 7/30/84; HFA-0232

The International Brotherhood of Electrical Workers (IBEW) filed a motion requesting reconsideration of a decision issued by the Office of Hearings and Appeals (OHA). That decision denied IBEW's appeal from a determination issued by the Manager of the Idaho Operation Office. In that determination the Manager withheld the names of employees on certified payroll records pursuant to 5 U.S.C. 552(b)(6) (Exemption 6) of the Freedom of Information Act. In its motion, IBEW claimed that the determination should be reconsidered in light of the decision in *International Brotherhood of Electrical Workers Local 41 v. HUD, (IBEW)*. OHA pointed out that in *IBEW*, the court found that the names of employees on payroll records should be released. The OHA concluded that the decision raised factual issues which should be considered initially by the Manager. Accordingly, the matter was remanded to the Manager with directions to review *IBEW*, and thereafter either to release the names of the employees or issue a determination that the names properly fall within the protection of Exemption 6.

Remedial Order

Amcole Energy Corp., et al., 8/3/84; HRO-0106

Amcole Energy Corporation and six working interest owners (Respondents) of a crude oil producing property objected to a Proposed Remedial Order issued to them by the Economic Regulatory Administration of the Department of Energy. The PRO alleged that the Respondents sold crude oil at prices exceeding the ceiling price levels. The Respondents objected to the ERA's claim that a reservoir from which they alleged that they began producing crude oil in 1975 was not entitled to treatment as a separate property. The DOE sustainted this objection in part, and issued the PRO as a final Remedial Order with appropriate modification. The important issues discussed in the determination were (1) the type of evidence sufficent to established the existence of separate reservoirs for purposes of 10 CFR 212.72, and (2) the apportionment among PRO recipients of the obligation to refund overcharges.

Request for Exception

Sky Oil Co., 8/2/84; HEE-0085

Sky Oil Company filed an Application for Exception in which the firm sought to be relieved from the requirement to file Form EIA-782B, "Reseller/Retailers' Monthly Petroleum Product Sales Report." In considering the request, the DOE found that the firm would not suffer an inordinate burden in fulfilling its reporting requirement. Accordingly, exception relief was denied.

Request for Modification and/or Rescission

Economic Regulatory Administration, 8/3/84; HRR-0093

The Economic Regulatory Administration filed a Motion for Modification of a Remedial Order issued to Marathon Petroleum Company/Marathon Oil Company. In considering the Motion, the DOE determined that the requested modifications served to rectify appropriately certain typographical and calculational errors contained in the Remedial Order. The modification request was therefore granted.

Implementation of Special Refund Procedures

Willis Distributing Co., Inc., 8/2/84; HEF-0197

The Office of Hearings and Appeals issued a Decision and Order setting forth procedures to be used in filing applications for refund for a portion of the settlement funds obtained as the result of the consent order which the DOE entered into with Willis Distributing Company, Inc. The OHA ordered that the funds be distributed to customers which purchased motor gasoline from Willis during the period April 1, 1979, through September 30, 1979, and which were injured as a result of those purchases. The Decision sets forth specific information which must be included in refund applications.

Refund Applications

Anadarko Production Co/Cities Service Co., Anadarko Production Co./Farmland Industries, Inc., 7/31/84; RF12-1, RF12-2

Cities Service Company and Farmland Industries, Inc. filed Applications for Refund in which the firms sought a portion of the fund obtained through a consent order entered into by the DOE and Anadarko Production Company. In considering the request, the DOE found that Cities Service experienced a competitive disadvantage with respect to its purchases of propane from Anadarko, and concluded that the firm should receive a refund of $791 plus interest. In considering the Farmland refund request, the DOE noted that Farmland is a firm owned by numberous agricultural cooperatives which sell propane to their members. The DOE pointed out that since the cooperatives' members are end-users, they would not have passed through the alleged overcharges associated with their propane purchases. Farmland was therefore granted a refund of $83,283 on the condition that the refund is distributed to the cooperatives' member end-users.

Standard Oil Co. (Indiana)/Hart's Amoco Station, 8/3/84; RF21-8190

The DOE issued a supplemental Decision and Order concerning Hart's Amoco Station. The DOE found that the Amoco gasoline purchase volume figures in Hart's original Application for Refund were incorrect, and that Hart's should receive an additional refund of $1,042.

Standard Oil Co. (Indiana)/Lou's All Service, Inc., 8/1/84; RF21-8169

The DOE issued a Decision and Order concerning an Application for Refund filed by Lou's All Service, Inc., a branded retailer of Amoco motor gasoline. Lou's elected not to apply for a refund based upon the presumption of injury and the formulae outlined in *Office of Sepcial Counsel*, 10 DOE ¶ 85,048 (1982). Lou's submitted detailed information concerning its Amoco purchase volumes, cost banks, profit margins, and gross profits. After analyzing the information submitted by the applicant, the DOE determined that Lou's had submitted adequate evidence that the firm was injured during 64 of the 82 months covered by the Amoco consent order and should receive a refund based upon the volume of Amoco motor gasoline that the firm purchased during those 64 months. Accordinlgy, Lou's application was granted in part. The refund granted to Lou's total $10,517.

Standard Oil Co., (Indiana)/O'Connell Oil Co., 8/3/84; RF21-11293

The DOE granted an Application for Refund filed by O'Connell Oil Company, a

wholesaler and retailer of Amoco motor gasoline, pursuant to which the firm had received a refund based on the wholesaler's 34 percent portion of the volumetric refund amount. O'Connell subsequently requested a refund with respect to the motor gasoline that it sold from its retail outlets. The DOE concluded that O'Connell should receive an additional refund of $1,062, based on the 6 percent difference between the retailer's 40 percent share and the wholesaler's 34 percent share of the volumetric refund amount.

Dismissal

The following submission was dismissed:

Name	Case No.
Varibus Corp.	HRO-0093

Copies of the full text of these decisions and orders are available in the Public Docket Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

Dated: September 18, 1984.

George E. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 84-26764 Filed 10-9-84; 8:45 am]

BILLING CODE 6450-01-M

Objection to Proposed Remedial Orders Filed; Week of August 13 Through August 17, 1984

During the week of August 13 through August 17, 1984, the notices of objection to proposed remedial orders listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Any person who wishes to participate in the proceeding the Department of Energy will conduct concerning the proposed remedial orders described in the Appendix to this notice must file a request to participate pursuant to 10 CFR 205.194 within 20 days after publication of this Notice. The Office of Hearings and Appeals will then determine those persons who may participate on an active basis in the proceeding and will prepare an official service list, which it will mail to all persons who filed requests to participate. Persons may also be placed on the official to participate. Persons may also be placed on the official service list as non-participants for good cause shown.

All requests to participate in the proceedings should be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20585.

Dated: September 26, 1984.

George G. Breznay,

Director, Office of Hearings and Appeals.

International Petroleum Refining & Supply Co., Denver, CO.; HRO-0243, Crude Oil

On August 17, 1984, International Petroleum Refining & Supply Sdad. Ltda. of Denver, Colorado filed a Notice of Objection to a Proposed Remedial Order which the Economic Regulatory Administration (ERA) issued to the firm on July 11, 1984. In the PRO, the ERA alleges that during the period November 1974 through December 1980, the firm sold crude oil in violation of 10 CFR 212.93, 212.186, 210.62(c), 205.202 and 212.182. According to the PRO the violations resulted in $5,228,439.94 of overcharges.

Marathon Petroleum Co., Marathon Oil Co., Findlay, OH; HRD. 0242, Crude oil.

On August 17, 1984, Marathon Petroleum Company and Marathon Oil Company (Marathon) of Findlay, Ohio, filed a notice of Objection to a Proposed Order of Disallowance which the Office of Special Counsel of the Economic Regulatory Administration issued to the firm on July 20, 1984. In the POD the Office of Special Counsel found that during 1979, Marathon claimed and reported costs of imported crude oil in excess of those allowable under DOE regulations. According to the POD the Marathon violation resulted in $17,634,577.54 of cost overstatements.

As a remedy for this violation, the POD states that Marathon's costs should be disallowed by the amounts which exceed DOE's representative prices in the months in which the costs were incurred and that Marathon should recalculate its costs and make refunds of any resulting overcharges, plus interest.

Murphy Oil Corp., El Dorado, AR; HRO-0244, Refined Petroleum Products

On August 16, 1984, Murphy Oil Co., 200 Jefferson Ave., El Dorado, Arkansas 71730, filed a Notice of Objection to a Proposed Remedial Order which the DOE Southwest District Office Of Enforcement issued to the firm on August 16, 1984. In the PRO the Southwest District found that during the period August 1973 through December 1978, Murphy received revenues in excess of those allowed by the DOE refiner price regulations by failing to reduce its crude oil costs by the amounts of revenues it received from import tickets. The PRO contemplates that Murphy recalculate the cost of its crude oil from August 1973 through January 1981 and remit any overcharges, plus interest to the DOE.

Murphy Oil Corp., El Dorado, AR; HRO-0248, Refined Petroleum Products

On August 16, 1984, Murphy Oil Corporation, 200 Jefferson Ave., El Dorado, Arkansas 71730, filed a Notice of Objection to a Proposed Remedial Order which the Office of Special Counsel of the DOE Economic Regulatory Administration issued to the firm on April 16, 1984. In the PRO, the Office of Special Counsel found that during the period August 1973 through December 1978, Murphy improperly calculated its increased non-product costs, in violation of 10 CFR Part 212, Subpart E. According to the PRO the violation resulted in $2,010,587 of overcharges.

[FR Doc. 84-26767 Filed 10-9-84; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL 2646-4]

California State Motor Vehicle Pollution Control Standards; Amendments Within the Scope of Previous Waivers of Federal Preemption; Summary of Determination

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of scope of waiver of Federal preemption.

SUMMARY: The California Air Resources Board (CARB) has notified EPA that it has adopted optional 1984 model year heavy-duty engine exhaust emission standards based on the Federal transient cycle test procedures. The amendments were adopted to ensure consistency between the California and Federal certification requirements. Other amendments to California's optional transient standards and test procedures for 1984 model year heavy-duty engines delay for one year the Federal crankcase emission requirement for naturally aspirated heavy-duty diesel engines to provide adequate compliance time for manufacturers and make minor changes in the optional engine labeling requirements to avoid consumer confusion. I find these amendments to be included within the scope of previously granted waivers of Federal preemption. Since these amendments are included within the scope of these waivers, a public hearing or comment period to consider them is not necessary. However, if any party asserts an objection to these findings within 30 days of the date of publication of this notice, EPA will consider holding a public hearing to provide an opportunity to present testimony and evidence to show that there are issues to be addressed through a section 209(b) waiver determination and that I should reconsider my findings. Otherwise, these findings will become final at the expiration of this 30-day period.

DATES: Any objection to the findings in this notice must be filed within 30 days of the date of this notice; otherwise, at the expiration of this 30-day period

these findings will become final. Upon the receipt of any timely objection, EPA will consider scheduling a public hearing in a subsequent **Federal Register** notice.

ADDRESSES: Any objection to the findings in this notice should be filed with Mr. Charles N. Freed, Director, Manufacturers Operations Division (EN–340), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460.

Copies of the California amendments at issue in this notice, a decision document containing an explanation of my determination, and documents used in arriving at this determination, are available for public inspection during normal working hours (8:00 a.m. to 4:00 p.m.) at the Environmental Protection Agency, Central Docket Section, Gallery I, 401 M Street, SW., Washington, D.C. 20460 (Docket EN–83–08). Copies of the decision document can be obtained from EPA's Manufacturers Operations Division by contacting Ms. Crowe, as noted below.

FOR FURTHER INFORMATION CONTACT: Alice Crowe, Attorney/Advisor, Manufacturers Operations Division (EN–340–F), U.S. Environmental Protection Agency, Washington, D.C. 20460, (202) 382–2526.

SUPPLEMENTARY INFORMATION: I have determined that CARB's amendments are within the scope of waivers of Federal preemption previously granted pursuant to section 209(b) of the Clean Air Act, as amended (Act).[1] Specifically, the changes include optional 1984 model year heavy-duty engine exhaust emissions standards based on the Federal transient test cycle procedures; and two amendments that revise these optional standards. The first amendment to the optional standards would delay for one year until the 1985 model year the Federal crankcase emission standard for naturally-aspirated heavy-duty diesel engines. The second amendment would substitute existing California labeling requirements for the originally adopted Federal labeling requirements for all heavy-duty engines starting in the 1984 model year. These changes do not undermine California's determination that its own standards are, in the aggregate, at least as protective as Federal standards.

A full explanation of my determination is contained in a decision document, which may be obtained from EPA as noted above.

[1] 43 FR 998 (January 5, 1978); 43 FR 25729 (June 14, 1978); 47 FR 1015 (January 8, 1982).

Since these amendments are included within the scope of previously granted waivers of Federal preemption, a public hearing to consider them is not necessary. The public has not had an opportunity to comment in advance of this determination. Therefore, my determination on these amendments will become final at the expiration of 30 days following publication of this notice, unless an objection is filed and a public hearing is scheduled.

Note.—My decision will affect not only persons in California but also the manufacturers located outside the State who must comply with California's requirements in order to produce motor vehicles for sale in California. For this reason I hereby determine and find that this decision is of nationwide scope and efffect. Accordingly, judicial review of this action is available only by filing a petition for review in the United States Court of Appeals for the District of Columbia Circuit within 90 days of publication. Under section 307(b)(2) of the Act, the requirements which are the subject of today's notice may not be challenged later in judicial proceedings brought by EPA to enforce these requirements.

Section 3(b) of Executive Order 12291, 46 FR 13193 (February 19, 1981) requires EPA to determine initially whether a rule that it intends to propose or issue is a major rule and to prepare Regulatory Impact Analyses for all major rules. Section 1(b) of the Order defines "major rule" as any regulation that is likely to result in:

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

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

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

EPA has determined that this action does not constitute a major rule. The action assures consistency between California and Federal requirements and as such reduces regulatory requirements on manufacturers. If anything, the action will likely result in cost savings to consumers, Government agencies and industries affected because of the reduced requirements.

Accordingly, a Regulatory Impact Analysis is not being prepared for this waiver determination.

This action is not a "rule" as defined in 5 U.S.C. 601(2) because EPA is not required to undergo "notice and comment" under section 553(b) of the Administrative Procedure Act, or any other law. Therefore, EPA has not prepared a supporting regulatory flexibility analysis addressing the impact of this action on small business entities.

Dated: October 2, 1984.

Alvin L. Alm,

Deputy Administrator.

[FR Doc. 84–26721 Filed 10–9–84; 8:45 am]

BILLING CODE 6560–50–M

[SAB–FRL–2689–5]

Science Advisory Board Executive Committee; Open Meeting

Under Pub. L. 92–463, notice is hereby given that a two-day meeting of the Executive Committee of the Science Advisory Board will be held on October 24–25, 1984, in Conference Room 1103, West Tower, 401 M Street, SW, Washington, D.C. 20460. The meeting will begin at approximately 9:15 am on October 24 and will adjourn at approximately noon on October 25.

Among the principal issues will be: (1) A briefing on interagency risk assessment and risk management efforts; (2) Committee and Subcommittee reports of Science Advisory Board; and (3) a discussion with the Administrator.

The meeting will be open to the public. Any member of the public wishing to attend or obtain information should contact Dr. Terry F. Yosie, Director, Science Advisory Board, (202) 382–4126 before close of business October 19, 1984.

Terry F. Yosie,

Director, Science Advisory Board.

[FR Doc. 84–26718 Filed 10–9–84; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Submitted to the Office of Management and Budget for Clearance

The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following information collection packages for approval in accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title: State Operating Plan for Superfund Temporary Relocation

Type: Extension of 3067–0156

Abstract: This plan is used to document the State's proposal for temporary relocation implementation. It also

includes budget and outlay information.
Type of respondents: State or Local Governments
Number of respondents: 12
Burden hours: 144
Title: Application for Superfund Temporary Relocation Assistance
Type: Regular Submission
Abstract: This form is used to document applicant information needed to determine eligibility for, and provide temporary relocation
Type of respondents: Individuals or Households
Number of respondents: 500
Burden hours: 125

Copies of the above information collection request and supporting documentation can be obtained by calling or writing the FEMA Clearance Officer, Linda Shiley, (202) 287–9906, 500 C. Street, SW., Washington, D.C. 20472.

Comments should be directed to Mike Weinstein, Desk Officer for FEMA, Office of Information and Regulatory Affairs, OMB, Rm. 3235, New Executive Office Building, Washington, D.C. 20503.

Dated: October 3, 1984.

Walter A. Girstantas,

Director, Administrative Support.

[FR Doc. 84–26689 Filed 10–9–84; 8:45 am]

BILLING CODE 6718–01–M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, D.C. Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202–007680–055.
Title: American West African Freight Conference.
Parties:
America—Africa Line
Barber West Africa Line
Cameroon Shipping Line
Companhia Nacional de Navegacao
Farrell Lines, Inc.
Medafrica Line
Nigeria America Line, Ltd.
Societe Ivoirienne de Transport Maritime,
SITRAM
Torm West Africa Line
Westwind Africa Line
Synopsis: The proposed amendment would increase the maximum level of fines which may be assessed by the neutral body for violations and would prescribe penalties for obstructing a neutral body investigation as well as authorizing the neutral body to adjudicate allegations of violations on the basis of a written exchange of evidence rather than a formal hearing.

Agreement No.: 217–009902–017.
Title: Hapag-Lloyd/French Line/Intercontinental Transport Cross Charter and Sailing Agreement.
Parties:
Compagine Generale Maritime
Hapag-Lloyd AG
Intercontinental Transport (ICT) B.V.
Synopsis: The proposed amendment would enable the parties to enter into a broader space cross charter and sailing agreement with another carrier or carriers in the same trade and would assure that the provisions of the broader agreement would prevail in the event of conflict with the provisions of Agreement No. 217–009902.

Agreement No.: 207–009973–011.
Title: Johnson Scanstar Joint Service.
Parties:
Blue Star Line, Ltd.
The East Asiatic Co., Ltd.
Johnson Line AB
Synopsis: The proposed amendment would eliminate a possible inconsistency between Agreement No. 207–009973 and a new space cross charter and sailing agreement between Johnson Scanstar, Hapag-Lloyd and Pacific Europe Express.

Agreement No.: 217–010648.
Title: Trans Freight Lines, Inc./Double Eagle Lines, Inc. Charter Agreement.
Parties:
Trans Freight Lines, Inc. (TFL)
Double Eagle Lines, Inc. (Double Eagle)
Synopsis: The proposed agreement would permit TFL to time charter a vessel to Double Eagle for use in the trade between U.S. North Atlantic ports and North Europe and would allow the parties to space charter to one another, rationalize sailing, interchange containers and chassis and to provide stevedoring and marine terminal or other services related to the physical handling of containers for each other. The parties have requested a shortened review period.

Agreement No.: 217–010649.
Title: Johnson Scanstar/Hapag-Lloyd/Pacific Europe Express Space Cross Charter and Sailing Agreement.
Parties:
Johnson Scanstar
Hapag-Lloyd AG
Pacific Europe Express
Synopsis: The proposed agreement would establish a new space chartering and sailing arrangement between the parties in the trade between the Pacific Coast of the United States and North Europe.

By Order of the Federal Maritime Commission.

Dated: October 3, 1984.

Francis C. Hurney,

Secretary.

[FR Doc. 84–26663 Filed 10–9–84; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Agency Forms Under Review

October 3, 1984.

Background

Notice is hereby given of final approval of proposed information collection(s) by the Board of Governors of the Federal Reserve System (Board) under delegated OMB authority, as per 5 CFR 1320.9 (OMB Regulations on Controlling Paperwork Burdens on the Public).

For Further Information Contact:

Federal Reserve Board Clearance Officer—Cynthia Glassman—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 (202–452–3829)

OMB Desk Officer—Judith McIntosh—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, D.C. 20503 (202–395–6880)

Request for Extension With Minor Revisions to the Report Form

1. Report title: Consumer Satisfaction Questionnaire
Agency form number: FR 1379
OMB Docket number: 7100–0135
Frequency: On occasion
Reporters: Any entity that has a complaint regarding a state member bank. Small businesses are affected
General description of report: This information collection is voluntary; there are no issues that arise under the Privacy Act.

Board of Governors of the Federal Reserve System, October 3, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-26684 Filed 10-9-84; 8:45 am]

BILLING CODE 6210-01-M

Franklin Bancorp, et al., Formation of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's apporoval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to aquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than October 31, 1984.

A. **Federal Reserve Bank of New York** (A. Marshall Puckett, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Franklin Bancorp,* Somerset, New Jersey; to acquire 90 percent of the voting shares of Hillsborough National Bank, Belle Meade, New Jersey.

2. *Suffolk Bancorp,* Riverhead, New York; to become a bank holding company by acquiring 100 percent of the voting shares of Suffolk County National Bank, Riverhead, New York.

B. **Federal Reserve Bank of Cleveland** (Lee S. Adams, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Peoples Financial Corp., Inc.,* Ford City, Pennsylvania; to become a bank holding company by acquiring 50.22 percent of the voting shares of Peoples Bank of Ford City, Pennsylvania, Ford City, Pennsylvania.

2. *Woodford Bancorp, Inc.,* Versailles, Kentucky; to become a bank holding company by acquiring 100 percent of the voting shares of The Woodford Bank & Trust Company, Versailles, Kentucky.

C. **Federal Reserve Bank of Chicago** (Frankling D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Citizens Banking Corporation,* Flint, Michigan; to acquire 100 percent of the voting shares of State Bank of Standish, Standish, Michigan.

2. *Rensselaer Financial Corporation,* Rensselaer, Indiana; to become a bank holding company by acquiring 80 percent or more of the voting shares of State Bank of Rensselaer, Rensselaer, Indiana.

D. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Louisiana Bancshares, Inc.,* Baton Rouge, Louisiana; to become a bank holding company by acquiring 100 percent of the voting shares of Louisiana National Bank, Baton Rouge, Louisiana; The First National Bank of Shreveport, Shreveport, Louisiana; and The Quachita National Bank in Monroe, Monroe, Louisiana.

3. *The Queensboro Company,* Louisiville, Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of The First National Bank of Louisville, Louisville, Georgia.

E. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Bank Management, Inc.,* Wahoo, Nebraska; intends to merge with and thereby acquire control of Sterling Bankshares, Inc., Sterling, Nebraska; Burchard Bankshares, Inc., Burchard, Nebraska; and Tecumseh Bankshares, Inc., Tecumseh, Nebraska thereby indirectly acquiring Bank of Sterling, Sterling, Nebraska; State Bank of Burchard, Burchard, Nebraska; and Johnson County Bank, Tecumseh, Nebraska, respectively.

F. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Allied Banchshares, Inc.,* Houston, Texas; to acquire 100 percent of the voting shares of Allied Bank Fort Worth, Fort Worth, Texas, a *de novo* bank.

G. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Downey Bancorp,* Downey, California; to become a bank holding company by acquiring 100 percent of the voting shares of Downey National Bank, Downey, California (in organization).

Board of Governors of the Federal Reserve System, October 3, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-26685 Filed 10-5-84; 8:45 am]

BILLING CODE 6210-01-M

The Wachovia Corp. et al.; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo,* either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each apaplication is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 29, 1984.

A. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *The Wachovia Corporation,* Winston-Salem, North Carolina; to engage *de novo* through its subsidiary,

Wachovia Services, Inc., in data processing, servicing of student loans, and providing financial advice and portfolio investment advice.

B. **Federal Reserve Bank of St. Louis** (Delmer P. Weisz, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Mark Twain Bancshares, Inc.*, St. Louis, Missouri; to engage *de novo* through its subsidiary, Tarquad Corporation, St. Louis, Missouri, in acting as a trustee under deeds of trust of which non-banking subsidiaries of applicant are beneficiaries, in connection with real estate loans made or serviced by such non-banking subsidiaries.

C. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Jacinto City Bancshares, Inc.*, Houston, Texas; to engage through its subsidiary, Mercury Acceptance Corporation, Houston, Texas, in the expansion of its consumer lending activities through an additional office in Pasadena, Texas. Activities would include making or acquiring loans and other extensions of credit such as would be made by a consumer finance company in accordance with the provisions of the Texas Code.

D. **Federal Reserve Banl On San Franciso** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *U.S. Bancorp*, Portland, Oregon; to engage through its subsidiary, Qualivest, Portland, Oregon, in acting as registered investment advisor, and providing investment advisory as well as portfolio management services to individuals, corporations, retirement plans, foundations, trusts, financial institutions, and other entities.

Board of Governors of the Federal Reserve System, October 3, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-26686 Filed 10-9-84; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. N-84-1454]

Notice of Submission of Proposed Information Collections to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notices.

SUMMARY: The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposals.

ADDRESS: Interested persons are invited to submit comments regarding these proposals. Comments should refer to the proposal by name and should be sent to: Robert Neal, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., Washington, D.C. 20410, telephone (202) 755-6050. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposals described below for the collection of information to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notices list the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the agency form number, if applicable; (4) how frequently information submissions will be required; (5) what members of the public will be affected by the proposal; (6) an estimate of the total number of hours needed to prepare the information submission; (7) whether the proposal is new or an extension or reinstatement of an information collection requirement; and (8) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Copies of the proposed forms and other available documents submitted to OMB may be obtained from David S. Cristy, Reports Management Officer for the Department. His address and telephone number are listed above. Comments regarding the proposals should be sent to the OMB Desk Officer at the address listed above.

The proposed information collection requirements are described as follows:

Notice of Submission of Proposed Collection to OMB

Proposal: Minimum Property Standards for One- and Two-Family Dwellings
Office: Housing
Form Number: None
Frequency of Submission: On Occasion
Affected Public: Individuals or Households, State or Local Governments, Farms, Businesses or Other For-Profit, Federal Agencies or Employees, Non-Profit Institutions, and Small Businesses or Organizations
Estimated Burden Hours: 28,000
Status: New
Contact: Mark W. Holman, HUD, (202) 755-65909, Robert Neal, OMB, (202) 395-7316

Proposal: American Housing Survey—1985 Metropolitan Sample (AHS-MS)
Office: Policy Development and Research
Form Number: AHS-61, 62, 63, 66, 67, and 68
Frequency of Submission: On Occasion and Annually
Affected Public: Individuals or Households
Estimated Burden Hours: 29,977
Status: Revision
Contact: Duane T. McGough, HUD, (202) 755-5060, Robert Neal, OMB, (202) 395-7316

Proposal: Survey of Prevailing Maintenance Wage Rates (for Public Housing Authorities)
Office: Secretary
Form Number: HUD-5136
Frequency of Submission: Annually
Affected Public: State or Local Governments, and Businesses or Other For-Profit
Estimated Burden Hours: 2,250
Status: Extension
Contact: Richard S. Allan, HUD, (202) 755-7373, Robert Neal, OMB, (202) 395-7316

Proposal: CDBG—Community Development Block Grant Entitlement Program
Office: Community Planning and Development
Form Number: HUD-7091.1, 7091.2, 4949.1 thru 4949.7; SF-424 and Narrative
Frequency of Submission: Annually
Affected Public: State or Local Government
Estimated Burden Hours: 324,000
Status: Revision
Contact: James R. Broughman, HUD, (202) 755-9267, Robert Neal, OMB, (202) 395-7316

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: September 25, 1984

Dennis F. Geer,

Director, Office of Information Policies and Systems.

[FR Doc. 84-26751 Filed 10-9-84; 8:45 am]

BILLING CODE 4210-01-M

Office of Environment and Energy

[Docket No. I-84-127]

Republish Notice of Intended Areawide Environmental Impact Statement; "Near Loop", Chicago, IL

The Department of Housing and Urban Development gives notice to extend the anticipated publication date of an Area Environmental Impact Statement (EIS) on the "Near Loop" area of Chicago, Illinois. The Notice of Intent to prepare an EIS was initially published in the **Federal Register** on November 13, 1981. Subsequent developments have delayed the EIS's publication. Interested individuals, governmental agencies, and private organizations are invited to submit information and comments concerning the project to the specific person indicated in the appropriate part of the appendix.

This Notice shall be effective for one year. If one year after the publication of this Notice in the **Federal Register**, a Draft EIS has not been filed on the project, then the Notice shall be cancelled. If a Draft EIS is expected more than one year after the publication of the Notice in the **Federal Register**, then a new and updated Notice of Intent will be published.

Issued at Washington, D.C. September 21, 1984.

Francis G. Haas,

Deputy Director, Office of Environment and Energy.

Appendix—EIS for the "Near Loop" Area, City of Chicago, Illinois

The Department of Housing and Urban development (HUD) Region V Office has prepared and will soon publish an Areawide Draft Environmental Impact Statement (D.E.I.S.) for the project described below and submit information and comments in the EIS.

Description: The Near Loop Area includes areas to the immediate south an west of the Loop in Chicago. The Near South Loop study area is defined as the area bounded by the Eisenhower Expressway on the north, Lake Shore Drive on the east, Cermak Road on the south and the Chicago River on the west. The Near West Loop study area is defined as the area bounded on the north by the Chicago and Northwestern Railroad (R.O.W.) by the South Branch on the Chicago River on the east, the Eisenhower Expressway on the south, and Halsted Street on the west. A significant amount of development including Printing House Row, Dearborn Park, River City, and South Loop New Town, has been completed recently or is planned in the Near South Loop. The proximity of the Near West Loop study area to the Loop is such that it is also capable of significant redevelopment as is exemplified by Presidential Towers, a 2300 unit development, which is presently under construction.

Need: An areawide EIS is being prepared to eliminate the need for duplicative project level EIS's by anticipating the significant impacts and assessing the cumulative overall impact of development in the project area. This analysis will allow for early planning on a more comprehensive scale resulting in policies which can be applied in a consistent, coordinated manner, and provide a uniform data base for site specific environmental assessments.

In addition, project sponsors will be better informed of HUD's position regarding particular issue areas and hence be able to address these areas in the project applications.

Alternatives: Alternative policies to guide HUD project review will be developed for each environmental component or subject area in which issues are expected to arise. These policies will be developed sufficiently to cover the range of possibilities for each policy area.

Scoping: Comments received from appropriate government agencies and service organizations as a result of the previous notice have been taken in consideration in preparation of the statement which is near completion. No scoping meeting therefore is believed necessary at this time. Presently, potential issue areas include land use patterns, residential densities, residential types, family and income orientation, rehabilitation and new construction, historic preservation and noise.

Comments: Comments should be sent within fifteen days of publication of this notice to: Harry P. Blus, Regional Environmental Officer, Department of Housing and Urban Development, Chicago Regional Office, 547 West Jackson Boulevard, Chicago, Illinois 60606.

[FR Doc. 84-26753 Filed 10-9-84; 8:45 am]

BILLING CODE 4210-29-M

[Docket No. I-84-128]

Intended Environmental Impact Statement; Cobo Hall Convention Center, Detroit, MI

The Department of Housing and Urban Development gives notice than an Environmental Impact Statement (EIS) is intended to be prepared by the City of Detroit, Michigan, for the expansion of the Cobo Hall Convention Center under the HUD programs as described in the appendix of the Notice. This Notice is required by the Council on Environmental Quality under its rule (40 CFR Part 1500).

Interested individuals, governmental agencies, and private organizations are invited to submit information and comments concerning the particular project to the specific person or address indicated in the appropriate part of the appendix.

Particularly solicited is information on reports or other environmental studies planned or completed in the project area, issues and data which the EIS should consider, recommended mitigating measures and alternatives, and major issues associated with the proposed project. Federal agencies having jurisdiction by law, special expertise or other special interests should report their interests and indicate their readiness to aid the EIS effort as a "cooperating agency."

This Notice shall be effective for one year. If one year after the publication of a Notice in the **Federal Register**, a Draft EIS has not been filed on a project, then the Notice for the project shall be cancelled. If a Draft EIS is expected more than one year after the publication of the Notice in the **Federal Register**, then a new and updated Notice of Intent will be published.

Issued at Washington, D.C. October 1, 1984.

Francis G. Haas,

Deputy Director, Office of Environment and Energy.

Appendix—ETS on the Expansion of the Cobo Hall Convention Center

The City of Detroit, Michigan, intends to prepare an Environmental Impact Statement for the expansion of the Cobb Hall Convention Center and solicits information and comments for consideration in the EIS.

Description: The proposed project is to expand the Cobo Hall Convention Center from its present size of 400,000 square feet in exhibition space to an ultimate build-out of 1 million square feet in exhibition space. Additional meeting rooms, loading docks, and other ancilliary spaces are also planned. The proposed expansion is to be implemented in phases over a serveral year period. The first phase will all approximately 300,000 square feet contiguous to the existing facility which is located in the Detroit Central Business District and is bounded by Larned Avenue to the north, Veterans Memorial Building and Hart Plaza to the east, the Detroit River to the south, and

Joe Louis Arena to the west. Potential expansion areas surrounding the existing hall are either in commercial or recreational use. The estimated cost of the first phase expansion is approximately 130–140 million.

Federal funding for the project is expected to be from U.S. Department of Housing and Urban Development (HUD) UDAG and Community Development Block Grants and from the U.S. Department of Transportation (FAUS and UMTA).

Need: A decision to prepare an EIS has been based upon the large-scale nature of the project in a dense urban setting and the possible impacts on river nagivation and biology, historical resources, and tranportation systems.

Alternatives: Alternative being considered include:

a. No action;

b. Renovation, with no expansion;

c. The proposed action (immediate expansion of approximately 300,000 squares feet north and west of the existing facility);

d. A smaller size expansion (of approximately 200,000 square feet) north or west;

e. A larger size expansion (of up to approximnately 1 million square feet); and

f. Alternative south and east expansion zones surrounding the present location of Cobo Hall.

Scoping: Responses to this Notice will be used to: (1) Help determine significant environmental issues; (2) Identify data that will be used in the EIS; (3) Identify agencies, groups and individuals that will participate in the EIS process.

Comments: Comments should be sent within fifteen days of publication of this Notice to: Thomas Walters, City of Detroit, Community and Economic Development Department, 150 Michigan Avenue, Detroit, Michigan 48226, (313) 224–2371.

[FR Doc. 84–26752 Filed 10–9–84; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Medford Advisory Council; Meeting Cancellation

Notice is hereby given in accordance with Pub. L. 92–463 that a meeting of the Bureau of Land Management, Medford District Advisory Council to be held October 4, 1984, has been postponed.

The meeting date has been rescheduled for November 5, 1984. On November 5, the meeting will begin at 9:00 a.m., in the Oregon Room of the Bureau of Land Management Office at 3040 Biddle Road, Medford, Oregon. The agenda for the meeting will include:

(1) A discussion of the Medford District's Supplemental Environmental Empact Statement on timber;

(2) A discussion on the disposition of logging residues;

(3) The area of critical environmental concern (ACEC) decision record; and

(4) Subleasing as it relates to base property and/or livestock.

The meeting of the advisory council is open to the public. Interested persons may make oral statements to the board between 12:30 p.m. and 1:00 p.m. on November 5, or file written statements for the board's consideration. Anyone wishing to make an oral statement must notify the District Manager, Bureau of Land Management, 3040 Biddle Road, Medford, Oregon 97504, by November 1, 1984. 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 be available for public inspection and reproduction (during regular business hours) within 30 days following the meeting.

Date Signed: October 2, 1984.

Hugh R. Shera,

District Manager.

[FR Doc. 84–26694 Filed 10–9–84; 8:45 am]

BILLING CODE 4310–33–M

[4–21702–ILM]

Utah; Classification Decision for State Indemnity Selection

1. The following described lands (U–53874) have been examined and found suitable for transfer to the State of Utah.

They are hereby classified for indemnity selection (natural deficiencies) pursuant to sections 2275 and 2276 of the Revised Statutes as amended (43 U.S.C. 851, 852) and the regulations thereunder (43 CFR Part 2621):

Tract No. 1—Garfield County, Cedar City District Office

T. 36 S., R. 5 E., SLM, Utah
Sec. 34, S½SE¼;
Sec. 35, S½N½SW¼, S½SW¼, SE¼.
T. 37 S., R. 5 E., SLM, Utah
Secs. 1, 3, 9–12, all;
Sec. 13, NE¼, N½NW¼, SW¼NW¼, S½;
Secs. 14, 15, all.

Containing 6,074.56 acres.

Tract No. 2—Garfield County, Richfield District Office

T. 37 S., R. 11 E., SLM, Utah
Secs. 8, 17, all.

Containing 1,280.00 acres.

Tract No. 3—San Juan County, Moab District Office

T. 37 S., R. 18 E., SLM, Utah
Sec. 10, S½NW¼, SW¼, S½SE¼;
Secs. 11–15, all.

Containing 3,520.00 acres.
Grand Total acreage 10,874.56 acres.

All oil and gas will be reserved to the United States in accordance with and subject to the regulations in 43 CFR Part 2093. Sodium will also be reserved for the lands situated in T. 37 S., R. 18 E.

Because of adjudicative concerns which are unresolved at this time, the Bureau of Land Management is not in a position to classify for or against selection by the State for the following described lands:

T. 37 S., R. 5 E., SLM, Utah
Sec. 13, SE¼NW¼.
T. 25 S., R. 21 E., SLM, Utah
Sec. 24, lots 1–4;
Sec. 25, lots 1–4, W½NE¼, E½NW¼.

The following lands have been examined and found unsuitable for selection:

T. 37 S., R. 18 E., SLM, Utah
Sec. 10, NE¼, N½NW¼, N½SE¼.

The subject lands are within PLO 3352 Withdrawal for a National Monument Access Road.

T. 36 S., R. 5 E., SLM, Utah
Sec. 34, SW¼, N½SE¼;
Sec. 35, N½, N½N½SW¼.

The subject lands are within a wilderness study area.

2. On lands where no adverse comments are received, it will be held that these lands are classified 60 days from the date of publication of this notice in the **Federal Register** and this classification action will become the final determination of the Department of the Interior. Classification is pursuant to Title 43 Code of Federal Regulations, Subpart 2400 and section 7 of the Act of June 28, 1934.

3. For a period of 60 days from the date of publication of this notice in the **Federal Register**, any persons who wish to submit comments on the above classification may present their views in writing for consideration to the State Director (U–942), Utah State Office, Bureau of Land Management, University Club Building, 136 East South Temple, Salt Lake City, Utah 84111. Comments should address a specific parcel within a specific tract (Example—Tract No. 1, Sec. 1, lot 1, T. 23 S., R. 5 E.) as opposed to commenting generally on the entire classification.

4. Any existing grazing use authorized by license or permit from the Bureau of Land Management will be terminated if the lands are transferred out of Federal ownership. The state shall honor all

leases, permits, contracts, and terms and conditions of user agreements on United States' lands.

Those lands which are encumbered by mining claims, cannot be transferred to the State of Utah until the mining claims are relinquished. Also, lands that are not surveyed will not be conveyed until a survey is completed and accepted.

5. Detailed information concerning the indemnity selection and proposed transfer to the State of Utah is available at the Utah State Office, Bureau of Land Management, University Club Building, 136 East South Temple, Salt Lake City, Utah 84111 (801–524–4245).

Dated: September 28, 1984.

Roland G. Robison,

State Director.

[FR Doc. 84–26677 Filed 10–9–84; 8:45 am]

BILLING CODE 4310-DQ-M

Realty Action, Sale of Public Land in Pitkin County, CO

Summary

The following described land has been examined and identified as suitable for disposal by sale under section 203 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750, 43 U.S.C. 1701, 1713) at the appraised fair market value.

SIXTH PRINCIPAL MERIDIAN, PITKIN COUNTY, CO

Parcel	Acres	Serial No.	Legal Description	Appraised value
93	4.88	C-38515	T. 9 S., R. 85 W., sec. 33: lots 16 and 17.	$4,800

This land has not been used for and is not required for any federal purpose. The location and physical characteristics of the parcel make it difficult and uneconomical to manage as public land. Disposal would best serve the public interest. The disposal would be consistent with the Bureau's planning recommendations as approved in the Glennwood Springs Resource Management Plan, January 1984.

The publication of this notice in the **Federal Register** will segregate the public lands described above to the extent that they will not be subject to appropriation under the public land laws, including the mining laws. As provided by the regulations of 43 CFR 2201.1(b), any subsequently tendered application, allowance of which is discretionary, shall not be considered as filed and shall be returned to the applicant. This segregation will expire two years from the date of publication of this notice.

Sale Conditions

Minerals beneath the parcel, except oil and gas, will also be offered for conveyance. The mineral interests being offered have no known mineral value. A bid on the parcels will also constitute application for conveyance of those mineral interests offered under the authority of section 209(b) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1719(b)). On the sale date, the bidders will be required to deposit an additional $50.00 nonrefundable filing fee and application for the conveyance of offered minerals pursuant to 43 CFR 2720.1–2(c).

The patent issued as the result of the sale will be subject to all valid existing rights and reservations of record and will contain a reservation to the United States for a right-of-way for ditches and canals under the Act of August 30, 1890 (26 Stat. 391; 43 U.S.C. 945), and Oil and Gas under the Act of July 17, 1914.

If sold, the parcel will be subject to Pitkin County zoning and regulations regarding use and development of the parcel.

If the parcel is not sold on the date of sale, it will be advertised and reoffered as a competitive sale at a later date.

Sale Dates and Procedures

Direct Noncompetitive Sale, the 30th Day of November 1984

The parcel will be offered as a direct noncompetitive sale to the adjacent landowner, Mitchell Development Company of the Southwest. Mitchell Development Company of the Southwest will be identified as the sole designated bidder for the parcel and no other bids or bidders will be considered. The designated bidder will be required to submit payment of at least 20 percent of the fair market value by cash, certified or cashier check, or money order to the BLM at 50629, Highway 6 and 24, Glenwood Springs, Colorado, on the 30th day of November 1984.

The balance of the appraised fair market value will be due within 180 days, payable in the same form at the same location. Failure to submit the remainder of the payment within 30 days of receipt of the decision notice accepting the bid deposit will result in cancellation of the sale offering and forfeiture of the deposit.

Further Information and Public Comment

Additional information concerning this sale offering, including the planning documents and environmental assessment, is available for review in the Glennwood Springs Resource Area Office at 50629 Highway 6 and 24, P.O. Box 1009, Glennwood Springs, Colorado 81602.

For a period of 45 days from the date of publication of this notice, interested parties may submit comments to the District Manager, Grand Junction District Office, Bureau of Land Management, 764 Horizon Drive, Grand Junction, Colorado 81501. Any adverse comments will be evaluated by the District Manager, who may vacate or modify this realty action and issue a final determination. In the absence of any action by the District Manager, this realty action will become the final determination of the Department of the Interior.

Dated: September 21, 1984.

Wright Sheldon,

District Manager, Grand Junction District Office.

[FR Doc 84–26682 Filed 10–9–84; 8:45 am]

BILLING CODE 4310-84-M

Minerals Management Service

Development Operations Coordination Document; Seneca Resources Corp.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Seneca Resources Corporation has submitted a DOCD describing the activities it proposes to conduct on Lease OCS–G 5668, Block 17, West Delta Area, offshore Louisana. Proposed plans for the above area provided for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Fourchon, Louisiana.

DATE: The subject DOCD was deemed submitted on September 28, 1984. Comments must be received within 15 days of the date of this Notice or 15 days after the Coastal Management Section receives a copy of the DOCD from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Manager, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the

Coastal Management Section Office located on the 10th Floor of the State Land and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, *Attention OCS Plans*, Post Office Box 44396, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Ms. Angie Gobert; Minerals Management Service; Gulf of Mexico OCS Region; Rules and Production; Plans, Platform and Pipeline Section; Exploration/Development Plans Unit; Phone (504) 838–0876.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to informn the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Service/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those pratices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: September 28, 1984.

John L. Rankin,

Regional Manager, Gulf of Mexico OCS Region.

[FR Doc. 84–26693 Filed 10–9–84; 8:45 am]

BILLING CODE 4310–MR–M

Bureau of Reclamation

[INT–FES 84–30]

Diamond Fork Power System, Bonneville Unit, Central Utah Project; Availability of Final Environmental Impact Statement

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, as amended, the Department of the Interior has prepared a final environmental impact statement on a proposed hydroelectric power development that would also convey water for agricultural and municipal and industrial purposes in northern and central Utah. The draft environmental statement issued in June 1984 recommended an 1,182-megawatt pumped storage plan with facilities in Fifth Water and Diamond Fork Canyons. However, an assessment of non-Federal interest in developing and financing the power system conducted early in 1984 indicated inadequate support for that plan and resulted in selection of a 166.2-megawatt flow through plan with facilities in Sixth Water and Diamond Fork Canyons.

The final statement presents four alternatives for the power system that would generate power by means of a transbasin diversion of water. The water would descend about 2,600 feet from the enlarged Strawberry Reservoir in the Upper Colorado River Basin to the confluence of Diamond Fork and the Spanish Fork River in the Bonneville Basin through a system of tunnels, pipelines, reservoirs, and powerplants. A fifth alternative would consist only of water delivery facilities. All alternatives would provide fish and wildlife measures, recreational opportunities, and water quality control. In addition, all but the fifth alternative would provide flood control. Power not required for project use would be funded by non-Federal entities.

Copies are available for inspection at the following locations:

Director, Office of Environmental Affairs, Room 7622, Bureau of Reclamation, Washington, DC 20240, Telephone: (202) 343–4991

Division of Management Support, General Service, Library Section, Code 950, Engineering and Research Center, Bureau of Reclamation, Denver Federal Center, Denver, Colorado 80225, Telephone: (303) 234–3019

Regional Director, Bureau of Reclamation, Upper Colorado Regional Office, 125 South State Street, P.O. Box 11568, Salt Lake City, Utah 84147, Telephone: (801) 524–5520

Utah Projects Office, Bureau of Reclamation, 302 East 1860 South, P.O. Box 1168, Provo, Utah 84603, Telephone: (801) 379–1000

Single copies of the statement may be obtained on request to the Director, Office of Environmental Affairs, or the Regional Director at the above addresses. Copies will also be available for inspection in libraries in the project vicinity.

Dated: October 4, 1984.

William C. Klostermeyer,

Acting Commissioner.

[FR Doc. 84–26712 Filed 10–9–84; 8:45 am]

BILLING CODE 4310–09–M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

Housing Guaranty Program; Notice of Investment Opportunity

The Agency of International Development (A.I.D.) has authorized guaranties of two loans for Kenya as part of A.I.D.'s development assistance program. One of these loans will be to the Ministry of Finance for $9,000,000. The other loan will be to the Nairobi City Commission for $17,000,000. The proceeds of these loans will be used to finance shelter projects for low income families in Kenya. The following are the names and addresses of representatives of the Borrower to be contacted by interested U.S. lenders or investment bankers.

1. Project: Kenya 615–HG–006 (Small Towns)—$9,000,000. Finance Nairobi (Telegraphic Address), Attention: Harris Mule, Permanent Secretary, Ministry of Finance, Nairobi Kenya.

2. Project: Kenya 615–005 (Umoja II)—$17,000,000.

a. Finance Nairobi (Telegraphic Address), Attention: Harris Mule, Permanent Secretary, Ministry of Finance, Nairobi, Kenya

b. Municipality—Nairobi (Telegraphic Address), Attention: Sumon Getonga, Town Clerk, Nairobi, Kenya.

Interested investors should telegram their bids to the Borrower's representatives on October 24, 1984. If possible bids should be open for 48 hours. Copies of all bids should be simultaneously telexed to the following addresses:

Fredrik Hansen, Telex No. 22964, American Embassy, Nairobi

PRE/H, A.I.D., Washington, D.C. 20523, Telex. No. 892703.

For the $9,000,000 loan (615–HG–006) the Borrower is requesting variable rate bids (with an option to convert to fixed rate) for the full amount, to be disbursed in 4 tranches as follows: $1.5 million in January 1985, $2.0 million in August 1985, $3.0 million in January 1986 and $2.5 million in August 1989. Consideration should be given to pro-rating fees to the extent possible, although a large percentage could be allowed up front.

For the $17,000,000 loan (615–HG–005) the Borrower is requesting variable rate bids with an option to convert to fixed rate.

Fixed interest rate bids may also be submitted for either loan.

Selection of investment bankers and/or lenders and the terms of the loans are

initially subject to the individual discretion of the Borrowers and thereafter subject to approval by A.I.D. The lender and A.I.D. shall enter into a Contract of Guaranty, covering each of the loans. Disbursements under the loans will be subject to certain conditions required of the Borrowers by A.I.D. as set forth in implementation agreements between A.I.D. and the Borrowers.

The full repayment of the loans will be guaranted by A.I.D. The A.I.D., guaranty will be backed by the full faith and credit of the United States of America and will be issued pursuant to authority in Section 222 of the Foreign Assistance Act of 1961, as amended (the "Act").

Lenders eligible to receive an A.I.D. guaranty are those specified in Section 238(c) of the Act. They are: (a) U.S. citizens; (2) domestic U.S. corporations, partnerships, or associations substantially beneficially owned by U.S. citizens; (3) foreign corporations whose share capital is at least 95 percent owned by U.S. citizens; and, (4) foreign partnerships or associations wholly owned by U.S. citizens.

To be eligible for an A.I.D. guaranty, the laons must be repayable in full no later than the thirtieth anniversary of the disbursement of the principal amount thereof and the interest rates may be no higher than the maximum rate extablished from time to time by A.I.D.

Information as to the eligibility of investors and other aspects of the A.I.D. housing guaranty program can be obtained from: Director, Office of Housing and Urban Developement, Room 625, SA/12, Washington, D.C. 20523. Telephone: (202) 632–9637.

Dated: October 5, 1984.

John T. Howley,

Deputy Director, Office of Housing and Urban Programs.

[FR Doc. 84–26889 Filed 10–9–84; 10:26 am]

BILLING CODE 4710–02–M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB–19 (Sub-No. 86X)]

Rail Carriers; Baltimore and Ohio Railroad Co. Abandonment in Webster County, WV; Exemption

The Baltimore and Ohio Railroad Company (B&O) has filed a notice of exemption under 49 CFR Part 1152 Subpart F—*Exempt Abandonments*. The line to be abandoned is between milepost 13.0 at or near Bolair and milepost 20.48 at end of line, at or near Jerryville, a distance of approximately 7.48 miles in Webster County, WV.

B&O certified that: (1) No local traffic has moved over the line for at least 2 years, and that the line does not handle overhead traffic, and (2) no formal complaint filed by a user of rail service on the line (or by a State or local government entity acting on behalf of such user) regarding cessation of service on the line either is pending with the Commission or has been decided in favor of the complainant within the 2-year period. The Public Service Commission (or equivalent agencies) in West Virginia has been notified in writing at least 10 days prior to the filing of this notice. *See: Exemption of Out of Service Rail Lines*, 366 I.C.C. 885 (1983).

As a condition to use of this exemption, any employees affected by the abandonment shall be protected purusant to *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979).

The exemption will be effective on November 9, 1984 (unless stayed pending reconsideration). Petitions to stay the effective date of the exemption must be filed by October 22, 1984, and petitions for reconsideration, including environmental, energy, and public use concerns, must be filed by October 30, 1984, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Rene J. Gunning, Suite 2204, 100 North Charles St., Baltimore, MD 21201.

If the notice of exemption contains false or misleading informaiton, the use of the exemption is void *ab initio*.

A notice to the parties will be issued if use of the exemption is conditioned upon environmental or public use conditions.

Decided: September 28 1984.

By the Commission, Heber P. Hardy, Director, Office of Proceedings.

James H. Bayne,

Secretary.

[FR Doc. 84–26858 Filed 10–9–84; 8:45 am]

BILLING CODE 7035–01–M

[Nos. 35404; 39380]

General American Transp. Corp. v. Indiana Harbor Belt Railroad Co. and General American Transp. Corp., et al. v. Baltimore and Ohio Terminal Railroad Co., et al.; Reopening; Possible Modification or Revocation of Case Law

AGENCY: Interstate Commerce Commission.

ACTION: Notice.

SUMMARY: In *General American Transp. Corp.* v. *Indiana Harbor Belt Railroad Company*, 357 I.C.C. 102 (1977), we determined that railroads could not exact separate charges for switches to and from repair facilities if they derived more than a *de minimis* amount of revenues, direct or indirect, from the use of private cars in furtherance of their common carrier obligation. We ordered IHB and certain other railroads that derived more than *de minimis* economic benefits from the use of private tank cars to participate in the tank car equalization rule published by the railroad industry. The equalization rule assesses a rate for all empty miles private tank cars move during a calendar year, to the extent that the mileage exceeds aggregate loaded miles for all carriers by more than a stated percentage; otherwise, empty movements, including movements for ordinary repairs, are required to be performed without charge, 357 I.C.C. at 138. The continuing validity of our prior ruling in *Indiana Habor*, including the requirement that IHB subscribe to the equalization rule, has been put in issue by a proceeding presently pending on administrative appeal before the Commission entitled No. 39380, *General American Transportation Corp. et al.* v. *Baltimore & Ohio Terminal Railroad Co., and Indiana Harbor Belt Railroad Co.* So as not to foreclose any options in connection with our consideration of this appeal we are reopening the record in No. 39380 and the prior *Indiana Harbor* decision, and are advising the public and the parties to both proceedings that we may modify or reverse our prior decisions in these two cases as being in conflict with the revenue adequacy, rate flexibility, and car service provisions of the Railroad Reorganization and Regulatory Reform Act of 1976 and the Staggers Rail Act of 1980.

DATE: Interested persons may submit written comments by November 9, 1984.

ADDRESS: An original and 10 copies of comments should be submitted to the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, D.C. 20423, and served upon all parties to this proceeding.

FOR FURTHER INFORMATION CONTACT: Louis Gitomer, (202) 275–7245.

This action is taken under authority of 49 U.S.C. 10321, 10327(g)(1), 10705, and 5 U.S.C. 553.

Decided: September 18, 1984.

By the Commission, Chairman Taylor, Vice Chairman Andre, Commissioners Sterrett.

Gradison, Simmons, Lamboley and Strenio. Commissioners Lamboley and Strenio did not participate.

James H. Bayne,

Secretary.

[FR Doc. 84-26852 Filed 10-9-84; 8:45 am]

BILLING CODE 7035-01-M

LIBRARY OF CONGRESS

Copyright Office

Policy Decision Announcing an Increase in the Fee for Special Handling of Applications for Copyright Registration

AGENCY: Copyright Office, Library of Congress.

ACTION: Notice of Policy Decision.

EFFECTIVE DATE: November 9, 1984.

New Fee for Special Handling

1. Background

Section 708(a) of the Copyright Act, title 17 of the United States Code, prescribes a schedule of fees that must be remitted to the Copyright Office on filing applications to register claims to copyright and for other services rendered to the public under the Act. Subsection (11) of section 708(a) gives the Register of Copyrights the authority to fix a fee for any special services requiring a substantial amount of time or expense based on the cost of providing the special service.

"Special handling" is a procedure established within the Copyright Office to reduce the length of time required to process an application for registration of a claim to copyright. Special handling is granted at the discretion of the Register of Copyrights in a limited number of cases as a service to copyright registrants who have compelling reasons for the expedited issuance of a certificate of registration. Before June 1982, the Copyright Office absorbed the additional costs of special handling, but the Office announced at the time that it could not continue to do so in the face of the rising number of such requests and the fiscal restraints under which it must operate. A special handling fee of $120.00 for each application for registration was fixed by the Register of Copyrights.

Special handling of requests for issuance of a certificate of registration impacts upon every step of the registration process. Under normal procedures applications for registration pass through the various processing steps in groups which are administratively efficient. A claim that receives special handling must be processed outside of the normal work flow necessitating individual handling at each step and individual routing between work stations. A separate system of controls must be maintained for the special handling of claims to assure both that they move expeditiously through the necessary procedures and that they can be located quickly if the need should arise. Each of these activities involves more employee time than claims in the normal work flow since employees could otherwise be more efficiently occupied processing ordinary claims.

The Copyright Office has reviewed the experience of the past two years and has re-evaluated the costs associated with special handling of registration applications. The Office has found that processing of special handling requests involves more special administrative procedures than we had identified at the time the Register set the current special handling fee. The Office has also found that the large number of special handling requests is more disruptive of routine processing procedures than we anticipated. The Register of Copyrights has consequently determined that the special handling fee must be increased to recover the administrative costs of providing this special service.

The Office has also experienced problems in processing multiple applications, which are accompanied by a single deposit for all applications, but where the request for special handling is limited to one or less than all of the multiple claims. The Register has decided to establish a special fee for processing the additional claims, but at a lesser amount than for special handling of single claims.

2. Policy Decision—New Fee

Under the authority of section 708(a)(11) the Register of Copyrights has determined that the requestor of special handling service should pay, in addition to the normal applicable filing fee, the cost of additional staff time involved in the special handling of cases, computed at overtime rates plus a reasonable administrative fee.

The fee for special handling of a registration of a claim to copyright has been fixed by the Register of Copyrights at $200.00, based upon the cost of providing this service. In fixing this new fee, the Register of Copyrights has reviewed the experience of the Office since June 1982, has re-evaluated the nature and number of requests submitted, and the cost of the special administrative procedures required by special handling, and has determined that these costs are greater than initially estimated in 1982. Inflationary increases in salaries have also been taken into account in fixing the new fee. The special handling fee is in addition to the filing fee set by statute.

The special handling fee is chargeable for each application for registration for which special handling service is requested and granted, with the following exception: if special handling is requested for only one of several claims submitted at the same time with a *single* deposit, which is an acceptable deposit for all the claims, the fee for processing the additional claims will be $50.00 each plus the filing fee for each claim. The claim for which special handling was requested will be processed for the $200.00 special handling fee plus the filing fee. The Office emphasizes that this is a narrow exception to the usual rule that the $200.00 fee applies to each application given expedited processing. It applies only where a single set of deposit copies may appropriately be submitted to register multiple claims, in accordance with the practices of the Copyright Office. The applicant will be given the option of submitting an additional set of copies for each application to avoid assessment of the special $50.00 fee. If multiple applications are accompanied by individual sets of deposit copies, claims for which special handling is not requested will be processed routinely. Only the claim(s) for which special handling is requested and granted will be processed specially.

If the request for special handling is granted, the fee is not refundable. The Copyright Office will make every effort to process the claim within five working days after the request has been approved. Within that period the Office will either issue the certificate of registration or notify the applicant of any defect in the claim. The fee may be charged to a deposit account established in the Copyright Office. If the deposit account contains insufficient funds to cover the total special handling fee, or if the remitter does not maintain a deposit account, the total special handling fee may be paid either in person at the Public Information Office in Washington, D.C., or it may be remitted by mail. Such payment must be in cash or in the form of a certified check, cashier's check, or money order made payable to the Register of Copyrights. Cash should not be sent by mail, however.

A request for special handling will be granted only in cases involving pending or prospective litigation, customs matters, or contract or publishing deadlines that necessitate the expedited issuance of a certificate. Special handling procedures may be applied to

cases pending in the Copyright Office, provided the previously mentionaed criteria are met.

3. Procedure for Requesting Special Handling

Requests for special handling may be made in person on the form available in the Public Information Office of the Copyright Office, Room LM–1410, James Madison Memorial Building, Library of Congress, 101 Independence Avenue, SE., Washington, D.C. The Office will also consider requests by mail providing the Special Handling Request form is used or a cover letter is submitted containing answers to the following questions that are required to be answered in the special handling form: "Why is there an urgent need for special handling"; If it is because of litigation, is the litigation actual or prospective? Are you or your client the plaintiff or defendant? What are the names of the parties and the name of the court where the action is pending or expected?" It is also necessary to certify that the answers to these questions are correct to the best of the requestor's knowledge. A mailed request for special handling should be sent to:

Library of Congress, Department DS, Washington, D.C. 20540, Attention: Acquisitions and Processing Division Office.

The outside of the envelope and the letter inside should clearly indicate that it is a request for special handling.

The request for special handling of a registration must be accompanied by a completed application, the required deposit copies, phonorecords, or identifying material, and the $200.00 fee plus the applicable filing fee ($10.00, except $6.00 for renewal applications).

Dated: September 28, 1984.

David Ladd,

Register of Copyrights.

Approved by:

Daniel J. Boorstin,

The Librarian of Congress.

[FR Doc. 84–26687 Filed 10–9–84; 8:45 am]

BILLING CODE 1410–03–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (84–77)]

Privacy Act of 1974; Systems of Records

According to 5 U.S.C. 552(e)(4) agencies were required to annually publish their Privacy Act Systems of Records in the **Federal Register.** This year's annual publication contains only editorial and organizational changes to NASA's Systems of Records which were published in the **Federal Register** on October 19, 1983.

On December 21, 1982, Pub. L. 97–375, "Congressional Reports Elimination Act of 1982," was enacted which amended section 552(e)(4) by eliminating annual publication of the Privacy Act Systems of Records unless a new system of records was being created or unless a system was substantially revised. Therefore, future notices will be published only when any of these systems of records are substantially altered or when a new system of records is established.

C. Robert Nysmith,

Associate Administrator for Management.

September 25, 1984.

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NASA 10ACMQ

SYSTEM NAME:

Aircraft Crewmembers Qualifications and Performance Records - NASA.

SYSTEM LOCATION:

Locations 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, and 11, as set forth in Appendix A.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Crewmembers of NASA aircraft.

CATEGORIES OF RECORDS IN THE SYSTEM:

System contains: (1) Record of qualification, experience, and currency, e.g., flight hours (day, night, and instrument), types of approaches and landings, crew position, type aircraft, flight check ratings and related examination results, training performed and medical records; (2) flight itineraries and passenger manifests; and (3) biographical information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 2473 and 44 U.S.C. 3101.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The information contained in this system of records is used within NASA for: Evaluation of crewmember performance by supervisory flight operations personnel and staff; by the individuals whose records are maintained; and on occasion by flight operations and safety survey teams. In addition to the internal uses of the information contained in this system of records, the following are routine uses outside of NASA: (1) In cases of accident investigations, access to this system of records may be granted to federal or local agencies such as Department of Defense, Federal Aviation Administration, National Transportation Safety Board, or foreign governments; (2) To other agencies, companies, or governments requesting qualifications of crewmembers prior to authorization to participate in their flight programs; or to other agencies, companies, or governments whose crewmembers may participate in NASA's flight programs; (3) With prior approval by the individual - publicity or press releases; and (4) Standard routine uses 1 through 4 inclusive as set forth in Appendix B.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders, charts, punched cards, computer printouts.

RETRIEVABILITY:

Records are indexed by name or aircraft number.

SAFEGUARDS:

Records are protected in accordance with the requirements and procedures which appear at 14 CFR Part 1212.

RETENTION AND DISPOSAL:

Records are retained indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Aircraft Management Office, Location 1.

Subsystem Managers: Chief, Ames Aircraft Operations Division, Location 2; Chief, Dryden Aircraft Operations Division, Location 3; Chief, Aircraft Operations Division, Location 5; Chief, Aircraft Operations Section, Location 6; Head, Aircraft Operations Branch, Location 7; Chief, Aircraft Operations Branch, Location 8; Chief, Aircraft Operations, Location 9; Chief Contract Management, Location 10; Data Acquisition Manager, Earth Resources Laboratory, Location 11; Head, Aeronautical Programs Branch, Location 4 (Locations are set forth in Appendix A).

NOTIFICATION PROCEDURE:

Information may be obtained from the cognizant system or subsystem manager listed above.

RECORD ACCESS PROCEDURES:

Requests from individuals should be addressed to: Same address as stated in the notification section above.

CONTESTING RECORD PROCEDURES:

The NASA regulations for access to records and for contesting contents and appealing initial determinations by the individual concerned appear at 14 CFR Part 1212.

RECORD SOURCE CATEGORIES:

Individuals, training schools or instructors, medical units or doctors.

NASA 10BRPA

SYSTEM NAME:

Biographical Records for Public Affairs - NASA

SYSTEM LOCATION:

Locations 1, 2, 3, 4, 5, 6, 7, 8, 9, and 11, as set forth in Appendix A.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Principal and prominent management and staff officials, program and project managers, scientists, engineers, speakers, other selected employees involved in newsworthy activities, and other participants in agency program.

CATEGORIES OF RECORDS IN THE SYSTEM:

Current biographical information about the individual with a recent photograph when available. Data items are those generally required by NASA or the news media in preparing news or feature stories about the individual and/or the individual's activity with NASA.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C 2473 and 44 U.S.C. 3101.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The information contained in this system of records is compiled, updated, and maintained at NASA installations for ready reference material and for immediate availability when required by the news media for news stories about the individual generally involving participation in a major NASA activity.

The data serves as background information about the individual and is used within NASA to prepare public appearance announcements of key officials, speaking engagements, special appointments, participation in professional societies, etc.; to write news stories about special achievements, awards, participation in major NASA activities, programs, etc.; and to prepare responses to inquiries submitted to the Public Affairs Division from the news media.

Users are the staff members of the public information office within each office of Public Affairs.

In addition to the internal uses of the information contained in this system of records, the following are routine uses outside of NASA: These records are made available to professional societies, civic clubs, industrial and other organizations, news media representatives, researchers, authors, Congress, other agencies and other members of the public in connection with NASA public affairs activities.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records are maintained in file folders.

RETRIEVABILITY:

Records are indexed by name.

SAFEGUARDS:

Since the records are a matter of public information, no safeguard requirements are necessary.

RETENTION AND DISPOSAL:

Records are maintained as long as there is potential public interest in them and are disposed of when no longer required.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, NASA Newsroom, Public Affairs Division, Location 1.

Subsystem Managers: The Public Affairs Officer at Locations 2, 3, 4, 5, 6, 7, 8, 9, and 11 as set forth in Appendix A.

NOTIFICATION PROCEDURE:

An individual desiring to find out if a Biographical System of Records contains a record pertaining to him/her should call, write, or visit the Public Affairs Office at the appropriate NASA location.

RECORD ACCESS PROCEDURES:

An individual may request access to his/her record by calling, writing, or visiting the Public Affairs Office at the appropriate NASA locations. Individuals may examine or obtain a copy of their biographical record at any time.

CONTESTING RECORD PROCEDURES:

The information in the record was provided voluntarily by the individual with the understanding that the information will be used for public release. The individual is at liberty at any time to revise, update, add, or delete information in his/her biographical record to his/her own satifaction.

RECORD SOURCE CATEGORIES:

Information in the biography of an individual in the system of records is provided voluntarily by the individual generally with the aid of a form questionnaire.

NASA 10EEOR

SYSTEM NAME:

Equal Opportunity Records - NASA

SYSTEM LOCATION:

Locations 1 through 9 inclusive and Location 11 as set forth in Appendix A.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees and applicants for employment.

CATEGORIES OF RECORDS IN THE SYSTEM:

(1) Complaints and (2) applications.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U. S. C. 2473; 44 U. S. C. 3101; Executive Order 11478, dated August 8, 1969; EEOC Regulations; 29 CFR Part 1613; MSPB Regulations; 5 CFR Parts 1200 - 1202; Equal Opportunity Act 1972, as amended (Pub. L. 92-261); Section 15 of the Age Discrimination in Employment Act of 1967, as amended (Pub. L. 93-259).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The information contained in this system of records is used within NASA to process complaints of alleged discrimination, including investigations, hearings, and appeals; to maintain active discrimination complaints files; and to retain inactive discrimination complaints files.

In addition to the internal uses of the information contained in this system of records, the following are routine uses outside of NASA: (1) Disclosures to the Equal Employment Opportunity Commission and the Merit Systems Protection Board to facilitate their processing of discrimination complaints, including investigations, hearings and reviews on appeals; (2) Responses to other Federal agencies and other organizations having legal and administrative responsibilities related to the NASA Equal Employment Opportunity Programs and to individuals in the record; (3) Disclosures may be made to a Congressional office from the record of an individual in response to a written inquiry from the Congressional office made at the request of that individual; and (4) Standard routine uses 1 through 4 inclusive as set forth in Appendix B.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders.

RETRIEVABILITY:

These records are indexed by the names of the individuals on whom they are maintained.

SAFEGUARDS:

Records are located in locked metal file cabinets, or in metal file cabinets in secured rooms with access limited to those whose official duties require access and are locked during non-duty hours.

RETENTION AND DISPOSAL:

Complaint case files for cases resolved within the agency, by EEOC, or by U.S. Court, are destroyed 4 years after resolution of the case. Other routine office records are reviewed periodically, and are retained or destroyed as appropriate.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Administrator for Equal Opportunity Programs, Location 1.

Subsystem managers: Director, Equal Opportunity Office at Location 1; Chief, Equal Opportunity Programs Office at Location 2; Head, Equal Opportunity Programs Office at Location 4; Chief, Equal Opportunity Programs Officer at Location 5; Director, Equal Opportunity Program Office at Location 6; Head, Office of Equal Opportunity Programs at Location 7; Chief, Office of Equal Employment Opportunity at Location 8; Director, Equal Opportunity Office at Location 9; Manager, Equal Employment Opportunity/Affirmative Action Programs at Location 10; Equal Opportunity Officer at Location 11. Locations are as set forth in Appendix A.

NOTIFICATION PROCEDURE:

Information may be obtained from the cognizant system or subsystem manager listed above.

RECORD ACCESS PROCEDURES:

Requests from individuals should be addressed to the same address as stated in the notification section above.

CONTESTING RECORD PROCEDURES:

The NASA regulations for access to records and for contesting contents and appealing initial determinations by the individual concerned appear at 14 CFR Part 1212.

RECORD SOURCE CATEGORIES:

Employees, applicants, installation EEO officers, complainants, EEO counselors, EEO investigators, EEOC complaints examiners, MSPB officials, complaints coordinators, Assistant Administrator for Equal Opportunity Programs.

NASA 10ERMS

SYSTEM NAME:

Executive Resources Management System - NASA

SYSTEM LOCATION:

Location 1, as set forth in Appendix A.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Approximately 2,000 individuals with experience and education unique to the NASA mission in the technical and administrative fields who are considered to be candidates for key positions within NASA.

CATEGORIES OF RECORDS IN THE SYSTEM:

Biographical data, education, training, work experience, career interests.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 2473, 44 U.S.C. 3101, 5 U.S.C. 4103; 5 U.S.C. 3396..

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The information contained in this system of records is used within NASA for the identification of replacement candidates. In addition to the internal uses of the information contained in this system of records, the following are routine uses outside of NASA: (1) Disclosures may be made to organizations or individuals having contract, legal, administrative or cooperative relationships with NASA, including labor unions, academic organizations, governmental organizations, non-profit organizations, and contractors; and to organizations or individuals seeking or having available a service or other benefit or advantage. The purpose of such disclosures is to satisfy a need or needs, further cooperative relationships, offer information, or respond to a request; (2) Statistical or data presentations may be made to governmental or other organizations or individuals having need of information about individuals in the records; (3) Responses may be made to other federal agencies, and other organizations having legal or administrative responsibilities related to programs and individuals in the records; (4) Disclosure may be made to a Congressional office from the record of an individual in response to a written inquiry from the Congressional office made at the request of that individual; and (5) Standard routine uses 1 through 4 inclusive as set forth in Appendix B may also apply.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders, lists, forms, index cards, microfilm, microfiche, and/or various computer storage devices such as discs, magnetic tapes and punched cards.

RETRIEVABILITY:

The records are indexed by social security number.

SAFEGUARDS:

Records are protected in accordance with the requirements and procedures

which appear in the NASA regulations at 14 CFR Part 1212.

RETENTION AND DISPOSAL:

Records are retained for varying periods of time depending on the need for use of the files and are destroyed or otherwise disposed of when no longer needed.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Development, Location 1.

Subsystem Managers: None.

NOTIFICATION PROCEDURE:

Information may be obtained from the System Manager only.

RECORD ACCESS PROCEDURES:

Requests from individuals should be addressed to the same address stated in the notification section above.

CONTESTING RECORD PROCEDURES:

The NASA regulations pertaining to access to records and for contesting contents and appealing initial determinations by the individual concerned are set forth in 14 CFR Part 1212.

RECORD SOURCE CATEGORIES:

Individuals to whom the records pertain, NASA employees, other Federal employees, other oranizations and individuals, and NASA personnel records.

NASA 10GMVP

SYSTEM NAME:

Government Motor Vehicle Operators Permit Records - NASA

SYSTEM LOCATION:

Locations 1 through 14 inclusive as set forth in Appendix A.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

NASA employees, contractor employees, other federal and state government employees. Location 8 does not maintain records on contractor employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, home address, Social Security Number, physical description of individual, physical condition of individual, traffic record.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 2473; 44 U.S.C. 3101; Federal Personnel Management Manual, Chapter 930; Federal Property Management Regulations Subpart 101-39.601; NASA Management Instruction 6720.1B.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The information contained in this system of records is used within NASA for the purpose of identifying and checking record of applicant and issuing permits for operation of Government vehicles. In addition to the internal uses of the information contained in this system of records, the following are routine uses outside of NASA: (1) National Driver Register, Department of Transportation, where Form 1047 is received for check and (2) Standard routine uses 1 through 4 inclusive, as set forth in Appendix B.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders.

RETRIEVABILITY:

Indexed by name.

SAFEGUARDS:

Records are kept in a locked metal file cabinet with access limited to those whose official duties require access. Room is locked during non-duty hours.

RETENTION AND DISPOSAL:

Records are maintained for a period of 3 years when permit expires or until permit holder leaves the Agency or requests cancellation. Records are destroyed when no longer reguired.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Support Services Branch, Location 1.

Subsystem Managers: Chief, Security Branch, Location 2; Transportation Officer, Location 3; Chief, Logistics Management Division, Location 4; Chief, Transportation Branch, Location 5; Chief of Transportation, Location 6; Chief, Management Support Division, Location 7; Transportation and Motor Vehicle Officer, Location 8; Director, Management Operations Office, Location 9; Chief Installation Operations, Location 11; Chief, Administration Office, Location 12; Chief, Maintenance and Administration Office, Location 13; Chief of Facilities, Location 14. Locations are as set forth in Appendix A.

NOTIFICATION PROCEDURE:

Information may be obtained from the cognizant system manager listed above.

RECORD ACCESS PROCEDURES:

Requests from individuals should be addressed to the same address as stated in the notification section above.

CONTESTING RECORD PROCEDURES:

The NASA regulations for access to records and for contesting contents and appealing initial determinations by the individual concerned appear at 14 CFR Part 1212.

RECORD SOURCE CATEGORIES:

Individual NASA employees and individual contractor employees. Location 8 does not maintain records on contractor employees.

NASA 10HABC

SYSTEM NAME:

History Archives Biographical Collection-NASA

SYSTEM LOCATION:

Locations 1 and 5 as set forth in Appendix A.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who are of historical significance in aeronautics, astronautics, space science, and other concerns of NASA.

CATEGORIES OF RECORDS IN THE SYSTEM:

Biographical data; speeches and articles by the individual; correspondence, interviews, and various other tapes and transcripts of program activities.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 2473 and 44 U.S.C. 3101.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The information contained in this system of records is used within NASA for researching and writing official histories and answering queries from various NASA offices. In addition to the internal uses of the information contained in this system of records, the following are routine uses outside of NASA: Disclosure to scholars (historians and other disciplines), or any other interested individuals for research and to write dissertations, articles, and books, for government, commercial and non-profit publication or develop material for other media use.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The records are stored in file folders or file boxes as appropriate.

RETRIEVABILITY:

The records are indexed by name.

SAFEGUARDS:

Because these records are archive material and therefore a matter of public information, there are no special safeguard procedures required.

RETENTION AND DISPOSAL:

Most biographical files are retained indefinitely, either in the archives or retired to the appropriate Federal Records Center.

SYSTEM MANAGER(S) AND ADDRESS:

Director, History Office, Code LBH, Location 1.

Subsystems Managers: JSC History Office Coordinator, Code BY, Location 5 (Locations are set forth in Appendix A).

NOTIFICATION PROCEDURE:

Information may be obtained from the cognizant system or subsystem manager listed above.

RECORD ACCESS PROCEDURES:

Requests from individuals should be addressed to: Same address as stated in the notification section above.

CONTESTING RECORD PROCEDURES:

The NASA regulations for access to records and for contesting contents and appealing initial determinations by the individual concerned appear at 14 CFR Part 1212.

RECORD SOURCE CATEGORIES:

Press releases, newspapers, journals, and the individuals themselves and copies of internal agency records.

NASA 10HERD

SYSTEM NAME:

Human Experimental and Research Data Records - NASA

SYSTEM LOCATION:

Locations 2, 3, 5, 6, and 9, as stated in Appendix A.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have been involved in space flight, aeronautical research flight, and/or participated in NASA tests or experimental or research programs; Civil Service employees, military, employees of other government agencies, contractor employees, students, human subjects (volunteer or paid), and other volunteers on whom information is collected as part of an experiment or study.

CATEGORIES OF RECORDS IN THE SYSTEM:

Data obtained in the course of an experiment, test, or research medical data from inflight records; other information collected in connection with an experiment, test, or research.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 2473 and 44 U.S.C. 3101.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The information contained in this system of records is used by NASA for the purposes of evaluating new analytical techniques, equipment, and re-examining flight data for alternative interpretations, developing applications of experimental techniques or equipment, reviewing and improving operational procedures with respect to experimental protocols (both inflight and ground), life support systems operating procedures, determining human engineering requirements, and carrying out other research.

In addition to the internal use of the information contained in this system of records, the following are routine uses outside of NASA: (1) Disclosures to other individuals or organizations, including Federal, State, or local agencies, and nonprofit, educational, or private entities, who are participating in NASA programs or are otherwise furthering the understanding or application of biological, physiological, and behavioral phenomena as reflected in the data contained in this system of records; and (2) the standard routine use 4 as set forth in Appendix B.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are in file folders; on punch cards, magnetic tapes, or discs; on microfilm, microfiche, still photographs, or motion picture film; and on various medical recordings such as electrocardiographic tapes, stripcharts, and x-rays.

RETRIEVABILITY:

By name, experiment or test; arbitrary experimental subject number; flight designation; or crew member designation on a particular space or aeronautical flight.

SAFEGUARDS:

Access is limited to Government personnel requiring access in the discharge of their duties, and to appropriate support contractor employees on a need-to-know basis. Computerized records are identified by code number and records are maintained in locked rooms or files. Records are protected in accordance with the requirements and procedures which appear in the NASA regulations set forth in 14 CFR Part 1212.

RETENTION AND DISPOSAL:

Astronaut records are retained indefinitely. Ground test and research data are retained for varying periods of time depending on the need for use of the files, and are destroyed or otherwise disposed of when no longer needed, except that significant medical data will be handled in accordance with OPM regulations and NASA Control Schedule 11.

SYSTEM MANAGER(S) AND ADDRESS:

Director, NASA Occupational Health Office, Location 1.

Subsystem Managers: Research Assistant to the Director, Location 2; Director of Man/Systems Integration Division, Location 3; Assistant Director for Life Sciences, Space and Life Sciences Directorate, Location 5; Director, Biomedical Office, Location 6; Director, Management Services Office, Location 9. Locations are as set forth in Appendix A.

NOTIFICATION PROCEDURE:

Information may be obtained from the system or subsystem manager named above.

RECORD ACCESS PROCEDURES:

Requests from individuals should be addressed to the same address as stated in the notification section above.

CONTESTING RECORD PROCEDURES:

The NASA regulations for access to records and for contesting and appealing initial determinations by the individual concerned appear at 14 CFR Part 1212.

RECORD SOURCE CATEGORIES:

Experimental test subjects, physicians, principal investigators and other researchers, and previous experimental test or research records.

NASA 10IGIC

SYSTEM NAME:

Inspector General Investigations Case Files - NASA

SYSTEM LOCATION:

National Aeronautics and Space Administration, Washington, DC 20546.

Subsystem Locations: Locations 1, 2, 4, 5, 6, 7, 8, 9 and 10 as set forth in Appendix A.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former employees of NASA, contractors and sub-contractors, and others whose actions have affected NASA.

CATEGORIES OF RECORDS IN THE SYSTEM:

Case files pertaining to matters including, but not limited to, the following classifications of cases: (1) Fraud against the Government, (2) Theft of Government property, (3) Bribery, (4) Lost or stolen lunar samples, (5) Misuse of Government property, (6) Conflict of interest, (7) Waiver of claim for overpayment of pay, (8) Leaks of Source Evaluation Board information, (9) Improper personal conduct, (10) Irregularities in awarding contracts.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 2473; 44 U.S.C. 3101; 28 U.S.C. 535 (b); 5 U.S.C. App. I; 4 CFR Part 91; Executive Order 11478.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The information contained in this system of records is used within NASA for: (1) Providing management with information which will serve as a possible basis for appropriate administrative action or the establishment of NASA policy; (2) Providing the Administrator of NASA (or the Comptroller General, as appropriate) sufficient information to provide a basis for decision concerning a request for waiver of claim in the case of an erroneous payment of pay.

In addition to the internal uses of the information contained in this system of records, the following are routine uses outside of NASA: (1) Responding to the White House regarding matters inquired of; (2) Disclosure to a Congressional office from the record of an individual in response to a written inquiry from the Congressional office made at the request of that individual; (3) Providing data to Federal intelligence elements; (4) Providing data to any source from which information is requested in the course of an investigation, to the extent necessary to identify the individual, inform the source of the nature and purpose of the investigation, and to identify the type of information requested; (5) Providing personal identifying data to Federal, State, local or foreign law enforcement representatives seeking confirmation of identity of persons under investigation; (6) Disclosing, as necessary, to a contractor, subcontractor, or grantee firm or institution to the extent that the disclosure is in NASA's interest and is relevant and necessary in order that the contractor/subcontractor/grantee is able to take administrative or corrective action; (7) Standard routine uses 1 through 4 inclusive as set forth in Appendix B.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information in the system is stored in file folders, index cards and on computer tapes and disks.

RETRIEVABILITY:

Information is retrieved by name of individual.

SAFEGUARDS:

Information is kept in locked metal file cabinets, and in secured vault and secured computer rooms. Access is limited to Inspector General personnel with a need-to-know.

RETENTION AND DISPOSAL:

Special interest case files are reviewed for destruction or further retention 10 years after case is closed and routine interest case files are destroyed 5 years after case is closed. Case is not closed until all judical and administration avenues and considerations have been finally exhausted. (Special interest files are those investigative files which the Assistant Inspector General for Investigations determines should be retained because of especially significant, sensitive, or historical content. All other files are routine interest files.)

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Inspector General for Investigations, Location 1.

Subsystem Managers: Director, Headquarters and Special Projects OIG Office, Location 1; Director, OIG Office at Ames Research Center, Location 2; Director, OIG Office at Goddard Space Flight Center, Location 4; Director, OIG Office at Lyndon B. Johnson Space Center, Location 5; Director, OIG Office of John F. Kennedy Space Center, Location 6; Director, OIG Office at Langley Research Center, Location 7; Director, OIG Office at Lewis Research Center, Location 8; Director, OIG Office at George C. Marshall Space Flight Center, Location 9; and Director, OIG Office at NASA Resident Office - JPL, Location 10.

NOTIFICATION PROCEDURE:

None. System is exempt. See below.

RECORD ACCESS PROCEDURES:

Same as above.

CONTESTING RECORD PROCEDURES:

Same as above.

RECORD SOURCE CATEGORIES:

Exempt.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The Inspector General Investigations Case Files system of records is exempt from all sections of the Privacy Act of 1974 (5 U.S.C. 552a), EXCEPT the following:

(b) relating to conditions of disclosure; (c)(1) and (2) relating to keeping and maintaining a disclosure accounting; (e)(4)(A) through (F) relating to publishing an annual system notice setting forth name, location, categories of individuals and records, routine uses, and policies regarding storage, retrievability, access controls, retention and disposal of the records; (e)(6), (7), (9), (10) and (11) relating to agency requirements for maintaining systems; and (i) relating to criminal penalties.

The determination to exempt this system of records has been made by the Administrator of NASA in accordance with 5 U.S.C. 552a(j) and Subpart 7 of the NASA regulations appearing in 14 CFR Part 1212, for the reason that the Office of Inspector General, NASA, is a component of NASA which performs as its principal function activity pertaining to the enforcement of criminal laws, within the meaning of 5 U.S.C. 552a(j)(2).

NASA 10PAYS

SYSTEM NAME:

Payroll Systems - NASA

SYSTEM LOCATION:

Locations 1, 2, 3, 4, 5, 6, 7, 8, 9, and 11, as set forth in Appendix A.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Present and former NASA employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

The data contained in this system of records includes payroll, employee leave, insurance, labor and human resource distribution and overtime information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 2473; 44 U.S.C. 3101; 5 U.S.C. 5501 et seq.; 5 U.S.C. 6301 et seq.; General Accounting Office Policy and Procedures Manual for Guidance of Federal Agencies, Title 6; Treasury Fiscal Requirements Manual, Part III; Federal Personnel Manual; and NASA Financial Management Manual, Sections 9300 and 9600.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The information contained in this system of records is used within NASA

for maintaining the payroll records and related areas.

In addition to the internal uses of the information contained in this system of records, the following are routine uses outside of NASA: (1) To furnish to a third party a verification of an employee's status upon written request of the employee; (2) To facilitate the verification of employee contributions and insurance data with carriers and collection agents; (3) To report to the Office of Personnel Management (a) withholdings of premiums for life insurance, health benefits and retirement, and (b) separated employees subject to retirement; (4) To furnish the U. S. Treasury magnetic tape reports on net pay, net savings allotments and bond transmittal pertaining to each employee; (5) To provide the Internal Revenue Service with detail of wages taxable under the Federal Insurance Contributions Act and to furnish a magnetic tape listing on Federal tax withholdings; (6) To furnish various financial institutions itemized listings of employee's pay and savings allotments transmitted to the institutions in accordance with employee requests; (7) To provide various Federal, state, and local taxing authorities itemized listing of withholdings for individual income taxes; (8) To respond to requests by State employment security agencies and the U.S. Department of Labor for employment, wage, and separation data on former employees for the purpose of determining eligibility for unemployment compensation; (9) To report to various Combined Federal Campaign offices total contributions withheld from employee wages; (10) To furnish leave balances and activity to the Office of Personnel Management upon request; (11) To furnish data to labor organizations in accordance with negotiated agreements; (12) To furnish pay data to the Department of State for certain NASA employees located outside the United States; (13) To furnish data to a consumer reporting agency in accordance with Section 3711(f) of Title 31; and (14) Standard routine uses 1 through 4 inclusive as set forth in Appendix B.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders, magnetic tape, and microfilm.

RETRIEVABILITY:

Records are indexed by name and/or social security number.

SAFEGUARDS:

Records are protected in accordance with the requirements and procedures which appear in the NASA regulations at 14 CFR Part 1212.

RETENTION AND DISPOSAL:

Records are retained for audit by the General Accounting Office and are transferred to the National Personnel Records Center, St. Louis, Missouri, anywhere from 1 to 3 years. Records are retained and destroyed in accordance with the policies and procedures outlined in NASA Records Disposition Handbook - NHB 1441.1A.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Financial Management Division, Office of the Comptroller, Location 1.

Subsystem Managers: Chief, Financial Management Division, Locations 2, 4, 5, 7 and 8; Financial Management Officer, Locations 3; Chief, Financial Management Office, Location 6; Director, Financial Management Office, Location 9; Chief, Resources and Financial Management Office, Location 11. Locations are as set forth in Appendix A.

NOTIFICATION PROCEDURE:

Information may be obtained from the cognizant system or subsystem manager listed above.

RECORD ACCESS PROCEDURES:

Requests from individuals should be addressed to the same address as stated in the notification section above.

CONTESTING RECORD PROCEDURES:

The NASA regulations for access to records and for contesting contents and appealing initial determinations by the individual concerned appear at 14 CFR Part 1212.

RECORD SOURCE CATEGORIES:

Individual on whom the record is maintained, personnel office, and the individual's supervisor.

NASA 10SCCF

SYSTEM NAME:

Standards of Conduct Counselling Case Files - NASA.

SYSTEM LOCATION:

National Aeronautics and Space Administration, Washington, DC 20546.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current, former, and prospective NASA employees, who have sought advice or have been counselled regarding conflict of interest requirements for government employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Depending upon the nature of the problem, information collected may include employment history, financial data, and information concerning family members.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 2473; 44 U.S.C 3101; 18 U.S.C. 201, 203, 205, 207-209; 5 U.S.C. 7324-7327; Executive Order 11222.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The information contained in the system of records is used within NASA for the purpose of counseling employees regarding conflict of interest problems. In addition to the internal uses of the information contained in this system of records, the following are routine uses outside of NASA: (1) Office of Personnel Management and Merit Systems Protection Board: for investigation of possible violations of standards of conduct which the agencies directly oversee; (2) Standard routine uses 1 through 4 inclusive as set forth in Appendix B.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are documentary and maintained in loose leaf binders or file folders.

RETRIEVABILITY:

By name of individual.

SAFEGUARDS:

Restricted access to a few authorized persons; stored in combination lock safe.

RETENTION AND DISPOSAL:

Retained indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant General Counsel for General Law, Code GG, NASA Headquarters, Washington, DC 20546.

NOTIFICATION PROCEDURE:

Information may be obtained from the System Manager.

RECORD ACCESS PROCEDURES:

Requests from individuals should be addressed to the System Manager and must include employee's full name and NASA installation where employed.

CONTESTING RECORD PROCEDURES:

The NASA regulations and procedures for access to records and for contesting contents and appealing initial

determinations by the individual concerned appear at 14 CFR Part 1212.

RECORD SOURCE CATEGORIES:

Information collected directly from individual and from his/her official employment record.

NASA 10SECR

SYSTEM NAME:

Security Records System - NASA.

SYSTEM LOCATION:

Locations 1 through 9 inclusive and Location 11, 12, and 14 as set forth in Appendix A.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees, applicants, NASA committee members, NASA consultants, NASA experts, NASA Resident Research Associates, guest workers, contractor employees, detailees, visitors, correspondents (written and telephonic), Faculty Fellows, sources of information.

CATEGORIES OF RECORDS IN THE SYSTEM:

Personnel Security Records, Criminal Matter Records, Traffic Management Records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

National Aeronautics and Space Act, Pub. L. 85-568; Espionage and Information Control Statutes, 18 U.S.C. 793 through 799; Sabotage Statutes, 18 U.S.C. 2151 through 2157; Conspiracy Statute, 18 U.S.C. 371; 18 U.S.C. 202-208 and 3056; Internal Security Act of 1950, 5 U.S.C. 781 through 798; Atomic Energy Act of 1954, Pub. L. 703; Executive Order 12356, Classification and Declassification of National Security Information and Material; Executive Order 10865, Safeguarding Classified Information Within Industry; Executive Order 10450, Security Requirements for Government Employees; Pub. L. 81-733; Executive Order 11490, Assigning Emergency Preparedness Functions to Federal Departments and Agencies; Federal Property Management Regulation, 41 CFR Subpart 101-11; Federal Personnel Manual, Chapters 732 and 736; 14 CFR Part 1203a; 42 U.S.C. 2473 and 44 U.S.C. 3101.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Personnel Security Records: The information contained in this category of records is used within NASA for the purpose of granting security clearances; for determining qualifications, suitability, and loyalty to the United States Government; for determining qualifications for access to classified information, security areas, and NASA installations, and for determining qualifications to travel to Communist controlled areas.

In addition to the internal uses of the information contained in this category of records, the following are routine uses outside of NASA: (1) To determine eligibility to perform classified visits to other Federal agencies and contractor facilities; (2) To provide data to Federal intelligence elements; (3) To provide data to any source from which information is requested in the course of an investigation, to the extent necessary to identify the individual, inform the source of the nature and purpose of the investigation, and to identify the type of information requested; (4) To provide a basis for determining preliminary visa eligibility; (5) To respond to White House inquiries; (6) Disclosures may be made to a Congressional office from the record of an individual in response to a written inquiry from the Congressional office made at the request of that individual; (7) To provide personal identifying data to Federal, State, local, or foreign law enforcement representatives seeking confirmation of identity of persons under investigation; (8) Disclosure to a NASA contractor, subcontractor, grantee, or other government organization information developed in an investigation or administrative inquiry concerning a violation of a Federal or State statute or NASA regulation on the part of an officer or employee of the contractor, subcontractor, grantee, or other government organization; and (9) Standard routine uses 1 through 4 inclusive as set forth in Appendix B.

Criminal Matter Records: The information contained in this category of records is used within NASA for providing management with information which will serve as a possible basis for administrative action. In addition to the internal uses of the information contained in this category of records, the routine uses outside of NASA are: (1) To provide personal identifying data to Federal, State, local, or foreign law enforcement representatives seeking confirmation of identity of persons under investigation; (2) To provide a NASA contractor, subcontractor, grantee, or other government organization information developed in an investigation or administrative inquiry concerning a violation of a Federal or State statute or NASA regulation on the part of an officer or employee of the contractor, subcontractor, grantee, or other government organization; and (3) Standard routine uses 1 through 4 inclusive as set forth in Appendix B.

Traffic Management Records: The information contained in this category of records is used within NASA to provide designated officials and employees with data concerning vehicle ownership, traffic accidents, violation of traffic laws, suspension of driving privileges, traffic control, vehicle parking, and car pools. In addition to the internal uses of the information contained in this category of records, the routine uses outside of NASA are: (1) To provide personal identifying data to Federal, State, local, or foreign law enforcement representatives seeking confirmation of identity of persons under investigation; (2) To provide a NASA contractor, subcontractor, grantee, or other government organization information developed in an investigation or administrative inquiry concerning a violation of a Federal or State statute or NASA regulation on the part of an officer or employee of the contractor, subcontractor, grantee, or other government organization; and (3) Standard routine uses 1 through 4 inclusive as set forth in Appendix B.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders, magnetic tape, punch cards, microfilm, and film.

RETRIEVABILITY:

Records are indexed by name, file number, organization, place of origin, badge number, decal number, date of event, space number, payroll number, and social security number.

SAFEGUARDS:

Access to Personnel Security Records is controlled by Government personnel exclusively. However, access to information extracted from personnel security records or information to be inserted into personnel security records is controlled by either government personnel or selected personnel of NASA contractor guard force or contractor personnel. Examples would be information required to prepare an identification badge and/or process a security clearance visitor request. Access to Criminal Matter Records is controlled by either Government personnel or selected personnel of NASA contractor guard forces. After presenting proper identification and requesting a file or record, a person with a need-to-know and, if appropriate, a proper clearance may have access to a file or record only after it has been retrieved and approved for release by a

NASA security representative. These records are secured in security storage equipment.

Traffic Management Records: Access to these records is controlled by either Government personnel or selected personnel of NASA contractor guard forces. Access to these records is permitted after a determination has been made that the requestor has an official interest. These records are stored in locked containers.

RETENTION AND DISPOSAL:

Records, depending upon type, are retained from 6 months to 30 years before being destroyed. When current immediate need no longer exists, records are either transferred to the appropriate Federal Records Center or destroyed in accordance with records disposal instructions.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, NASA Security Office, Location 1.

Subsystem Managers: Chief, Security Branch, Locations 2, 4, and 5; Security Officer, Location 3; Chief, Security Office, Location 6; Security Officer, Locations 7, 8, and 11; Chief, Security Division, Location 9; Security Officer at Location 12; Safety and Security Officer at Location 15. Locations are as set forth in Appendix A.

NOTIFICATION PROCEDURE:

Information may be obtained from the cognizant system or subsystem manager listed above. Requests must contain the following identifying data concerning the requestor: First, middle, and last name; date of birth; social security number; period and place of employment with NASA, if applicable.

RECORD ACCESS PROCEDURES:

Personnel Security Records compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, Federal contracts, or access to classified information have been exempted by the Administrator under 5 U.S.C. 522a (k) (5) from the access provisions of the Act.

Criminal Matter Records compiled for civil or criminal law enforcement purposes have been exempted by the Administrator under 5 U.S.C. 552a (k) (2) from the access provisions of the Act.

Traffic Management Records: Requests from individuals should be addressed to the same address as stated in the notification section above.

CONTESTING RECORD PROCEDURES:

For Personnel Security Records and Criminal Matters Records see Access, above. For Traffic Management Records, the NASA rules for access to records and for contesting contents and appealing initial determinations by the individual concerned appear in the NASA rules section of the **Federal Register.**

RECORD SOURCE CATEGORIES:

Personnel Security Records: Exempt

Criminal Matter Records: Exempt

Traffic Management Records: Employees, civil investigative agencies, civil law enforcement agencies, Federal and local judicial systems, medical records.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Personnel Security Records compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, Federal contracts, or access to classified information, but only to the extent that the disclosure of such material would reveal the identity of a confidential source, are exempt from the following sections of the Privacy Act of 1974, 5 U.S.C. 552a:

(c) (3) relating to access to the disclosure accounting; (d) relating to access to the records; (e) (1) relating to the type of information maintained in the records; (e) (4) (G) (H) and (I) relating to publishing in the annual system notice information as to agency procedures for access and correction and information as to the categories of sources of records; and (f) relating to developing Agency rules for gaining access and making corrections.

The determination to exempt this portion of the Security Records System has been made by the Administrator of NASA in accordance with 5 U.S.C. 552a (k) (5) and Subpart 7 of the NASA regulations appearing in 14 CFR Part 1212.

Criminal Matter Records to the extent they constitute investigatory material compiled for law enforcement purposes are exempt from the following sections of the Privacy Act of 1974, 5 U.S.C. 552a:

(c) (3) relating to access to the disclosure accounting; (d) relating to access to the records; (e) (1) relating to the type of information maintained in the records; (e) (4) (G) (H) and (I) relating to publishing in the annual system notice information as to agency procedures for access and correction and information as to the categories of sources of records; and (f) relating to developing Agency rules for gaining access and making corrections.

The determination to exempt this portion of the Security Records System has been made by the Administrator of NASA in accordance with 5 U.S.C. 552a (k) (2) and Subpart 7 of the NASA regulations appearing in 14 CFR Part 1212.

Records subject to the provisions of 5 U.S.C. 552 (b) (1) (required by Executive order to be kept secret in the interest of national defense or foreign policy) are exempt from the following sections of the Privacy Act of 1974, 5 U.S.C. 552a:

(c) (3) relating to access to the disclosure accounting; (d) relating to the access to the records; (e) (1) relating to the type of information maintained in the records; (e) (4) (G) (H) and (I) relating to publishing in the annual system notice information as to agency procedures for access and correction and information as to the categories of sources of records; and (f) relating to developing Agency rules for gaining access and making corrections.

The determination to exempt this portion of the Security Records System has been made by the Administrator of NASA in accordance with 5 U.S.C. 552A (k) (1) and Subpart 7 of the NASA regulations appearing in 14 CFR Part 1212.

NASA 10HIMS

SYSTEM NAME:

Health Information Management System - NASA.

SYSTEM LOCATION:

In Medical Clinics/Units and Environmental Health Offices at locations 1 through 15 inclusive as set forth in Appendix A.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

NASA Civil Service employees and applicants; other Agency civil service and military employees working at NASA; visitors to field installations; on-site contractor personnel who receive job related examinations, have mishaps or accidents, or come to clinic for emergency or first aid treatment; space flight personnel and their families.

CATEGORIES OF RECORDS IN THE SYSTEM:

General medical records of first aid, emergency treatment, examinations, exposures, and consultations.

Information resulting from physical examinations, laboratory and other tests, and medical history forms; treatment records; screening examination results; immunization records; administration of medications prescribed by private/personal physicians; statistical records; examination schedules; daily log of patients; correspondence; chemical, physical, and radiation exposure records; other environmental health data; alcohol/drug patient information;

consultation records; and health hazard and abatement data.

Astronauts and their families - more detailed and complex physical examinations.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 2473; 44 U.S.C. 3101; OMB Circular A-72; Pub. L. 92-255; Pub. L. 79-658.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The information contained in this system of records is used within NASA for the following purposes: Reference by examining physicians in conduct of physical examinations; review by physicians in consideration of fitness for duty; evaluation for physical disability retirement; statistical data development; patient recall; in-space medical evaluation for astronauts; exposure data for radiation/toxic exposure limits, compliance and examinations; consultations; evaluation of employees, applicants, and contractor employees for specialized or hazardous duties; and for determining reliability pursuant to the Space Transportation System, Personnel Reliability Program (14 CFR Part 1214 Subpart 1214.5, NASA Management Instruction 8610.13).

In addition to the internal uses of the information contained in this system of records, the following are routine uses outside of NASA: (1) Referral to private physicians designated by the individual when requested in writing; (2) Patient referrals; (3) Referral to OPM, OSHA and other Federal agencies as required in accordance with these special program responsibilities; (4) Referral of information to a non-NASA individual's employer; (5) Evaluation by medical consultants; (6) Disclosure to the employer of non-NASA personnel, information affecting the reliability of such office or employee for purposes of the Space Transportation System, Personnel Reliability Program; (7) Disclosure to the public of a summary of flight crew information as it relates to mission impact, and limited to name, diagnosis, treatment, and prognosis; and (8) Standard routine use 4 as set forth in Appendix B.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are in file folders, punch cards, electrocardiographic tapes, x-rays, microfiche, and computer discs and tapes. They are handled between NASA installations by telecommunications.

RETRIEVABILITY:

By name, date of birth and social security number.

SAFEGUARDS:

Access limited to concerned medical environmental health personnel on a need-to-know basis. Computerized records are identified by code number and records are maintained in locked rooms or files. Records are protected in accordance with the requirements and procedures which appear in the NASA regulations at 14 CFR Part 1212.

RETENTION AND DISPOSAL:

In accordance with Office of Personnel Management regulations and NASA Control Schedule II. Records on astronauts are retained permanently.

SYSTEM MANAGER(S) AND ADDRESS:

Director, NASA Occupational Health Office, Location 1

Subsystem Managers: Medical Director or Medical Administrator or Safety and Health Coordinator at Locations 1 through 15 inclusive as set forth in Appendix A.

NOTIFICATION PROCEDURE:

Information may be obtained from the cognizant system or subsystem manager listed above.

RECORD ACCESS PROCEDURES:

Requests from individuals should be addressed to the same address as stated in the notification section above.

CONTESTING RECORD PROCEDURES:

The NASA regulations for access to records and for contesting contents and appealing initial determinations by the individual concerned appear in 14 CFR Part 1212.

RECORD SOURCE CATEGORIES:

Individuals, physicians and previous medical records of individuals.

NASA 10SPER

SYSTEM NAME:

Special Personnel Records - NASA

SYSTEM LOCATION:

Locations 1 through 9 inclusive and Location 11 as set forth in Appendix A.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Candidates for and recipients of awards or NASA training; civilian and active duty military detailees to NASA; participants in enrollee programs; Faculty, Science, National Research Council and other Fellows, Associates and Guest Workers including those at NASA installations but not on NASA rolls; NASA contract and grant awardees and their associates having access to NASA premises and records; individuals with interest in NASA matters including Advisory Committee Members; NASA employees and family members, prospective employees and former employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Special Program Files including: (1) Alien Scientist files; (2) Award files; (3) Counseling files, life and health insurance, retirement, upward mobility, and work injury counseling files; (4) Military and Civilian Detailee files; (5) Personnel Development files such as nominations for and records of training or education, Upward Mobility Program files, Intern Program files, Apprentice files, and Enrollee Program files; (6) Special Employment files such as Federal Junior Fellowship Program files, Stay-in-School Program files, Summer Employment files, Worker-Trainee Opportunity Program files, NASA Executive Position files, Expert and Consultant files, and Cooperative Education Program files; and (7) Supervisory appraisals under Competitive Placement Plan.

Correspondence and related information including: (1) Claims correspondence and records about insurance such as life, health, and travel; (2) Congressional and other Special Interest correspondence, including employment inquiries; (3) Correspondence and records concerning travel related to permanent change of station; (4) Debt complaint correspondence; (5) Employment interview records; (6) Information related to outside employment and activities of NASA employees; (7) Placement follow-ups; (8) Pre-employment inquiries and reference checks; (9) Preliminary records related to possible adverse actions; (10) Records related to reductions-in-force; (11) Records under agency as well as negotiated grievance procedures; (12) Separation information including exit interview records, death certificates and other information concerning deaths, retirement records, and other information pertaining to separated employees; (13)Special planning, analysis, and administrative information; (14) Performance appraisal records; (15) Working papers for prospective or pending retirements.

Special Records and Rosters including: (1) Locator files; (2) Ranking lists of employees; (3) Repromotion

candidate lists; (4) Retired military employee records; (5) Retiree records.

Agencywide and installation automated personnel information.

Rosters, applications, recommendations, assignment information and evaluations of Faculty, Science, National Research Council and other Fellows, Associates and Guest Workers including those at NASA installations but not on NASA rolls; also, information about NASA contract and grant awardees and their associates having access to NASA premises and records.

Information about members of advisory committees and similar organizations.

All NASA-maintained information of the same types as, but not limited to, that information required in systems of records for which the Office of Personnel Management and other Federal personnel-related agencies publish governmentwide Privacy Act Notices in the Federal Register.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 2473; 44 U.S.C. 3101.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The information contained in this system of records is used by officials and employees within NASA for preview, planning, review and management decisions regarding personnel and activities related to the records.

In addition to the internal uses of the information contained in this system of records the following are routine uses outside of NASA: (1) Disclosures may be made to organizations or individuals having contract, legal, administrative or cooperative relationships with NASA, including labor unions, academic organizations, governmental organizations, non-profit organizations, and contractors; and to organizations or individuals seeking or having available a service or other benefit or advantage. The purpose of such disclosures is to satisfy a need or needs, further cooperative relationships, offer information, or respond to a request; (2) Statistical or data presentations may be made to governmental or other organizations or individuals having need of information about individuals in the records; (3) Responses may be made to other Federal agencies, and other organizations having legal or administrative responsibilities related to programs and individuals in the records; (4) Disclosure may be made to a Congressional office from the record of an individual in response to a written inquiry from the Congressional office made at the request of that individual; and (5) Standard routine uses 1 through 4 inclusive as set forth in Appendix B may also apply.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders, lists, forms, index cards, microfilm, microfiche, and/or various computer storage devices such as discs, magnetic tapes and punched cards.

RETRIEVABILITY:

Records are indexed by any one or a combination of name, birthdate, social security number, or identification number.

SAFEGUARDS:

Records are protected in accordance with the requirements and procedures which appear in the NASA regulations at 14 CFR Part 1212.

RETENTION AND DISPOSAL:

Records are retained for varying periods of time depending on the need for use of the files, and are destroyed or otherwise disposed of when no longer needed.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Personnel Programs Division, Location 1

Subsystem Managers: Director, Headquarters Personnel and Office of Inspector General, Location 1; Director of Personnel, Locations 2, 3, 4, 5, 6, 7, 8, and 9; Chief, Personnel Office, Location 11. Locations are as set forth in Appendix A.

NOTIFICATION PROCEDURE:

Apply to the System or Subsystem Manager at the appropriate location above. In addition to personal identification (name, social security number, etc.), indicate the specific type of record, the appropriate date or period of time, and the specific kind of individual applying (e.g., employee, former employee, contractor employee, etc.).

RECORD ACCESS PROCEDURES:

Same as notification procedures above.

CONTESTING RECORD PROCEDURES:

The NASA regulations pertaining to access to records and for contesting contents and appealing initial determinations by the individual concerned are set forth in 14 CFR Part 1212.

RECORD SOURCE CATEGORIES:

Individuals to whom the records pertain, NASA employees, other Federal employees, other organizations and individuals.

NASA 10XROI

SYSTEM NAME:

Exchange Records on Individuals - NASA

SECURITY CLASSIFICATION:

Locations 6, 7, 8, and 9 as set forth in Appendix A.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Present and former employees of, and applicants for employment with, NASA Exchanges, Recreational Associations, and Employees' Clubs at NASA installations. Individuals with active loans or charge accounts at one or more of the several organizations.

CATEGORIES OF RECORDS IN THE SYSTEM:

Exchange Employees' personnel and payroll records, including injury claims, unemployment claims, biographical data, performance evaluations, annual and sick leave records, and all other employee records. Credit records on NASA employees with active accounts.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 2473 and 44 U.S.C. 3101.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The information contained in this system of records is used within NASA for (1) maintaining exchange employees' payroll, leave, and other records; (2) determining pay adjustment eligibility; (3) determining Federal, State, and City tax withholdings; (4) determining leave eligibility; (5) determining person to notify in emergency; (6) certification of unemployment or injury claims; (7) determining eligibility for employment and promotion; and (8) determining credit standing.

In addition to the internal uses of the information contained in this system of records, the following are routine uses outside of NASA: (1) To furnish a third party a verification of an employee's status upon written request of the employee; (2) To facilitate the verification of employee contributions for insurance data with carriers and collection agents; (3) To provide various Federal, State, and local taxing authorities itemized listing of withholdings for individual income taxes; (4) To respond to State employment compensation requests for

wage and separation data on former employees; (5) To report previous job injuries to worker's compensation organizations; (6) For emergency notice to person designated by employee; (7) To report unemployment record to appropriate State and local authorities; (8) When requested, provide other employers with work record; and (9) Standard routine uses 1 through 4 inclusive as set forth in Appendix B.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders.

RETRIEVABILITY:

Records are indexed by name.

SAFEGUARDS:

Records are protected in accordance with the requirements and procedures which appear in the NASA regulations at 14 CFR Part 1212.

RETENTION AND DISPOSAL:

Exchange personnel records are permanent.

SYSTEM MANAGER(S) AND ADDRESS:

NASA Comptroller, Location 1.

Subsystem Managers: Chairperson, Exchange Council, Locations 6 and 7; Treasurer, NASA Exchange, Location 8; Exchange Operations Manager, Location 9; Head, Administrative Management Branch, and Treasurer Wallops Exchange and Morale Association, Location 4. Locations are as set forth in Appendix A.

NOTIFICATION PROCEDURE:

Individuals may obtain information from the cognizant subsystem managers listed above.

RECORD ACCESS PROCEDURES:

Requests from individuals should be directed to the same address as stated in the notification section above.

CONTESTING RECORD PROCEDURES:

The NASA rules for access to records and for contesting contents and appealing initial determinations by the individual concerned appear in the NASA rules section of the **Federal Register.**

RECORD SOURCE CATEGORIES:

Individual on whom the record is maintained and the individual's supervisor.

NASA 22ORER

SYSTEM NAME:

LeRC Occupational Radiation Exposure Records - NASA.

SYSTEM LOCATION:

Locations 8 and 13, as set forth in Appendix A.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Present and former LeRC employees and contractor personnel who may be exposed to radiation.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, date of birth, exposure history, name of license holder, social security number, employment and training history.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 2473; 44 U.S.C 3101; 42 U.S.C. 2021, 2073, 2093, 2095, 2111, 2133, 2134, 2201; 10 CFR Part 20.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The information contained in this system of records is used within NASA to inform individuals of their radiation dosage.

In addition to the internal uses of the information contained in this system of records, the following are routine uses outside of NASA: (1) Standard routine uses 1 through 4 inclusive as set forth in Appendix B and (2) The Nuclear Regulatory Commission (formerly Atomic Energy Commission) may inspect records pursuant to fulfilling their responsibilities in administering and issuing licenses to use radiation sources.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders.

RETRIEVABILITY:

Records are indexed by name.

SAFEGUARDS:

Records are personally supervised during the day and locked in the office at night.

Records are protected in accordance with the requirements and procedures which appear in the NASA rules section of the **Federal Register.**

RETENTION AND DISPOSAL:

Records are retained indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Office of Environmental Health, location 8.

Subsystem Manager: Manager, Plum Brook Reactor Facility, Location 13. Locations are set forth in Appendix A.

NOTIFICATION PROCEDURE:

Individuals may obtain information from the cognizant System Manager or Subsystem Manager listed above.

RECORD ACCESS PROCEDURES:

Same as above.

CONTESTING RECORD PROCEDURES:

The NASA rules for access to records and for contesting contents and appealing initial determinations by the individual concerned appear in the NASA rules section of the **Federal Register.**

RECORD SOURCE CATEGORIES:

Individual is sole source.

NASA 51RSCR

SYSTEM NAME:

GSFC Radiation Safety Committee Records - NASA

SYSTEM LOCATION:

Goddard Space Flight Center, National Aeronautics and Space Administration, Greenbelt, Maryland 20771.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Radiation users and custodians under GSFC cognizance.

CATEGORIES OF RECORDS IN THE SYSTEM:

Employment and training history.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 2473; 44 U.S.C. 3101; USNRC License and GHB 1860.1, 'Radiation Safety Handbook'; GHB 1860.2 'Radiation Safety Radio-Frequency'; GHB 1860.3 'Radiation Safety Laser'.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The information contained in this sytem of records is used within NASA for review and approval of custodians and users of ionizing and non-ionizing radiation by the Radiation Safety Committee. In addition to the internal uses of the information contained in this system of records, the following are routine uses outside NASA: (1) The Nuclear Regulatory Commission (formerly Atomic Energy Commission) may inspect records pursuant to fulfilling their responsibilities in administering and issuing licenses to use radiation sources; (2) Occupational Safety and Health Administration (Federal and State) may inspect records pursuant to fulfilling their responsibilities under the Occupational Safety and Health laws. (3) The

Environmental Protection Agency may inspect records pursuant to fulfilling their responsibilities under the Environmental Protection laws and executive order; (4) The Food and Drug Administration may inspect records pursuant to fulfilling their responsibilities respecting use of lasers and x-rays; (5) Standard routine uses 1 through 4 inclusive as set forth in Appendix B.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders.

RETRIEVABILITY:

Records are indexed by name only.

SAFEGUARDS:

Records are located in locked metal file cabinet in locked room with access limited to those whose official duties require access.

RETENTION AND DISPOSAL:

Records are kept for 2 years. If employee does not wish to be renewed for position at the end of 2-year period, the record is removed and placed in inactive file.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Health, Safety, and Security Office; address same as shown for system location.

NOTIFICATION PROCEDURE:

Individuals may obtain information from the system manager.

RECORD ACCESS PROCEDURES:

Same as above.

CONTESTING RECORD PROCEDURES:

The NASA regulations for access to records and for contesting contents and appealing initial determinations by the individual concerned appear at 14 CFR Part 1212.

RECORD SOURCE CATEGORIES:

Employees

NASA 53BHTR

SYSTEM NAME:

Wallops Flight Facility Base Housing Tenant Record - NASA.

SYSTEM LOCATION:

Wallops Flight Facility, National Aeronautics and Space Administration, Wallops Island, Virginia 23337

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Tenants of Wallops Housing area.

CATEGORIES OF RECORDS IN THE SYSTEM:

Housing Rental Agreements, records of rent receipts and records of dormitory occupants.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 2473 and 44 U.S.C. 3101.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The information contained in this system of records is used within NASA for control of family housing and dormitory facilities. In addition to the internal uses of the information contained in this system of records, the following are routine uses outside NASA: (1) To furnish to a third party a verification of an employee's tenant status upon a written request of tenant; (2) To furnish verification of residency to various Federal, State, and local authorities; and (3) Standard routine uses 1 through 4 inclusive as set forth in Appendix B.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders and card files.

RETRIEVABILITY:

Records are indexed by name and/or room number.

SAFEGUARDS:

Access to and use of these records are limited to those persons whose official duties require such access. Records are protected in accordance with the requirements and procedures which appear in the NASA regulations at 14 CFR Part 1212.

RETENTION AND DISPOSAL:

Records are retained and destroyed in accordance with the policies and procedures outlined in NASA Records Disposition Handbook, NHB 1441.1A.

SYSTEM MANAGER(S) AND ADDRESS:

Head, Wallops Facilities Engineering Branch, Code 273 address same as shown for System Location.

NOTIFICATION PROCEDURE:

Individuals may obtain information from the System Manager.

RECORD ACCESS PROCEDURES:

Same as above.

CONTESTING RECORD PROCEDURES:

The NASA regulations for access to records and for contesting contents and initial determinations by the individual concerned appear at 14 CFR Part 1212.

RECORD SOURCE CATEGORIES:

Tenants and dormitory occupants and Administrative Management records.

NASA 72XOPR

SYSTEM NAME:

JSC Exchange Activities Records - NASA.

SYSTEM LOCATION:

Lyndon B. Johnson Space Center, National Aeronautics and Space Administration, Houston, Texas 77058.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees and past employees of JSC Exchange Operations, applicants under the JSC Exchange Scholarship Program, and JSC employees or JSC contractor employees participating in sports or special activities sponsored by the Exchange.

CATEGORIES OF RECORDS IN THE SYSTEM:

For present and past employees of the JSC Exchange Operations, the system includes a variety of records relating to personnel actions and determinations made about an individual while employed by the NASA Exchange-JSC. These records contain information about an individual relating to birth date; social security number; home address and telephone number; marital status; references; veteran preference, tenure, handicap; position description, past and present salaries, payroll deductions, leave; letters of commendation and reprimand; adverse actions, charges and decisions on charges; notice of reduction-in-force; personnel actions, including but not limited to, appointment, reassignment, demotion, detail, promotion, transfer and separation; minority group; records relating to life insurance, health and retirement benefits; designation of beneficiary; training; performance ratings; physical examinations; criminal matters; data documenting the reasons for personnel actions or decisions made about an individual; awards; and other information relating to the status of the individual.

For successful applicants under the JSC Exchange Scholarship Program, the system contains information supplied by individual center employees who have applied for an Exchange Scholarship for their son or daughter and includes, but is not limited to, education, financial transactions or holdings, employment history, medical data and other related information.

For participants in social or sports activities sponsored by the Exchange, information includes employees' or

contractors' employee identification number, organization, location, telephone number, and other information directly related to status or interest in participation in such activities.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 2473; 44 U.S.C. 3101; NASA Management Instruction 9050.6; Treasury Fiscal Requirement Manual, Part III, Payroll Deductions and Withholdings; Federal Personnel Manual; JSCM 31712A, Exchange Activities Manual, dated May 1980.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The information contained in this system of records is used within NASA for the following purposes: (1) With respect to past or present employees of the JSC Exchange Operations, information in the system is used to: (a) pay employees and advise employees through Leave and Earnings Statements, (b) provide for promotion opportunities, disciplinary actions, staffing controls, budget requirements, employee fringe benefits, and other related personnel managerial purposes, and (c) submit reports in accordance with legal or policy directives and regulations to center management and NASA Headquarters; (2) With respect to successful applicants under the JSC Scholarship Program, the information in the system is used to award scholarships to the sons and daughters of NASA-JSC employees; and (3) With respect to participants in the social or sports activities sponsored by the Exchange, the information maintained in the system is used to facilitate participation in such activities.

In addition to the internal uses of the information contained in this system of records, the following are routine uses outside of NASA for information maintained on JSC Exchange Operations employees only: (1) Provide information in accordance with legal or policy directives and regulations to the Internal Revenue Service, Department of Labor, Department of Commerce, Texas State Government Agencies, labor unions; (2) Provide information to insurance carriers with regard to worker's compensation, health and accident, and retirement insurance coverages; (3) Provide employment or credit information to other parties as requested by a current or former employee of the JSC Exchange Operations; and (4) Standard routine uses 1 through 4 inclusive as set forth in Appendix B.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders.

RETRIEVABILITY:

For Exchange employees, records are maintained by name and filed as current or past employee. For Scholarship applicants, records are maintained by name. For participants in social or sports activities, records are maintained by name.

SAFEGUARDS:

Records are located in locked metal file cabinets with access limited to those whose official duties require access.

RETENTION AND DISPOSAL:

For employees of JSC Exchange Operations, Personnel Records are retained indefinitely to satisfy payroll, reemployment, unemployment compensation, tax and employee retirement purposes.

For successful applicants under the JSC Exchange Scholarship Program, records are maintained until completion of awarded scholarship and then destroyed. Records pertaining to unsuccessful applicants are returned to them.

For participants in social or sports activities, records are maintained for a stated participation period, and are then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Manager, Exchange Operations, NASA Exchange - JSC, address same as shown for System Location.

NOTIFICATION PROCEDURE:

Individuals may obtain information from the System Manager.

RECORD ACCESS PROCEDURES:

Same as above.

CONTESTING RECORD PROCEDURES:

The NASA regulations for access to records and for contesting contents and appealing initial determinations by the individual concerned appear in 14 CFR Part 1212.

RECORD SOURCE CATEGORIES:

For employees of the JSC Exchange Operations, information is obtained from the individual employee, the employee references, insurance carriers, JSC Health Services Division, JSC Security, employment agencies, Texas Unemployment Commission, credit bureaus, and creditors.

With respect to the JSC Exchange Scholarship Program, the information is obtained from the parents or guardians of the scholarship participants.

For JSC employees and JSC contractor employees participating in social or sports activities sponsored by the Exchange, information is obtained from the individual participant.

NASA 73FHAP

SYSTEM NAME:

WSTF Federal Housing Administration (FHA) 809 Housing Program - NASA.

SYSTEM LOCATION:

JSC White Sands Test Facility, National Aeronautics and Space Administration, P. O. Drawer MM, Las Cruces, New Mexico 88004.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

WSTF Civil Service and contractor personnel who have applied for FHA 809 housing.

CATEGORIES OF RECORDS IN THE SYSTEM:

Contains personal (name, home address, home phone, age, marital status), realtor/mortgage and employment data. Contains certification by employee, WSTF, and FHA.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 2473; 44 U.S.C. 3101; and 12 U.S.C. 1748h-1 (Section 809, National Housing Act).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The information contained in this system of records is used within NASA for identification of employees who have applied for and received or not received FHA 809 certificates. In addition to the internal uses of the information contained in this system of records, the following are routine uses outside of NASA: (1) Disclosures to the Federal Housing Administration to facilitate their issuing or denying 809 housing certificates; (2) Disclosures to realtors and builders to facilitate their activities with respect to the real estate transaction; and (3) Standard routine uses 1 through 4 inclusive as set forth in Appendix B.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders and index cards.

RETRIEVABILITY:

Records are indexed by certificate number and person's name.

SAFEGUARDS:

Records are located in locked metal file cabinets or in metal file cabinets in secured rooms with access limited to those whose official duties require access.

RETENTION AND DISPOSAL:

Certificates are held for 5 years after issuance and then destroyed by shredding. Index cards are held indefinitely in order that an employee will not be authorized more than one certificate.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Administration Office, address same as shown for System Location.

NOTIFICATION PROCEDURE:

Individuals may obtain information from the System Manager.

RECORD ACCESS PROCEDURES:

Same as above.

CONTESTING RECORD PROCEDURES:

The NASA regulations for access to records and for contesting contents and appealing initial determinations by the individual concerned appear at 14 CFR Part 1212.

RECORD SOURCE CATEGORIES:

Individual on whom the record is maintained.

NASA 76RTES

SYSTEM NAME:

KSC Radiation Training and Experience Summary - NASA

SYSTEM LOCATION:

John F. Kennedy Space Center, National Aeronautics and Space Administration, Kennedy Space Center, Florida 32899.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Custodians and/or users of sources radiation (ionizing and non-ionizing). Applicable to all users or custodians at KSC and NASA or NASA contractor personnel at Cape Canaveral Air Force Station, Florida, or Vandenberg Air Force Base, California.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individuals name and radiation related training and experience.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 2473; 44 U.S.C. 3101; 42 U.S.C. 2021, 2111, 2201, 2232, 2233, 10 CFR Part 33 for Federal Licensee, and Florida Administrative Code, Chapter 10 D-56 for State Licensee.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The information contained in this system of records is used within NASA to determine the suitability of individuals for specific assignments dealing with radiation and to preclude unnecessary exposure to self and others.

In addition to the internal uses of the information contained in this system of records, routine uses outside of NASA include: (1) Disclosure to Air Force Radiation Protection Officers at Eastern Space and Missile Center, Patrick Air Force Base, Florida, and Vandenberg Air Force Base, California, to governmental and private license holders, and to NASA contractors using sources of radiation to facilitate protection of the individual and the public; (2) Standard routine uses 1 through 4 inclusive as set forth in Appendix B.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Duplicate copies of the records are maintained for Kennedy Space Center by EG & G Florida, Inc., Occupational Medicine and Environmental Health Services. All records maintained by the KSC Biomedical Office or EG & G Florida, Inc., consist of 8 1/2 x 11 inch paper files.

RETRIEVABILITY:

Records are indexed by name, program/project title. Use authorization number and/or license number as applicable.

SAFEGUARDS:

Records are personally supervised during the day and locked in the office at night. Records are protected in accordance with the requirements and procedures which appear in the applicable NASA regulations at 14 CFR Part 1212.

RETENTION AND DISPOSAL:

Records are retained indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

KSC Radiation Protection Officer; address same as shown for System Location.

NOTIFICATION PROCEDURE:

Individuals may obtain information from the system manager.

RECORD ACCESS PROCEDURES:

Same as above.

CONTESTING RECORD PROCEDURES:

The NASA regulations for access to records and for contesting contents and appealing initial determinations by the individual concerned appear at 14 CFR Part 1212.

RECORD SOURCE CATEGORIES:

Individual is sole source.

NASA 76STCS

SYSTEM NAME:

KSC Shuttle Training Certification System (YC 04)

SYSTEM LOCATION:

John F. Kennedy Space Center Systems Training and Employee Development Branch, Kennedy Space Center, FL 32899

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

KSC Civil Service, KSC contractor, and DOD personnel who have received systems, skills, or safety training in support of KSC or Space Shuttle Operations.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records of training attendance and certifications, including certifications of physical ability to perform hazardous tasks.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 2473, 44 U.S.C. 3101

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The information contained in this system of records is used within NASA to determine training needs, and the operational readiness of the work force, to provide data for badging and access control to hazardous areas or critical operations, to determine the size of individual protective equipment and to identify personnel with needed skill combinations. In addition to the internal uses the information contained in this systems of records, the following are routine uses outside of NASA: (1) Disclosure is made of information on employees of KSC contractors to those contractor organizations and to EG & G Florida, Inc., to facilitate the performance of the contracts. EG & G Florida, Inc., compiles these training records for KSC; (2) Standard routine uses 1-4 inclusive as set forth in Appendix B.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained for KSC by EG & G Florida, Inc., on computer tape with printouts made periodically as required. Complete printouts are filed in the KSC Systems Training and Employee Development Branch, and the EG & G Florida, Inc., training office. Records containing raw data on course attendance and trainee statistics are maintained by EG & G Florida, Inc., for KSC.

RETRIEVABILITY:

Indexed by name, organization, and skill.

SAFEGUARDS:

These listings are automated systems, skills, and safety training records maintained under administrative control of responsible organizations in areas that are locked when not in use. Records are protected in accordance with the requirements and procedures which appear in the NASA regulations at 14 CFR Part 1212.

RETENTION AND DISPOSAL:

Outdated records are destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Systems Training and Employee Development Branch, NASA Kennedy Space Center, FL 32899

NOTIFICATION PROCEDURE:

Individuals may obtain information from the Systems Manager.

RECORD ACCESS PROCEDURES:

Same as above.

CONTESTING RECORD PROCEDURES:

The NASA regulations for access to records and for contesting contents and for appealing initial determinations by the individual concerned appear at 14 CFR Part 1212.

RECORD SOURCE CATEGORIES:

Information is obtained from class rosters, operational records, reports of physical examination completions and actions of certification boards.

NASA 76XRAD

SYSTEM NAME:

KSC USNRC Occupational External Radiation Exposure History for Nuclear Regulatory Commission Licenses - NASA.

SYSTEM LOCATION:

John F. Kennedy Space Center, National Aeronautics and Space Administration, Kennedy Space Center, Florida 32899.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

KSC civil servants and KSC contractor personnel who have received radiation exposure.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, date of birth, exposure history, name of license holder, social security number.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 2473; 44 U.S.C. 3101; 42 U.S.C. 2021, 2073, 2093, 2095, 2111, 2133, 2134, and 2201; 10 CFR Part 20 for Federal Licensee; and Florida Administrative Code, Chapter 10 D-56 for State Licensee.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The information contained in this system of records is used within NASA to record exposure and to inform individuals of their approaching or exceeding radiation dose limits.

In addition to the internal uses of the information contained in this system of records the following are routine uses outside of NASA: (1) Disclosure to Air Force Radiation Protection Offices at Eastern Space and Missile Center, Patrick Air Force Base, Florida and Vandenberg Air Force Base, California, to governmental and private license holders, and to NASA contractors using radioactive materials or ionizing radiation producing devices, to facilitate the protection of individuals; (2) Standard routine uses 1 through 4 inclusive as set forth in Appendix B.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Duplicate copies of the records are maintained for Kennedy Space Center by EG & G Florida, Inc., Occupational Medicine and Environmental Health Services. All records maintained by the KSC Biomedical Office or EG & G Florida, Inc., consist of 8 1/2 x 11 inch paper files.

RETRIEVABILITY:

Records are indexed by name in personnel dosimetry files.

SAFEGUARDS:

Records are personally supervised during the day and locked in the office at night. Records are protected in accordance with the requirements and procedures which appear in the NASA regulations at 14 CFR Part 1212.

RETENTION AND DISPOSAL:

Records are maintained indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

KSC Radiation Protection Officer; address same as shown for System Location.

NOTIFICATION PROCEDURE:

Individuals may obtain information from the System Manager.

RECORD ACCESS PROCEDURES:

Same as above.

CONTESTING RECORD PROCEDURES:

The NASA regulations for access to records and for contesting contents and appealing initial determinations by the individual concerned appear at 14 CFR Part 1212.

RECORD SOURCE CATEGORIES:

Individual is sole source.

Appendix A—Location Numbers and Mailing Addresses of NASA Installations at Which Records Are Located

Location 1.
National Aeronautics and Space Administration
Washington, DC 20546
Location 2
Ames Research Center
National Aeronautics and Space Administration
Moffett Field, CA 94035
Location 3
Dryden Flight Research Facility
National Aeronautics and Space Administration
P. O. Box 273
Edwards, CA 93523
Location 4
Goddard Space Flight Center
National Aeronautics and Space Administration
Greenbelt, MD 20771
Location 5
Lyndon B. Johnson Space Center
National Aeronautics and Space Administration
Houston, TX 77058
Location 6
John F. Kennedy Space Center
National Aeronautics and Space Administration
Kennedy Space Center, FL 32899
Location 7
Langley Research Center
National Aeronautics and Space Administration
Langley Station
Hampton, VA 23665
Location 8
Lewis Research Center
National Aeronautics and Space Administration

21000 Brookpark Road
Cleveland, OH 44135
Location 9
George C. Marshall Space Flight Center
National Aeronautics and Space Administration
Marshall Space Flight Center, AL 35812
Location 10
NASA Resident Office-JPL
National Aeronautics and Space Administration
4800 Oak Grove Drive
Pasadena, CA 91103
Location 11
National Space Technology Laboratories
National Aeronautics and Space Administration
NSTL, Station, MS 39529
Location 12
JSC White Sands Test Facility
National Aeronautics and Space Administration
P.O. Drawer MM
Las Cruces, NM 88004
Location 13
LeRC Plum Brook Station
National Aeronautics and Space Administration
Sandusky, OH 44870
Location 14
Michoud Assembly Facility
National Aeronautics and Space Administration
P.O. Box 29300
New Orleans, LA 70129

Appendix B—Standard Routine Uses—NASA

The following routine uses of information contained in systems of records subject to the Privacy Act of 1974 are standard for many NASA systems. They are cited by reference in the paragraph 'Routine uses of records maintained in the system, including categories of users and the purpose of such uses' of the FEDERAL REGISTER notice on those systems to which they apply.

Standard Routine Use No. 1 - LAW ENFORCEMENT - In the event that this system of records indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether federal, state, local or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation or order issued pursuant thereto.

Standard Routine Use No. 2 - DISCLOSURE WHEN REQUESTING INFORMATION - A record from this system of records may be disclosed as a 'routine use' to a federal, state or local agency maintaining civil, criminal or other relevant enforcement information or other pertinent information, such as current licenses, if necessary to obtain information relevant to an agency decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant or other benefit.

Standard Routine Use No. 3 - DISCLOSURE OF REQUESTED INFORMATION - A record from this system of records may be disclosed to a federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

Standard Routine Use No. 4 - COURT PROCEEDINGS - In the event there is a pending court or formal administrative proceeding, any records which are relevant to the proceeding may be disclosed to the Department of Justice or other agency for purposes of representing the Government, or in the course of presenting evidence, or they may be produced to parties or counsel involved in the proceeding in the course of pre-trial discovery.

[FR Doc. 84-26059 Filed 10-9-84; 8:45 am]
BILLING CODE 7510-01-T

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

Dance Advisory Panel (Dance TV Initiative); Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Dance Advisory Panel (Dance TV Initiative) to the National Council on the Arts will be held on October 24, 1984, from 9:00 a.m.-5:30 p.m. in room 716 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, D.C. 20506

This meeting is for the purpose of Panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and 9(b) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call (202) 682-5433.

Dated: October 1, 1984.

John H. Clark,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 84-26695 Filed 10-9-84; 8:45 am]
BILLING CODE 7537-01-M

NATIONAL SCIENCE FOUNDATION

Advisory Panel for Memory and Cognitive Processes; Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, the National Science Foundation announces the following meeting:

Name: Advisory Panel for Memory and Cognitive Processes.

Date and Time: October 25 and 26, 1984: 9:00 a.m.—5:00 p.m. each day.

Place: National Science Foundation, 1800 G St., NW., Washington, D.C. 20550, Room 523.

Type of Meeting: Closed.

Contact Person: Dr. Joseph L. Young, Program Director, Memory and Cognitive Processes Program, Room 320, National Science Foundation, Washington, D.C. 20550, telephone (202) 357-9898.

Summary Minutes: May be obtained from the Contact Person at the above stated address.

Purpose of Meeting: To provide advice and recommendations concerning support for research in memory and cognitive processes.

Agenda: To review and evaluate research proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Authority to Close Meeting: This determination was made by the Committee Management Officer pursuant to provisions of section 10(d) of Pub. L. 92-463. The Committee Management Officer was delegated the authority to make such determinations by the Director, NSF, on July 6, 1979.

Dated: October 4, 1984.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 26755 Filed 10-9-84; 8:45 am]

BILLING CODE 7555-01-M

Technical Review Committee for Advanced Scientific Computing; Meeting

In accordance with the Federal Advisory Committee Act, as amended, Pub. L. 92–463, the National Science Foundation announces the following meeting.

Name: Technical Review Committee for Advanced Scientific Computing.

Date and Time: Thursday, Friday and Saturday, October 25, 26 and 27, 1984 from 9:00 a.m. to 5:00 p.m.

Place: Room 520, National Science Foundation, 1800 G Street, NW., Washington, DC 20550.

Type of Meeting: Closed.

Contact Person: Dr. Lawrence Lee, Program Director for Supercomputing Centers, Room 504, Telephone: (202)357–7558.

Purpose of Advisory Panel: To review proposals received in response to a Project Solicitation for Advanced Scientific Computing Centers.

Agenda: To review and evaluate research proposals as one of four parts of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Authority to Close Meeting: This determination was made by the Committee Management Officer pursuant to provisions of section 10((d) of Pub. L. 92–463. The Committee Management Officer was delegated the authority to make such determinations by the Director, NSF, on July 6, 1979.

Dated: October 4, 1984.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 84-26756 Filed 10-9-84; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–247, License No. DPR–26, EA 84–92]

Consolidated Edison Company of New York, Inc.; Order Modifying License

In the matter of Consolidated Edison Company of New York, Inc., (Indian Point Nuclear Generating Station, Unit 2), Docket No. 50–247, License No. DPR–26, EA84–92.

I

Consolidated Edison Company (the "licensee") is the holder of Facility Operating License No. DPR–26 which authorizes the licensee to operate the Indian Point Nuclear Generating Station, Unit 2 (the "facility") in Buchanan, New York.

II

On June 12–15, 1984, an NRC special safety inspection was conducted to review radiological safety concerns identified by the resident inspector. As a result of this inspection on June 21, 1984, a Confirmatory Action Letter was issued by the Regional Administrator of Region I to confirm the licensee's commitments to take immediate and effective measures to improve radiological controls and prevent recurrence of deficiencies affecting radiological controls, including upgrading controls on High Radiation Area inside the Vapor Containment, ensuring that sampling of airborne radioactive material is consistent with the requirements of 10 CFR 20.103, and reviewing the qualifications of all contractor radiation protection technicians and supervisors to ensure these individuals meet the minimum criteria of ANSI N18.1, 1971, "Selection and Training of Nuclear Power Plant Personnel."

On July 5–6, 1984, the NRC special safety inspection was resumed to review the circumstances associated with the unplanned occupational radiation exposures to two workers on June 19, 1984, of 1050 millirem and 1500 millirem, respectively. One of the workers received a total quarterly exposure of 2395 millirem. The 10 CFR Part 20 limit is 3000 millirem per calendar quarter. Although the unplanned exposures were not in excess of regulatory limits, a substantial potential for such an exposure did exist.

The workers received the unplanned exposures while in a High Radiation Area where they were waiting to be called to work inside steam generators. Although the workers believed that they were standing in a low-background radiation area inside the Vapor Containment, radiation surveys performed by the licensee after identification of the unplanned exposures indicated that the workers inadvertently waited in an area with radiation dose rates of between 2000 and 4000 milliren per hour. The required radiological controls regarding access to the High Radiation Area where the workers waited were not implemented. Specifically, the workers were not adequately instructed by the use of map routes or guides, or otherwise directed to the location of the actual low background area where they were to wait. Also, these areas which had dose rates greater than 1000 millirem per hour were not adequately barricated to prevent unauthorized entry. Further, the workers were sent to the area of low-backgroud radiation without radiation survey meters, alarming dosimeters, or the equivalent that would have alerted them to the high radiation fields in which they finally waited. The provision of such equipment is required by Technical Specifications given that the area through which the workers were to proceed and in which they were to wait were both contained within an area posted as a High Radiation Area.

On July 18, 1984, an Enforcement Conference was conducted on-site to discuss the incidents. At this meeting, the licensee identified specific corrective measures and proposed a plan to upgrade and improve the radiation protection program at the facility.

On August 16–17, 1984, an NRC special safety inspection was conducted to review the circumstances associated with an unplanned exposure of approximately 2000 millirem to another worker on August 7, 1984. Although the unplanned exposure was not in excess of regulatory limits, a substantial potential for such an exposure did exist. The occurance was reported to the NRC resident inspector on August 9, 1984 and involved an individual performing work inside a steam generator. The worker was standing in the manway of one of the steam generators with his arms and portions of his upper body located inside the steam generator. The radiation does rate at the steam generator manway was between 10–15 rem per hour and as high as 30 rem per hour inside the steam generator. Although the worker's exposure was being controlled by a Radiation Protection Technician, the technician did not read all of the self-reading dosimeters located on the worker (upper arms, head and chest) and did not use the highest dosimeter value (the upper arms in this case) to control the worker's time in the steam generator and to limit the worker's exposure as required by procedures. This unplanned exposure resulted in a total of 2900 millirem received by the individual during the calendar quarter (the 10 CFR Part 20 limit is 3000 millirem per calendar quarter).

The violations of NRC requirements associated with these incidents are set forth in a Notice of Violation issued to the licensee on this date and incorporated herein by reference. These

recent violations at the facility represent a continuing problem in the effective implementation of radiological controls at Indian Point Nuclear Generating Station, Unit 2. On December 4, 1981, a Notice of Violation and Proposed Imposition of Civil Penalty was issued to the licensee in the amount of $40,000 for violations involving weaknesses in the control of personnel monitoring, access of personnel to high radiation areas, and failures of health physics contractor personnel to adhere to procedures (Reference EA No. 82–01). Also, on December 16, 1982, a Notice of Violation and Proposed Imposition of Civil Penalty in the amount of $180,000 was issued to the licensee, $100,000 of which was for violations involving a radiation exposure in excess of regulatory limits to a contractor performing diving operations in the spent fuel pool. In that case, a spent fuel bundle was incorrectly moved near a location in the spent fuel pool where diving operations were to occur; the survey of the area did not identify the resulting high radiation fields associated with the bundle; and the diver's monitoring equipment did not identify and warn the diver of the resulting hazards associated with the area in which he was working (Reference EA No. 82–110).

III

Collectively, these occurrences at the facility represent inadequate planning, direction, and control of activities involving the potential for personnel exposure to radiation in excess of regulatory limits. These occurrences are indicative of programmatic deficiencies in the radiological controls program and they demonstrate the need for significant generic corrective measures to prevent similar occurrences in the future.

IV

In view of the foregoing, and pursuant to Sections 103, 161(i), 161(o), and 182 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR Part 2 and 10 CFR Part 50, it is hereby ordered that:

A. Within 30 days of the effective date of this Order, the licensee shall submit to the Regional Administrator, Region I, for review and approval:

(1) An action plan for upgrading the radiological controls program, a description of action items to be performed, and a schedule delineating a timetable for completion of those actions. All actions shall be completed no later than one year from the effective date of this Order. The plan for upgrading the radiological controls program shall provide a description of the program and shall define the subjects to be addressed by the administrative and implementing procedures.

The radiological controls program shall include:

(a) Provisions for positive control of High Radiation Areas;

(b) A clear and effective Radiation Work Permit (RWP) system;

(c) A technically adequate and effective Respiratory Protection Program;

(d) An effective Training Program for both employee and contractor health physics staff and radiation workers, including provisions for informing individuals of the presence of radioactive material or radiation and instructions in precautions and procedures to minimize exposure;

(e) A program which documents existing corporate philosophy to maintain radiation exposures as low as is reasonably achievable; and,

(f) A system for auditing and evaluating program implementation by qualified assessors at least annually.

(2) Specific interim actions taken or planned for effecting improved radiological controls before the program required by Paragraph (1) is implemented, including consolidation of procedures, personnel training, enhanced high radiation area controls, and increased management oversight.

(3) A charter for a senior level Oversight Committee to monitor and report on the effectiveness and quality of the radiological controls program and the progress being made in implementing the planned upgrade of the program discussed in Paragraph (1) above. The Committee shall assign one or more individuals, independent of the radiological protection organization, to perform surveillance of the day-to-day activities and to provide assessments of the adequacy of performance of the radiation protection staff and radiation protection practices, and to periodically report on these assessments to the Committee chairman. This charter shall include provisions that the Committee will provide monthly a written report directly to a senior corporate officer (at the level of the vice-President Nuclear Power or above), which documents the achievements made in upgrading the program. A copy of each report shall also be submitted to the Regional Administrator, Region I. The senior level Oversight Committee shall function at least until completion of the action plan, and the submittal and acceptance by the Regional Administrator, Region I, of a final report which summarizes program improvements and details plans to maintain the effectiveness of the program. The identity and qualifications for each member assigned to this Committee shall also be provided to the Regional Administrator along with the charter for the establishment of this Committee. The members of this Committee shall be independent of the licensee's radiological protection organization and from those persons responsible for developing and implementing the plan required by Paragraphs (1) and (2) of this Order.

B. Upon review and approval of the licensee's submittals by the Regional Administrator, Region I, they shall be implemented. Scheduled completion dates may not be extended without good cause and the concurrence of the Regional Administrator, Region I, or his designee.

C. The Regional Administrator, Region I, may relax or terminate any of the preceding conditions for good cause.

V

The licensee or any other person whose interest is adversely affected by this Order may request a hearing on this Order. any request for hearing shall be submitted to the Director, Office of Inspection and Enforcement, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, within 30 days of the date of this Order. A copy of the request shall also be sent to the Executive Legal Director at the same address and to the Regional Administrator, Region I, 631 Park Avenue, King of Prussia, Pennsylvania 19406.

If a hearing is to be held concerning this Order, the Commission will issue an Order designating the time and place of hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order shall be sustained.

This Order shall become effective upon expiration of the time during which the licensee may demand a hearing or, in the event that the licensee demands a hearing, on the date specified in an order issued following further proceedings on this Order.

Dated at Bethesda, Md., this 27th day of September 1984.

For the Nuclear Regulatory Commission.

Richard C. DeYoung,

Director, Office of Inspection and Enforcement.

Notice of Violation

[Docket No. 50-247 License No. DPR-26 EA 84-92]

Consolidated Edison Company of New York, Inc.

Indian Point Nuclear Generating Station, Unit 2

On June 12-15 and July 5-6, 1984, an NRC special safety inspection was conducted to review radiological safety concerns and the circumstances associated with the unplanned occupational radiation exposure on June 19, 1984 of 1050 millirem and 1500 millirem, respectively, to two workers. One of the workers received a total quarterly exposure of 2395 millirem. The 10 CFR 20 limit is 3000 millirem per calendar quarter. The NRC resident inspector became aware of the unplanned exposures while attending a routine outage meeting conducted by the licensee on June 20, 1984. Although the unplanned exposures were not in excess of regulatory limits, a substantial potential for such an exposure did exist.

The workers received the unplanned exposures while waiting in a High Radiation Area inside the crane wall of the 40 foot elevation of the Vapor Containment near the Regenerative Heat Exchanger. Although the workers believed they were standing in a low-background radiation area, radiation surveys performed by the licensee after identification of the unplanned exposures indicated that the workers inadvertently waited in an area with radiation dose rates of between 2000 and 4000 millirem/hr.

The required radiological controls regarding access to the High Radiation Area where the workers waited were not implemented. Specifically, the workers were not adequately instructed by the use of map routes or guides or otherwise directed to the location of the actual low background area where they were to wait. Also, areas having dose rates greater than 1000 millirem/hr were not adequately barricaded to prevent unauthorized entry. Further, the workers were sent to the area of low-background radiation without radiation survey meters, alarming dosimeters, or the equivalent that would have alerted them to the high radiation fields in which they finally waited. The provision of such equipment is required by Technical Specifications given that the area through which the workers were to transit and in which they were to wait were both contained within an area posted as a High Radiation Area.

On August 16-17, 1984, an NRC special safety inspection was conducted to review the circumstances associated with an unplanned exposure on August 7, 1984, of 2000 millirem to another worker with a total quarterly exposure of 2900 millirem. The occurrence was reported to the NRC resident inspector on August 9, 1984, and involved an individual performing work in a steam generator. The worker was standing at the manway of one of the steam generators with his arms and portions of his upper body located inside the steam generator. The radiation dose rate at the steam generator manway was 10-15 R/hour and as high as 30 R/hour inside the steam generator. Although the worker's exposure was being controlled by a Radiation Protection Technician, the technician did not read all the self reading dosimeters located on the worker (upper arms, head and chest) and did not use the highest dosimeter value (the upper arms in his case) to control the worker time in the steam generator and to limit the worker exposure as required by procedures.

In accordance with the NRC Enforcement Policy, 10 CFR Part 2, Appendix C, as revised, 49 FR 8583 (March 8, 1981). The particular violations are set forth below:

A. Technical Specification 6.12, "High Radiation Area", specifies that areas greater than 1000 mrem/hour be controlled by conspicuously posting the area as a High Radiation Area, by the issuance of a Radiation Work Permit, by providing individuals (or groups of individuals) with continuously indicating dose rate instrumentation, and by providing locked doors for each area with the key administratively controlled by the Watch Supervisor on duty.

Contrary to the above, on June 19, 1984, two workers were permitted to enter a High Radiation Area in the Unit 2 Vapor Containment where radiation levels were between 2000 and 4000 mrem/hour, without the entry being controlled by the issuance of a Radiation Work Permit, and without being provided with continuously dose rate indicating instrumentation.

B. 10 CFR 19.12 requires, in part, that individuals working or frequenting any portion of a restricted area be kept informed of radiation in such portions of the restricted area and precautions or procedures to minimize exposures.

Contrary to the above, on June 19, 1984, two workers who entered the crane wall of Unit 2 Vapor Containment (a restricted area) were not informed of the radiation dose rates or precautions and procedures to minimize their exposures. No surveys, maps, diagrams, or other means were used to instruct the workers as to the location of a low background area that they were supposed to wait at, and instead they waited near the Regenerative Heat Exchanger which had radiation levels between 2000 millirem/hr and 4000 millirem/hr.

C. Technical Specification 6.11, Radiation Protection Program, states that "Procedures for personnel radiation protection shall be prepared consistent with the requirements of 10 CFR Part 20 and shall be approved, maintained and adhered to for all operations involving personnel radiation exposure."

Procedure No. EHS 3.403, Revision O, "Steam Generator Channel Entry," developed pursuant to the above, requires an SAO-134 be prepared for the entry of personnel into the Steam Generators. The SAO-134 prepared for the Steam Generator entry on August 7, 1984, required that self reading dosimeters be worn on the head, chest and the upper arms, and the highest reading on these dosimeters be used in controlling the worker's whole body exposure.

Contrary to the above, on August 7, 1984, an entry was made into a Steam Generator by a worker, and a Health Physics Technician did not adhere to Procedure No. EHS 3.403 in that he did not utilize the highest reading indicated by the dosimeter located on the upper arm of the worker to control the worker's whole body exposure.

Collectively, these violations have been categorized in the aggregate as a Severity Level III problem (Supplement IV).

Pursuant to the provisions of 10 CFR 2.201, Consolidated Edison Company is hereby required to submit to the Director, Office of Inspection and Enforcement, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and a copy to the Regional Administrator, U.S. Nuclear Regulatory Commission, Region I, 631 Park Avenue, King of Prussia, Pennsylvania 19406, within 30 days of the date of this Notice, a written statement or explanation, including for each alleged violation: (1) Admission or denial of the alleged violation; (2) the reasons for the violation, if admitted; (3) the corrective steps which have been taken and the results achieved; (4) the corrective steps which will be taken to avoid further violations; (5) the date when full compliance will be achieved. Consideration may be given to extending the response time for good cause shown. Under the authority of Section 182 of the Act, 42 U.S.C. 2232, this response shall be submitted under oath or affirmation.

[FR Doc. 84-26727 Filed 10-09-84; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-277, 50-278]

Philadelphia Electric Co., et al.; Consideration of Issuance of Amendments To Facility Operating Licenses and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating Licenses Nos. DPR-44 and DPR-56 issued to Philadelphia Electric Company, Public Service Electric and Gas Company, Delmarva Power and Light Company and Atlantic City Electric Company (the licensees), for operation of the Peach Bottom Atomic Power Station Units Nos. 2 and 3 (the facility) located in York County, Pennsylvania.

In accordance with the licensees' application dated September 28, 1984, the amendments would change the Technical Specifications (TSs) to permit changes in the normal full power background trip level setting for the Main Stream Line High Radiation scram and isolation setpoints to accommodate a scheduled short-term test at Unit 3 and a possible future Unit 2 test of hydrogen injection as a potential intergranular stress corrosion cracking mitigating activity. The change would specifically permit a temporary increase in the Main Steam Line High Radiation scram and

isolation setpoints to facilitate operation with the expected increased N–16 radiation levels due to the hydrogen injection test. The licensee also requested the deletion of an obsolete footnote in the Unit 2 TSs since the testing authorized by Amendment No. 34 has been completed.

Before issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; and (3) involve a significant reduction in a margin of safety.

The proposed amendment request would permit, during the proposed 3–4 day test for Unit 3 and a potential back-up test at Unit 2, an increase in the calculated radiation level setpoint will remain at three times the background radiation level; however, due to the increased N–16 carryover in the steam, the background radiation level used to determine the high radiation setpoint will be increased prior to the test period. The increase in the background level would be based upon the calculated value of the radiation level expected during the tests. The license amendments would also permit the background level to be adjusted during hydrogen injection tests to correct for uncertainties in the initial pre-test computations. Restoration to pre-test setpoints will be required within 24 hours of re-establishing normal radiation levels after completion of the test program. The Main Steam Line Radiation scram and isolation setpoints provide the capability to monitor for fuel failures. The only event which takes credit for these trips is the design bases control rod drop accident (CRDA). A CRDA is only a concern below 10% of rated power. The hydrogen injection test will not be performed below 20% power. In addition, the capability to monitor for fuel failures will be maintained through: (1) The continued operability of the main steam radiation monitoring scram and isolation system; (2) routine radiation surveys; (3) the performance of daily primary coolant water analyses; and (4) the continued operability of the Steam Jet-Air Ejector OFF-Gas Monitor.

Furthermore, radiation protection practices will be performed during the course of the test based upon the licensee's pre-test radiation (ALARA) review. During the hydrogen injection test, special radiation level surveys will be performed and protective actions will be taken, as appropriate, to control all onsite personnel exposure. Changes in gaseous effluent release rates for hydrogen injection are expected to be negligible due to the short decay times for N–16. The proposed change to delete an obsolete footnote in the Unit 2 TSs is an administrative change since the testing program authorized by Amendment No. 34 has been completed. Based on these considerations, the Commission's staff concludes that the proposed amendments will not significantly increase the probability or consequences of accidents previously considered, will not create the possibility of a new or different accident from any previously evaluated, and will not significantly reduce a safety margin. Thus, the staff proposes to determine that these amendments to not involve significant hazards considerations.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Comments should be addressed to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, ATTN: Docketing and Service Branch.

By November 9, 1984, the licensees may file a request for a hearing with respect to issuance of the amendments to the subject facility operating licenses and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendments under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request invovles no significant hazards consideration, the Commission may issue the amendments and make them effective,

notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendments.

If the final determination is that the amendments involve a significant hazards consideration, any hearing held would take place before the issuance of any amendments.

Normally, the Commission will not issue the amendments until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendments before the expiration of the 30-day notice period, provided that its final determination is that the amendments involve no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325-6000 (in Missouri (800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to John F. Stolz: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to Troy B. Conner, Jr., 1747 Pennsylvania Avenue, NW, Washington, D.C. 20006, attorney for Philadelphia Electric Company.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board designated to rule on the petition and/or request, that the petitioner has made a substantial showing of good cause for the granting of a late petition and/or request. That determination will be based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., and at the Government Publications Section, State Library of Pennsylvania, Education Building, Commonwealth and Walnut Streets, Harrisburg, Pennsylvania.

For the Nuclear Regulatory Commission.

John F. Stolz,

Chief, Operating Reactors Branch No. 4, Division of Licensing.

[FR Doc. 84-26728 Filed 10-9-84; 8:45 am]

BILLING CODE 7590-01-M

In Situ Testing During Site Characterization for High-Level Nuclear Waste Repositories; Availability of Draft Technical Position

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability.

SUMMARY: The Nuclear Regulatory Commission (NRC) is announcing the availability of a "Draft Generic Technical Position on In Situ Testing During Site Characterization for High-Level Nuclear Waste Repositories."

DATE: The comment period expires December 10, 1984.

ADDRESSES: Send comments to Hubert J. Miller, Chief, Repository Projects Branch, Division of Waste Management, U.S. Nuclear Regulatory Commission, Mial Stop 623-SS, Washington, D.C. 20555. Copies of this document may be obtained free of charge upon written request to Nancy Still, Docket Control Center, Division of Waste Management, U.S. Nuclear Regulatory Commission, Mail Stop 623-SS, Washington, D.C. 20555, Telephone 1/800/368-5642, Ext. 74426.

FOR FURTHER INFORMATION CONTACT: Dr. Mysore Nataraja, Section Leader, Engineering Branch, Division of Waste Management, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Telephone (301) 427-4319.

SUPPLEMENTARY INFORMATION: The Nuclear Waste Policy Act of 1982, Pub. L. 97-425 (NWYPA) and Commission regulation 10 CFR Part 60 promote interaction between the Department of Energy (DOE) and NRC prior to submittal of a license application for a geologic repository. These interactions are to fully inform DOE about the level of information that must be provided in a license application to allow a licensing decision to be made by NRC. Guidance to DOE is provided in NRC Site Characterization Analyses (SCA's) which document staff reviews of DOE Site Characterization Plans submitted according to the NWPA and 10 CFR Part 60. Supplementary guidance is presented in staff technical positions on both generic and site-specific issues. Generic technical positions establish the staff's position on technical issues that would be applicable to any site.

This announcement notices availability and solicits comments on the "Draft Generic Technical Position on In Situ Testing During Site Characterization for High-Level Nuclear Waste Repositories." Guidance is provided to DOE on what the staff considers to be the essential elements of an in situ test program to address the requirements and performance objectives of 10 CFR Part 60 with respect to deep geologic disposal of high-level nuclear waste. The staff considers that necessary and sufficient in situ testing should be performed at depth on the host rock to address key issues prior to submitting a licensing application. The intent of the Generic Technical Position is to provide guidance to the Department that is applicable throughout the site characterization period. In situ testing is essential to assess the suitability of a geologic repository site for hosting high-level nuclear waste and to provide realistic input parameters for the repository design. The Technical Position summarizes guidance which has been given to DOE through technical correspondence, documented technical meetings, and other mechanisms provided by the NRC/DOE Procedural Agreement (48 FR 38701), dated 8/25/83). The staff considers that a program of in situ exploration and testing must be addressed in the Site Characterization Plans for each site.

Dated at Silver Spring, MD, this 28th day of September, 1984.

For the Nuclear Reglatory Commission.

John J. Linehan,

Acting chief, Repository Projects Branch, Division of Waste Management.

[FR Doc. 84-26726 Filed 10-9-84; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-213]

Connecticut Yankee Atomic Power Co.; Environmental Assessment and Finding of No Significant Impact

Correction

In FR Doc. 84-25994 beginning on page 38721 in the issue of Monday, October 1, 1984, make the following correction. On page 38721, third column, fifth line from the top, insert the word "not" after the word "was".

BILLING CODE 1505-01-M

PENSION BENEFIT GUARANTY CORPORATION

Exemption From Bond/Escrow Requirement Relating to Sale of Assets by an Employer That Contributes to a Multiemployer Plan: Rock-Tenn Co.

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of exemption.

SUMMARY: The Pension Benefit Guaranty Corporation has granted an exemption from the bond/escrow requirement of section 4204(a)(1)(B) of the Employee Retirement Income Security Act of 1974 to Rock-Tenn Company. A notice of the request for exemption was published in the **Federal Register** on March 27, 1984 (49 FR 11740). The effect of this notice is to advise the public of the decision on the exemption request.

ADDRESS: The request for an exemption and the PBGC response to the request are available for public inspection at the PBGC Public Affairs Office, Suite 7100, 2020 K Street, NW., Washington, D.C. 20006, between the hours of 9:00 a.m. and 4:00 p.m. A copy of these documents may be obtained by mail from the PBGC Disclosure Officer (190) at the above address.

FOR FURTHER INFORMATION CONTACT: Deborah Murphy, Attorney, Corporate Policy and Regulations Department (611), Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, D.C. 20006; (202) 254-4860 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

Under section 4204(a)(1) of the Employee Retirement Income Security Act of 1974 ("ERISA"), a sale of assets by an employer that contributes to a multiemployer pension plan will not constitute a withdrawal from the plan if certain conditions are met. One of these conditions is that the purchaser furnish a bond or escrow for five plan years after the sale.

ERISA section 4204(c) authorizes the Pension Benefit Guaranty Corporation ("PBGC") to grant exemptions from the purchaser's bond/escrow requirement of section 4204(a)(1)(B). Under § 2643.3(a) of the PBGC's regulation on variances for sales of assets (29 CFR 2643), the PBGC will approve a request for an exemption if it determines that approval of the request is warranted, in that it—

(1) Would more effectively or equitably carry out the purposes of Title IV of ERISA; and

(2) Would not significantly increase the risk of financial loss to the plan.

The legislative history of section 4204 indicates a Congessional intent that the sales rules be administered in a manner that assures protection of the plan with the least practicable intrusion into normal business transactions.

ERISA sections 4204(c) and § 2643.3(b) of the regulation require the PBGC to publish a notice of the pendency of an exemption request in the **Federal Register**, and to give interested parties an opportunity to comment on the proposed exemption.

Decision

On March 27, 1984 (49 FR 11740), the PBGC published a notice of the pendency of a request from Rock-Tenn Company ("Rock-Tenn") for an exemption from the bond/escrow requirement of ERISA section 4204(a)(1)(B), in connection with the purchase by Rock-Tenn of the assets of the Partition/Mill Division and Dallas Folding Carton Plant of Clevepak Corporation ("Clevepak") on August 1, 1983. No comments were received in response to the notice.

In connection with the sale, Rock-Tenn has assumed Clevepak's obligation to contribute to the Paper Industry Union-Management Pension Fund ("PIUMPF") under collective bargaining agreements with United Paperworkers International Union, AFL-CIO, and Local Unions Nos. 826, 1106, and 200, Philadelphia Local Union No. 286, and Greater Milwaukee Local No. 200. According to the PIUMPFs' computations, Clevepak has no potential withdrawal liability. (Clevepak is continuing to contribute to the PIUMPF for operations not involved in this sale of assets. How that fact might affect Clevepak's status, now or in the future, under the complete or partial withdrawal rules of ERISA is a matter as to which the PBGC takes no position in this notice.)

The amount of the bond or escrow that would be required of Rock-Tenn under ERISA section 4204(a)(1)(B) is $138,200 (Clevepak's average required annual contribution for the three plan years preceding the sale).

In the sale contract, Clevepak agreed that, if Rock-Tenn withdraws and fails to pay withdrawal liability within five plan years after the sale, Clevepak will be secondarily liable for any withdrawal liability it would have had to the PIUMPF but for the operation of ERISA section 4204.

In accordance with the PBGC's regulation (29 CFR § 2643.2(d)(7)), copies of Rock-Tenn's unaudited financial statements for its fiscal years 1980, 1981 and 1982 were submitted as part of the application. However, Rock-Tenn has asserted that the financial information is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552(b)(4)).

Rock-Tenn asserted that an exemption should be granted because the bond/escrow amount is *de minimis*. Based on information provided by the PIUMPF, the total average annual contributions to the Fund for the three plan years preceding the plan year of the sale were $23,937,019. Thus, the amount of the bond or escrow is about six-tenths of one percent of the average amount of all employers' contributions.

Based on the facts of this case and the representations and statements made in connection with the exemption request, the PBGC has determined that this request is *de minimis* in nature and thus an exemption from the bond/escrow requirement is warranted, in that it would more effectively carry out the purposes of Title IV of ERISA and would not significantly increase the risk of financial loss to the PIUMPF. Therefore, the PBGC hereby grants the request for an exemption from the bond/escrow requirements of section 4204(a)(1)(B) with respect to Rock-Tenn's purchase of assets from Clevepak. The granting of such an exemption does not constitute a determination by the PBGC that the transaction satisfies the other requirements of section 4204(a)(1). That is a determination to be made by the plan sponsor.

Issued at Washington, DC, on this 3rd day of October 1984.

C.C. Tharp,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 84-26686 Filed 10-9-84; 8:45 am]

BILLING CODE 7708-01-M

SECURITIES AND EXCHANGE COMMISSION

Forms Under Review by Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash, (202) 272–2142.

Upon Written Request Copy Available from: Securities and Exchange Commission, Office of Consumer Affairs, Washington, D.C. 20549.

Extension of Approval

Rule 17a–8
No. 270–225.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission has submitted for extension of OMB approval Rule 17a–8 (17 CFR 240.17a–8) under the Securities Exchange Act of 1934 (15 U.S.C. 78 *et seq.*) which generally requires brokers and dealers to make certain reports and records regarding currency and foreign transactions.

Submit comments to OMB Desk Officer: Ms. Katie Lewin, (202) 395–7231, Office of Information and Regulatory Affairs, Room 3235 NEOB, Washington, D.C. 20503.

Dated: September 26, 1984.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84–26707 Filed 10–9–84; 8:45 am]

BILLING CODE 8010–01–M

Forms Under Review by Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash, (202) 272–2142.

Upon Written Request Copy Available from: Securities and Exchange Commission, Office of Consumer Affairs, Washington, D.C. 20549.

Extension of Approval

Rule 13a–17 and Form 10–C
No. 270–206.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission has submitted for extension of OMB approval Rules 13a–17 (17 CFR 240.13a–17), 15d–17 (17 CFR 240.15d–17) and Form 10–C (17 CFR 249.310c) under the Securities Exchange Act of 1934 (15 U.S.C. 78 *et seq.*) which requires issuers of securities quoted on NASDAQ Inter-dealer Quotation System to report either a change of corporate name or an increase or decrease of outstanding securities that exceeds 5%.

Submit comments to OMB Desk Officer: Ms. Katie Lewin, (202) 395–7231, Office of Information and Regulatory Affairs, Room 3235 NEOB, Washington, D.C. 20503.

Dated: September 26, 1984.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84–26706 Filed 10–9–84; 8:45 am]

BILLING CODE 8010–01–M

Forms Under Review by Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash (202) 272–2142.

Upon Written Request Copy Available from: Securities and Exchange Commission Office of Consumer Affairs, Washington, D.C. 20549.

Extension of Approval

Rule 17a–22
No. 270–202

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission has submitted for extension of OMB approval Rule 17a–22 (17 CFR 240.17a–22) under the Securities Exchange Act of 1934 (15 U.S.C. 78 *et set.*) which requires registered clearing agencies to send the Commission copies of publications sent to clearing agency participants.

Submit comments to OMB Desk Officer: Ms. Katie Lewin, (202) 395–7231, Office of Information and Regulatory Affairs, Room 3235 NEOB, Washington, D.C. 20503.

Dated: September 26, 1984.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84–26705 Filed 10–9–84; 8:45 am]

BILLING CODE 8010–01–M

Forms Under Review by Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash, (202) 272–2142.

Upon Written Request Copy Available from: Securities and Exchange Commission, Office of Consumer Affairs, Washington, D.C. 20549.

Extension of Approval

Rule 17A(b)–2–1
No. 270–203

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission has submitted for extension of OMB approval Rule 17A(b)–2–1 (17 CFR 240.17Ab2–1) and Form CA–1 (17 CFR 249b.200) under the Securities Exchange Act of 1934 (15 U.S.C. 78 *et seq.*) which require registered clearing agencies.

Submit comments to OMB Desk Officer: Ms. Katie Lewin, (202) 395–7231, Office of Information and Regulatory Affairs, Room 3235 NEOB, Washington, D.C. 20503.

Dated: September 26, 1984.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84–26704 Filed 10–9–84; 8:45 am]

BILLING CODE 8010–01–M

Forms Under Review by Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash, (202) 272–2142.

Upon Written Request Copy Available from: Securities and Exchange Commission, Office of Consumer Affairs, Washington, D.C. 20549.

Extension of Approval

Rule 12f–3 and Form 28
No. 270–141

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission has submitted for extension of OMB approval Rule 12f–3 (17 CFR 240.12f–3) and Form 28 (17 CFR 249.28) under the Securities Exchange Act of 1934 (15 U.S.C. 78 *et seq.*) which prescribes the information which must be included in an application for and notice of termination or suspension of unlisted trading privileges.

Submit comments to OMB Desk Officer: Ms. Katie Lewin, (202) 395–7231, Office of Information and Regulatory Affairs, Room 3235 NEOB, Washington, D.C. 20503.

Dated: September 27, 1984.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84–26703 Filed 10–9–84; 8:45 am]

BILLING CODE 8010–01–M

Forms Under Review by Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash, (202) 272–2142.

Upon Written Request Copy Available from: Securities and Exchange Commission, Office of Consumer Affairs, Washington, D.C. 20549.

Extension of Approval

Rule 12f–2
No. 270–140

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980

(44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission has submitted for extension of OMB approval Rule 12f-2 (17 CFR 240.12f-2) and Form 27 (17 CFR 249.27) under the Securities Exchange Act of 1934 (15 U.S.C. 78 *l et seq.*) which requires a national securities exchange to inform the Commission of certain changes in a security admitted to unlisted trading privileges. The information required by Rule 12f-2, adopted in 1934, is designed to enable the Commission to discharge its statutorily-mandated oversight responsibilities with respect to unlisted trading privileges and generally to update the Commission's records regarding such securities.

Submit comments to OMB Desk Offices: Ms. Katie Lewin, (202) 395-7231, Office of Information and Regulation Affairs, Room 3235 NEOB, Washington, D.C. 20503.

Dated: September 27, 1984.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84-26702 Filed 10-9-84; 8:45 am]

BILLING CODE 8010-01-M

Forms Under Review by Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash, (202) 272-2142.

Upon Written Request Copy Available from: Securities and Exchange Commission, Office of Consumer Affairs, Washington, D.C. 20549.

Extension of Approval

Rule 15c2-5
No. 270-34

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et. seq.*), the Securities and Exchange Commission has submitted for extension of OMB approval Rule 15c2-5 (17 CFR § 15c-2-5) under the Securities Exchange Act of 1934 (15 U.S.C. 78 *et seq.*) which prohibits a broker-dealer from arranging a loan for a customer to whom a security is sold, unless before the transaction is entered into, the broker-dealer reasonably determines that the transaction is suitable for the customer.

Submit comments to OMB Desk Officer: Ms. Katie Lewin, (202) 395-7231, Office of Information and Regulatory Affairs, Room 3235 NEOB, Washington, D.C. 20503.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84-26701 Filed 10-9-84; 8:45 am]

BILLING CODE 8010-01-M

Forms Under Review by Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash, (202) 272-2142.

Upon Written Request Copy Available from: Securities and Exchange Commission, Office of Consumer Affairs, Washington, D.C. 20549.

Extension of Approval

Rule 19d-3
No. 270-245

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission has submitted for extension of OMB approval Rule 19d-3 (17 CFR 240. 19d-3) under the Securities Exchange Act of 1934 (15 U.S.C. 78 *et. seq.*) which prescribes the form and content of applications to the Commission for review of final disciplinary sanctions, denials of membership, participation or association with a member or prohibitions or limitations of access to services imposed by self-regulatory organizations.

Submit comments to OMB Desk Officer: Ms. Katie Lewin, (202) 395-7231, Office of Information and Regulatory Affairs, Room 3235 NEOB, Washington, D.C. 20503.

Dated: October 1, 1984.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84-26700 Filed 10-9-84; 8:45 am]

BILLING CODE 8010-01-M

Forms Under Review by Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash, (202) 272-2142.

Upon Written Request Copy Available from: Securities and Exchange Commission, Office of Consumer Affairs, Washington, D.C. 20549.

Extension of Approval

Rule 19d-2
No. 270-204

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission has submitted for extension of OMB approval Rule 19d-2 (17 CFR 240.19d-2) under the Securities Exchange Act of 1934 (15 U.S.C. 78 *et. seq.*) which prescribes the form and content of applications to the Commission for stays of final disciplinary sanctions and summary actions of self-regulatory organizations.

Submit comments to OMB Desk Officer: Ms. Katie Lewin, (202) 395-7231, Officer of Information and Regulatory Affairs, Room 3235, NEOB, Washington, D.C. 20503.

Dated: October 1, 1984.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84-26699 Filed 10-9-84; 8:45 am]

BILLING CODE 8010-01-M

Forms Under Review by Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash, (202) 272-2142.

Upon Written Request Copy Available from: Securities and Exchange Commission, Office of Consumer Affairs, Washington, D.C. 20549.

Extension of Approval

Rule 24b-1
No. 270-205

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission has submitted for extension of OMB approval Rule 24b-1 (17 CFR 240.24b-1) under the Securities Exchange Act of 1934 (15 U.S.C. 78 *et. seq.*) which requires a national securities exchange to permit public access to a copy of its registration statement which has been approved by the Commission. The information required by Rule 24b-1, adopted in 1934, is designed to permit members of the public access to the exchange's registration statements and amendments thereto.

Submit comments to OMB Desk Officer: Ms. Katie Lewin, (202) 395-7231, Office of Information and Regulatory Affairs, Room 323B NEOB, Washington, D.C. 20503.

Dated: September 27, 1984.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84-26698 Filed 10-9-84; 8:45 am]

BILLING CODE 8010-01-M

[File No. 22-13241]

American Southwest Finance Co., Inc.; Application and Opportunity for Hearing

October 2, 1984.

Notice is hereby given that American Southwest Finance, Inc. (the "Applicant") has filed an application pursuant to clause (ii) of Section 310(b)(1) of the Trust Indenture Act of 1939, as amended, (the "Act") for a finding by the Securities and Exchange

Commission (the "Commission") that trusteeship of The Valley National Bank of Arizona ("Valley") under an indenture dated as of January 1, 1984 (the "Qualified Indenture"), between the Applicant and Valley which was heretofore qualified under the Act, and trusteeship by Valley under an indenture tentatively to be dated as of August 1, 1984, and which will be qualified under the Act (the "New Indenture"), is not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify Valley from acting as trustee under the Qualified Indenture and the New Indenture.

Section 310(b) of the Act provides in part that if a trustee under an indenture qualified under the Act has or shall acquire any conflicting interest (as defined in the section), it shall, within ninety days after ascertaining that it has such conflicting interest, either eliminate such conflicting interest or resign. Subsection (1) of this section provides, with certain exceptions stated therein, that a trustee under a qualified indenture shall be deemed to have a conflicting interest if such trustee is trustee under another indenture of the same obligor.

However, pursuant to clause (ii) subsection (1), there may be excluded from the operation of this provision another indenture or indentures under which other securities of the issuer are outstanding, if the issuer shall have sustained the burden of providing on application to the Commission, and after opportunity for hearing thereon, that the trusteeships under the qualified indentures and such other indentures are not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify such trustee from acting as trustee under any such indentures. The Applicant alleges that:

(1) Pursuant to the Qualified Indenture, the Applicant has issued $76,500,000 in aggregate principal amount of its Mortgage-Collateralized Bonds, Series 1984–1 (the "Series 1984–1 Bonds"), for which Valley serves as trustee. The Series 1984–1 Bonds were registered under the Securities Act of 1933, and the Qualified Indenture was qualified under the Act.

(2) Pursuant to the New Indenture, the Applicant proposes to issue and sell an as yet undetermined aggregate principal amount of its Mortgage-Collateralized Bonds, issuable in series (the "New Bonds") for which it comtemplates Valley will serve as trustee. The Applicant contemplates that the New Bonds will be registered under the Securities Act of 1933 pursuant to Rule 415 thereunder and that the New Indenture will be qualified under the Act.

(3) Each series of Bonds is secured by the pledge by the Applicant to Valley of collateral which serves as security only for that series. Each series is payable solely from the collateral pledged to secure the bonds of that series, and the holders of any Bonds of any series issued by the Applicant will not have recourse to the collateral granted to Valley as trustee for any other series of bonds. Any default under an indenture or indenture supplement for any series of Bonds will not cause a default under an indenture or indenture supplement for any other series of Bonds.

(4) The Applicant is not in default under the Qualified Indenture.

(5) Such differences as exist between the Qualified Indenture and the New Indenture are not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify Valley from acting as trustee under any of the Indentures.

The Applicant has waived notice of hearing, hearing and any and all rights to specify procedures under the Rules of Practice of the Securities and Exchange Commission in connection with this matter.

For a more detailed statement of the matters of fact and law asserted, all persons are referred to said application which is on file in the offices of the Commission's Public Reference Section 450 Fifth Street, NW., Washington, D.C. 20549.

Notice is further given that any interested persons may, not later than October 26, 1984, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request and the issues of law or fact raised by such application which he desires to controvert, or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. At any time after said date, the Commission may issue an order granting the application, upon such terms and conditions as the Commission may deem necessary or appropriate in the public interest and the interest of investors, unless a hearing is ordered by the Commission.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84–26708 Filed 10–9–84; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 21366; File No. SR–MSRB–84–14]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change by the Municipal Securities Rulemaking Board

October 3, 1984.

The Municipal Securities Rulemaking Board ("MSR B") on September 27, 1984, submitted copies of a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") and Rule 19b–4 thereunder, to amend rule A–5(b), concerning the election of officers of the Board, to provide for voting of officers at the penultimate meeting of the Board held prior to October 1. The Board also has amended the rule to incorporate expressly its current practice of electing officers by secret, written ballot.

This proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act. At any time within sixty days of filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

Publication of this notice is expected to be made in the **Federal Register** during the week of October 8, 1984. Interested persons are invited to submit written comments concerning the submission within 21 days from the date of publication in the **Federal Register.** Persons submitting written comments should file six copies with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. Comments should refer to File No. SR–MSR B–84–14.

Copies of the submission and all related items, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C 552, will be available for inspection and copying at the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, D.C. Copies of the filing and of any subsequent amendments also will be available at the office of the MSR B.

For the Commission, by the Division of Market Regulation pursuant to delegated authority. 17 CFR 200.30-3(a)(12).

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84-26709 Filed 10-9-84; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[Designation of Disaster Loan Area No. 6209]

Designation of Disaster Loan Area; California

Kern County in the State of California constitutes a disaster area because of a massive earth slide which occurred on May 18, 1984, and the temporary closing of the State Highway 178 east of Bakersfield in the County of Kern California. Eligible small businesses without credit elsewhere and small agricultural cooperatives without credit elsewhere may file applications for economic injury assistance until the close of business on July 3, 1985, at the address listed below: Disaster Area 4 Office, Small Business Administration, 77 Cadillac Drive, Suite 158, Sacramento, California 95825, or other locally announced locations. The interest rate for eligibile small business applicants without credit elsewhere is 4% and 10.5% for eligible small agricultural cooperatives without credit elsewhere.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: October 3, 1984.

James C. Sanders,

Administrator.

[FR Doc. 84-26744 Filed 10-9-84; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area No. 2164; Amdt #3]

Declaration of Disaster Loan Area; Nevada

The above numbered declaration (49 FR 32703), Amendment #1 (49 FR 35459) and Amendment #2 (49 FR 36465) are hereby amended to extend the incidence period to September 11, 1984, and to extend the termination date for filing applications for physical damage to the close of business on October 31, 1984. The termination date for economic injury applications remains the close of business on May 8, 1985.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: October 4, 1984.

James C. Sanders,

Administrator.

[FR Doc. 84-26745 Filed 10-9-84; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area No. 2172]

Declaration of Disaster Loan Area; Texas

As a result of the President's major disaster declaration on October 2, 1984, I find that the County of Cameron constitutes a disaster loan area because of damage from severe storms and flooding beginning on or about September 16, 1984. Eligible persons, firms and organizations may file applications for loans for physical damage until the close of business on December 3, 1984, and for economic injury until July 2, 1985, at: Disaster Area 3 Office, Small Business Administration, 2306 Oak Lane, Suite 110, Grand Prairie, Texas 75051 or other locally announced locations.

Interest rates are:

	Percent
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.000
Businesses without credit available elsewhere	4.000
Businesses (EIDL) without credit available elsewhere	4.000
Other (non-profit organizations including charitable and religious organizations)	10.500

The number assigned to this disaster is 217206 for physical damage and for economic injury the number is 621100.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated October 3, 1984.

Bernard Kulik,

Deputy Associate Administrator for Disaster Assistance.

[FR Doc. 84-26743 Filed 10-9-84; 8:45 am]

BILLING CODE 8025-01-M

[License No. 02/02-5455]

Triad Capital Corporation of New York; Filing of an Application for an Approval of a Conflict-of-Interest Transaction

Notice is hereby given that Triad Capital Corporation of New York (Triad), 7 Hugh Grant Circle, Bronx, New York 10462, a Federal Licensee under the Small Business Investment Act of 1958, as amended, has filed an application with the Small Business Administration pursuant to § 107.903 of the Regulations governing small business investment companies (13 CFR 107.903 (1984)) for an approval of a conflict of interest transaction.

Triad proposes to loan $150,000 to Sam Munroe for the purchase of a McDonalds franchise Ost & Scott Street, Houston, Texas 77013. Sam Munroe is a Director and owner of 7.7 percent of the common stock of Triad.

As a result, Triad's financing to Sam Munroe falls within the purview of § 107.903(b)(1) of the SBA Regulations. Triad's loan to Sam Munroe requires prior written approval of SBA.

Notice is hereby given that any person may no later than 10 days from the date of this Notice, submit written comments to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 "L" Street, NW., Washington, D.C. 20416

A similar Notice shall be published in a newspaper of general circulation in New York, New York.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: October 2, 1984.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 84-26742 Filed 10-9-84; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF THE TREASURY

Office of the Secretary

Public Information Collection Requirements Submitted to OMB for Review

Dated: October 2, 1984.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB (listed by submitting bureau(s)), for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of these submissions may be obtained by calling the Treasury Bureau Clearance Officer listed under each bureau. Comments regarding these information collections should be addressed to the OMB reviewer listed at the end of each bureau's listing and to the Treasury Department Clearance Officer, Room 7225, 1201 Constitution Avenue, NW., Washington, D.C. 20220.

Internal Revenue Serice

OMB Number: 1545-0040
Form Number: IRS Form 964
Type of Review: Extension
Title: Election of Shareholder Under Section 333 Liquidation

OMB Number: 1545-0089
Form Number: IRS Form 1040-NR

Type of Review: Revision
Title: U.S. Nonresident Alien Income Tax Return

Clearance Officer: Garrick Shear, (202) 566-6254, Room 5571, 1111 Constitution Avenue, NW., Washington, D.C. 20224.

OMB Reviewer: Norman Frumkin, (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503.

[FR Doc. 84-26696 Filed 10-9-84; 8:45 am]
BILLING CODE 4810-25-M

VETERANS ADMINISTRATION

Agency Forms Under OMB Review

AGENCY: Veterans Administration.

ACTION: Notice.

SUMMARY: The Veterans Administration has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document contains extensions, revisions and a reinstatement and lists the following information: (1) The Department or Staff Office issuing the form; (2) The title of the form; (3) The agency form number, if applicable; (4) How often the form must be filled out; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to fill out the form; and (8) An indication of whether section 3504(h) of Pub. L. 96-511 applies.

ADDRESSES: Copies of the forms and supporting documents may be obtained from Patricia Viers, Agency Clearance Officer (732), Veterans Administration, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 389-2146. Comments and questions about the items on this list should be directed to the VA's OMB Desk Officer, Dick Eisinger, Office of Management and Budget, 726 Jackson Place, NW, Washington, DC 20503, (202) 395-7316.

DATES: Comments on the information collections should be directed to the OMB Desk Officer within 60 days of this notice.

Dated: October 4, 1984.

By direction of the Administrator.

Dominick Onorato,

Associate Deputy Administrator for Information Resources Management.

Extensions

1. Department of Veterans Benefits
2. Designation of Beneficiary and Optional Settlement
3. VA Form 29-336
4. On occasion
5. Individuals or households
6. 101,864 responses
7. 17,317 hours
8. Not applicable

1. Department of Veterans Benefits
2. Educational Plan (Under Provisions of Chapter 35, Title 38, U.S.C.)
3. VA Form 22-5490a
4. On occasion
5. Individuals or households
6. 2,000 responses
7. 333 hours
8. Not applicable

1. Department of Veterans Benefits
2. Claim for Monthly Payments of National Service Life Insurance
3. VA Form 29-4125a
4. On occasion
5. Individuals or households
6. 1,453 responses
7. 363 hours
8. Not applicable

1. Department of Veterans Benefits
2. Claim for Monthly Payments of United States Government Life Insurance
3. VA Form 29-4125k
4. On occasion
5. Individuals or households
6. 1,453 responses
7. 363 hours
8. Not applicable

Extensions

1. Department of Veterans Benefits
2. Notice of Intention to Foreclose
3. VA Form 26-6851
4. On occasion
5. Individuals or households; Small businesses or organizations
6. 109,000 responses
7. 27,250 hours
8. Not applicable

1. Department of Veterans Benefits
2. Application for Educational Assistance Under VEAP (Chapter 32, Title 38, U.S.C.)
3. VA Form 22-8821
4. On occasion
5. Individuals or households
6. 32,000 responses
7. 24,000 hours
8. Not applicable

1. Department of Veterans Benefits
2. Serviceperson's Application for Education Benefits (Under Chapter 34, Title 38, U.S.C.—G.I. Bill for Service Which Began Before 1-1-77)
3. VA Form 22-1990a
4. Once
5. Individuals or households
6. 11,000 responses
7. 8,250
8. Not applicable

1. Department of Veterans Benefits
2. Notice of Past Due Payment
3. VA Form 29-389e
4. On occasion
5. Individuals or households
6. 2,000 responses
7. 500 hours
8. Not applicable

1. Department of Veterans Benefits
2. Matured Endowment Notification
3. VA Form 29-5767
4. On occasion
5. Individuals or households
6. 750 responses
7. 250 hours
8. Not applicable

1. Department of Veterans Benefits
2. Statement of Heirs for Payment of Credits Due Estate of Deceased Veteran
3. VA Form Letter 29-596
4. On occasion
5. Individuals or households
6. 228 responses
7. 57 hours
8. Not applicable

1. Department of Veterans Benefits
2. Applicafion for Reinstatement
3. VA Form 29-353
4. On occasion
5. Individuals or households
6. 1,500 responses
7. 375 hours
8. Not applicable

1. Department of Veterans Benefits
2. Application for Amounts Due Estates of Persons Entitled to Benefits
3. VA Form 21-609
4. On occasion
5. Individuals or households
6. 750 responses
7. 375 hours
8. Not applicable

Extension

1. Department of Veterans Benefits
2. Financial Counseling Statement
3. VA Form 26-8844
4. On occasion
5. Individuals or households
6. 1,300 responses
7. 975 hours
8. Not applicable

Revisions

1. Department of Veterans Benefits
2. Monthly Report of Wages Paid to Trainee
3. VA Form 28-1917
4. Monthly
5. Individuals or Households; Businesses or other for-profit; Small businesses or organizations
6. 300 responses
7. 1,800 hours
8. Not applicable

1. Department of Veterans Benefits
2. Insurance Deduction Authorization
3. VA Form 29-888

4. On occasion
5. Individuals or Households
6. 4,000 responses
7. 666 hours
8. Not applicable

Reinstatement

1. Department of Veterans Appeals
2. Statement of Accredited Representative in Appealed Case
3. VA Form 1–646
4. On occasion
5. Individuals or households
6. 32,800 responses
7. 32,800 hours
8. Not applicable

[FR Doc. 84–26711 Filed 10–9–84; 8:45 am]
BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 49, No. 197
Wednesday, October 10, 1984

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).

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1

COMMODITY FUTURES TRADING COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 49 FR 39006.

PREVIOUS ANNOUNCED TIME AND DATE OF THE MEETING: Wednesday, October 10, 1984, at 10:00 a.m.

CHANGES IN THE MEETING: The following item should be added to the agenda: Amendments to the Fourth Quarter 1984 Budget Categories, Plans, Programs and Priorities.

Jean A. Webb,

Acting Secretary of the Commission.

[FR Doc. 84-26807 Filed 10-5-84; 12:49 pm]

BILLING CODE 6351-01-M

2

FEDERAL RESERVE SYSTEM

TIME AND DATE: 11:00 a.m., Monday, October 15, 1984.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, D.C. 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: October 5, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-26863 Filed 10-5-84; 3:35 pm]

BILLING CODE 6210-01-M

3

INTERNATIONAL TRADE COMMISSION

TIME AND DATE: 10:00 a.m., Thursday, October 18, 1984.

PLACE: Room 117, 701 E Street, NW., Washington, D.C. 20436

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Petitions and complaints:
   a. Automotive transmission shifters (Docket No. 1102).
2. Investigation 731-TA-155 [Final] (Choline Chloride from Canada)—briefing and vote.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary, (202) 523-0161.

Kenneth R. Mason,

Secretary.

[FR Doc. 84-26865 Filed 10-5-84; 3:55 pm]

BILLING CODE 7020-02-M

4

INTERNATIONAL TRADE COMMISSION

[USITC SE-84-47]

TIME AND DATE: 3:00 p.m., Tuesday, October 16, 1984.

PLACE: Room 117, 701 E Street, NW., Washington, D.C. 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda.
2. Minutes.
3. Ratifications.
4. Petitions and complaints, if necessary.
5. Investigation 731-TA-164 [Final] (Stainless Steel Sheet and Strip from Spain)—briefing and vote.
6. Investigation 104-TAA-23 (Certain Tomato Products from Greece)—briefing and vote.
7. Any items left over from previous agenda.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary, (202) 523-0161.

Kenneth R. Mason,

Secretary.

[FR Doc. 84-26866 Filed 10-5-84; 3:55 pm]

BILLING CODE 7020-02-M

5

NATIONAL TRANSPORTATION SAFETY BOARD

[NM-84-31]

TIME AND DATE: 9 a.m., Tuesday.

PLACE: NTSB Board Room, 8th Floor, 800 Independence Ave., SW., Washington, D.C. 20594.

STATUS: The first four items are open to the public; the remaining two item are closed under Exemption 10 of the Government in the Sunshine Act.

MATTERS TO BE CONSIDERED:

1. *Aircraft Accident Report*—Pilgrim Airlines, Inc., Fokker F27-100, N148PM, John F. Kennedy International Airport, Jamaica, New York, January 13, 1984.
2. *Recommendation* to the Federal Aviation Administration regarding occupant survival, crashworthiness, and flight attendant training and manuals.
3. *Pipeline Accident Report*—Boston Gas Company Natural Gas System Overpressure, Explosion and Fires, East Boston, Massachusetts, September 23, 1983.
4. *Railroad Accident Report*—Collision of Amtrak Train No. 301 on Illinis Central Gulf Railroad with Marquette Motor Service Terminals, Inc., Delivery Truck, Wilmington, Illinois, July 28, 1983.
5. *Opinion and Order:* Petition of Stephens, Docket SM-3175; disposition of the Administrator's appeal.

CONTACT PERSON FOR MORE INFORMATION: Sharon Flemming, (202) 382-6525.

Dated: October 4, 1984.

H. Ray Smith, Jr.,

Federal Register Liaison Officer.

[FR Doc. 84-26747 Filed 10-4-84; 4:39 pm]

BILLING CODE 7533-01-M

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NUCLEAR REGULATORY COMMISSION

DATE: Weeks of October 8, 14, 22, and 29, 1984.

PLACE: Commissioners' Conference Room, 1717 H Street, NW., Washington, D.C.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of October 9

Tuesday, October 9

10:00 a.m.
Discussion of Severe Accident Program for Nuclear Power Reactors—Revised Policy Statement (Public Meeting)
2:00 p.m.
Discussion of Management-Organization and Internal Personnel Matters (Closed—Ex. 2 & 6)

Wednesday, October 10

10:00 a.m.
Discussion of Proposed Rule on Decommissioning Nuclear Facilities (Public Meeting)

Thursday, October 11

2:00 p.m.
Periodic Meeting with Advisory Committee on Reactor Safeguards (ACRS) (Public Meeting)
3:30 p.m.
Affirmation Meeting (Public Meeting) (if needed)

Friday, October 12

9:30 a.m.
NUMARC Briefing on Fitness for Duty, Training and Requirements for Senior Managers (Public Meeting)

Week of October 15

Tentative

Tuesday, October 16

10:00 a.m.
Discussion of Material False Statements—Policy Options (Public Meeting) (Tentative)
2:00 p.m.
Discussion of QA Report to Congress (Public Meeting)

Wednesday, October 17

10:00 a.m.
Discussion with staff on Fitness for Duty, Training and Requirements for Senior Managers (Public Meeting)

Thursday, October 18

3:30 p.m.
Affirmation Meeting (Public Meeting) (if needed)

Week of October 22

Tentative

Monday, October 22

2:00 p.m.
Status of NTOL's (Public Meeting)

Tuesday, October 23

10:00 a.m.
Semi-Annual Briefing on Appraisal of Operating Experience (Public Meeting)
2:00 p.m.
Briefing and Discussion on the Hearing Process (Public Meeting)

Wednesday, October 24

10:00 a.m.
Discussion of Management-Organization and Internal Personnel Matters (Closed—Ex. 2 & 6)
2:00 p.m.
Affirmation Meeting (Public Meeting) (if needed)

Week of October 29

Tentative

Tuesday, October 30

10:00 a.m.
Discussion of Material False Statements—Policy Options (Public Meeting) (Tentative)

Thursday, November 1

3:30 p.m.
Affirmative Meeting (Public Meeting) (if needed)

Friday, November 2

10:00 a.m.
Continuation of Discussion on Indian Point (Public Meeting)

ADDITIONAL INFORMATION:

Briefing/Possible Vote on UCS 2.206 Petition on TMI–1 Emergency Feedwater scheduled for October 2, *postponed.*

Affirmation on Denial of Petition for Rulemaking Concerning Emergency Planning and Response for Transportation Accidents Involving Radioactive Materials (PRM–71–6) was held October 4 (Public Meeting).

TO VERIFY THE STATUS OF MEETINGS CALL: (Recording)—(202) 634–1498.

CONTACT PERSON FOR MORE INFORMATION: Julia Corrado (202) 634–1410.

George T. Mazuzan,

Office of the Secretary.

October 5, 1984

[FR Doc. 84–26859 Filed 10–5–84; 3:19 pm]

BILLING CODE 7590–01–M

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TENNESSEE VALLEY AUTHORITY

[Meeting No. 1339]

TIME AND DATE: 10:15 a.m. (EDT), Wednesday, October 10, 1984.

PLACE: TVA West Tower Auditorium, 400 West Summit Hill Drive, Knoxville, Tennessee.

STATUS: Open.

Agenda Items

Approval of minutes of meeting held on September 27, 1984.

Discussion Item

1. TVA Raptor Restoration Activities.

Action Items

B—Purchase Awards

B1. Invitation C3–696073—Indefinite quantity term contract for unleaded gasoline for any TVA project or warehouse.

B2. Requisition 65–955600—Nuclear steam supply system project services for Sequoyah and Watts Bar nuclear plants units 1 and 2.

B3. Requisition 10—Coal for Johnsonvile Steam Plant.

C—Power Items

C1. Proposed form agreement covering PCB (polychlorinated biphenyls) capacitor replacement program.

C2. Proposed form agreement amending revised home insulation program agreements.

C3. Amendment to interconnection agreement between TVA and Union Electric Company, Illinois Power Company, and Central Illinois Public Service Company to modify provisions for emergency assistance and maintenance energy transactions.

C4. Supplement to contract No. TV–62313A with the State of Alabama for cooperation in the development and implementation of radiological emergency plans as required by the Nuclear Regulatory Commission and the Federal Emergency Management Agency.

E—Real Property Transactions

E1. Designation of an underground mining lease of the No. 8 seam of coal underlying approximately 76 acres in the Red Bird coal reserves located in Leslie County, Kentucky, as surplus and for sale at public auction—Tract No. XEKCR–14L.

F—Unclassified

F1. Authority to write off uncollectible accounts receivable.

CONTACT PERSON FOR MORE INFORMATION: Craven H. Crowell, Jr., Director of Information, or a member of his staff can respond to requests for information about this meeting. Call (615) 632–8000. Knoxville, Tennessee. Information is also available at TVA's Washington Office (202) 245–0101.

Dated: October 3, 1984.

John G. Stewart,

Manager of Corporate Administration and Planning.

[FR Doc. 84–26839 Filed 10–5–84; 2:19 pm]

Billing Code 8120–01–M

federal register

Wednesday
October 10, 1984

Part II

Environmental Protection Agency

40 CFR Part 790

Toxic Substances; Test Rule Development and Exemption Procedures; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 790

[OPTS-42052; FRL 2613-2]

Toxic Substances; Test Rule Development and Exemption Procedures

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is promulgating a procedural rule describing a process it will use to develop certain test rules under section 4(a) of TSCA and to grant exemptions from those test rules under section 4(c) of TSCA. This rule sets forth certain methods for prescribing how data are to be developed in response to test rules and describes the procedures which persons subject to them must follow in order to obtain testing exemptions or receive EPA's approval to conduct testing.

EFFECTIVE DATE: Effective on November 9, 1984.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Room E-543, 401 M Street, SW., Washington, D.C. 20460, Toll Free: (800-424-9065), In Washington, D.C.: (554-1404), Outside the United States: (Operator-202-554-1404).

SUPPLEMENTARY INFORMATION: This rule prescribes how data are to be developed in response to test rules and describes the procedures to follow to obtain test exemptions or approval to conduct testing.

I. Introduction

When the Enviromental Protection Agency (EPA) promulgates a test rule under section 4 of the Toxic Substances Control Act (15 U.S.C. 2601 *et seq.*) the responsibility for required tests is borne jointly by all manufacturers (including importers) and/or processors of the subject chemical, depending on which activities give rise to the testing requirement. Those persons subject to a test rule who do not directly sponsor testing must apply to EPA for exemption from testing. The test sponsor must conduct the required testing according to the standards provided in the test rule.

This rule establishes EPA's procedures for test rule development under TSCA section 4(a), for granting exemptions from test rules and for providing standards for the conduct of those tests. It includes changes in the Agency's original approach which were made in response to comments received on the Proposed Statement of Exemption Policy and Procedures as published in the **Federal Register** of July 18, 1980 (45 FR 48512), and Changes in Test Standards Policy and Test Rule Development Process as published in the **Federal Register** of March 26, 1982 (47 FR 13012). EPA is including both of these procedures in this final rule because the processes are inter-related. This rule does not include exemption procedures for chemicals being tested under a category-based rule. The Agency has not arrived at a final policy concerning the conduct of such testing. Final exemption procedures for category-based rules will be issued prior to or in conjunction with EPA's first category-based test rule.

Test rule development procedures, described in the **Federal Register** of March 26, 1982, were proposed for codification in Part 799 as part of specific chemical test rules (47 FR 18386, April 29, 1982; 48 FR 23080, May 23, 1983; 48 FR 23088, May 23, 1983; 48 FR 30699, July 5, 1983; 48 FR 57686, December 30, 1983; 49 FR 430, January 4, 1984; 49 FR 438, January 4, 1984; 49 FR 456, January 4, 1984; 49 FR 899, January 6, 1984; 49 FR 1760, January 13, 1984). The final procedures are being codified as general test rule development procedures in Part 790.

The proposed exemption procedures, as published in the **Federal Register** of July 18, 1980 were planned to be codified in 40 CFR Part 770. The final rule has been redesignated as part 790. The following table is provided to aid readers in relating sections in the proposed procedures to the corresponding sections in the final rule.

CONVERSION TABLE

Proposed rule Part 770	Section title	Final rule Part 790
770.400	Scope, purpose, and authority	790.1
770.401	Applicability	790.2
770.402	Definitions	790.3
	Submission of information	790.5
	Confidentiality	790.7
	Phase I test rule	790.20
	Persons subject to Phase I test rule	790.22
	Submission of letter of intent to test or exemption application.	790.25
	Procedure if no one submits a letter of intent to conduct testing.	790.28
	Submission of proposed study plans	790.30
	Proposed Phase II test rule	790.32
	Final Phase II test rule	790.34
	Modification of study plans during conduct of study.	790.35
	Failure to comply with a test rule	790.39
770.405	Submission of exemption applications	790.80
770.406	Content of exemption application	790.82
770.420	Submission of equivalence data	790.85
770.410	Approval of exemption applications	790.87
770.410	Denial of exemption application	790.88
770.430	Appeal of denial of exemption application.	790.90
770.431	Termination of conditional exemption	790.93
	Hearing procedures	790.97
770.440	Statement of financial responsibility	790.99

II. Statutory Background

Section 4(a) of TSCA authorizes EPA to require manufacturers (including importers) and/or processors of identified chemical substances and mixtures to test the chemicals in accordance with applicable EPA test rules. Section 4(b) of TSCA requires that each section 4(a) test rule identify the chemical substance or mixture for which testing is being required, and provide standards for the development of test data. These standards are to prescribe the health and environmental effects, and information relating to toxicity, persistence and other characteristics which affect health and the environment for which test data are to be developed and, to the extent necessary to assure development of adequate and reliable data, the manner in which the data are to be developed, the test protocol or methodology to be employed, and such other requirements as are necessary to provide such assurance (section 3(12)(B)).

Manufacturers or processors required by rule to sponsor testing may do so either individually, or jointly through formation of a testing consortium (section 4(b)(3)(A)). Alternatively, they may choose to apply for a testing exemption under TSCA section 4(c) based on the belief that the required testing will be performed by another person subject to the rule. In order to approve an exemption application, EPA must find that: (1) The applicant's product is equivalent to the substance or mixture for which test data have been submitted or are being developed, and (2) data submitted by the applicant under a section 4 test rule would be duplicative of data already submitted or being developed pursuant to the rule.

TSCA does not define what constitutes "duplicative data" or what criteria should be used in determining whether chemicals are "equivalent." However, TSCA's legislative history states that Congress expected EPA's Administrator to consider whether any additives or impurities in the substance or mixture for which the exemption is being sought might cause "significant" differences in test data and thereby

render the substances "nonequivalent" (H.R. No. 94–1679 94th Cong., 2d Sess. 9/23/76, p. 61, Legis. Hist. 674). For purposes of determining equivalence under section 4, EPA interprets this to mean that the Agency must take into consideration the presence of any additive or impurity in a chemical which might cause differences in test data which are significant for the purposes of assessing the risk associated with the chemical. That is, if the presence of such an additive or impurity is likely to produce differences in the test data which may affect those data's value in assessing the risk presented by the chemical, the Agency must find that forms of the chemical containing that additive or impurity are not equivalent to those not containing it and require testing of the non-equivalent substance.

The Agency is interpreting the term "duplicative data" to mean duplicative for purposes of the test rule. A variety of factors in a test's design can affect the data generated by it. In order to assure the development of data which are adequate and reliable for purposes of individual test rules, EPA will provide standards for the conduct of that testing. So long as the substances being tested are equivalent, EPA will assume that all tests adhering to these standards will produce data which are duplicative for the purposes of determining the effects identified in the test rule.

III. Prior Proposals

A. Testing Standards and Test Rule Development

Under EPA's original approach to providing testing guidance, the Agency proposed to publish and codify in the Code of Federal Regulations (CFR), a number of model test methodologies. A number of proposed "test standards" for health effects were published in the **Federal Register** of May 9, 1979 (44 FR 27334) and on July 26, 1979 (44 FR 44054), while similar proposed standards for chemical fate and ecological effects were published on November 21, 1980 (45 FR 77332). The Agency planned to adopt such "test standards" or "generic methodology requirements" for all of the major types of tests which might be required under section 4 test rules. The Agency planned to incorporate, by reference, whichever of these test methodologies was appropriate for use in each chemical-specific test rule.

In response to comments that the codified testing standards approach would provide insufficient flexibility in test design, EPA proposed a different approach for providing testing standards in the **Federal Register** of March 26, 1982 (47 FR 13012). In that notice, the Agency proposed to abandon the idea of codifying its approved generic test methodologies and to publish them as guidelines instead. It planned to make test rule development a two-phase process. In the first phase, EPA would establish by rule the effects and characteristics for which a given chemical must be tested and refer subject manufacturers and/or processors to suitable guidelines for how the testing should be performed. The subject firms would be required by a specified date to submit study plans detailing the methodologies and protocols they intended to use to perform the required tests. In the second phase, after consideration of public comment on the proposed study plans, the Agency would promulgate another rule adopting specific test requirements reflecting any modifications deemed necessary by EPA to assure the development of reliable and adequate data.

B. Exemptions

EPA's exemption proposal published in the **Federal Register** of July 18, 1980 (45 FR 48512) called upon each exemption applicant to submit data establishing that the chemical for which the exemption was being sought was equivalent to the one being tested and that duplicative data would result from its testing. The Agency stated its belief that one properly designed and executed study will normally provide a sufficient basis for making a regulatory decision on a given characteristic or effect of a chemical and proposed to consider all tests meeting its standards to be duplicative of each other as long as the substances being tested were equivalent. Therefore, if an exemption applicant established that its chemical was equivalent to a substance which was to be tested according to the standards described in the test rule, the Agency would accept the contention that testing of that applicant's chemical would yield duplicative data.

EPA's determination of equivalence was to be a two-stage process. In the first stage, the Agency would select a test substance or several test substances representative of all forms of the chemical subject to the rule. The selection was to involve among other factors consideration of the nature of the test, the various grades of the chemical on the market, the toxicity of the various components found in those different grades of the chemical, and the effects that various additives and impurities might have on the outcome of the testing. Where possible, EPA planned to select a single representative test substance and to consider all forms of the chemical "equivalent" to each other for exemption purposes.

However, if it was necessary to require testing of two or more test substances, the Agency proposed to require that each exemption applicant provide biological, chemical, manufacturing or processing data "as appropriate" in order to establish which test substance its chemical was to be considered equivalent to. Evaluating these data and determining which test substance the applicant's chemical would be considered equivalent to constituted the second and final stage of the Agency's equivalence determination process.

If, after evaluating the information provided in the exemption application, EPA found the applicant's chemical to be equivalent to one for which testing plans had been submitted and approved, the Agency would then proceed to grant an exemption. All exemptions granted prior to completion of testing were to be conditional upon the sponsor's proper completion of the required tests.

IV. Summary of Final Rule

A. Testing Standards and Test Rule Development

EPA has considered carefully the public comments received on both proposals in arriving at this final rule. Under these revised procedures, EPA is adopting a two-phase process as was proposed and published in the **Federal Register** of March 26, 1982 (47 FR 13012). The first phase will consist of the proposal and adoption of a test rule specifying what chemical substance or substances are to be tested and for what effects. The Phase I test rule will provide testing guidance in the form of specific suggestions and/or reference to published testing methodologies, but test sponsors may also propose their own test methods. EPA's provision of final standards for the development of data and time deadlines and reporting schedules will occur during Phase II of the rulemaking as part of the study plan approval process. The second phase will involve submission of industry's proposed study plans for conducting the required testing and public comment on those study plans. At that time, EPA will make whatever modifications in the proposed study plans that it finds necessary to assure development of adequate and reliable data. The approved testing plans then will be adopted as test standards and schedules in the final Phase II rule and will be binding on the test sponsor(s). These procedures will be applicable to each

test rule promulgated under section 4 of TSCA that are designated as two phase.

B. Exemptions

The Agency has not changed its approach to determining whether data that would be generated by testing an exemption applicant's chemical would be duplicative of those which will be under development. If the exemption applicant demonstrates his chemical to be equivalent to one which is being or will be tested according to the study plans adopted in the Phase II rule, EPA will consider this condition to have been met.

In response to industry comments that EPA had not adequately explained what criteria would be used to evaluate equivalence, the Agency has modified its approach to the issue. Rather than leave substantiation of equivalence claims to the discretion of the exemption applicant, EPA will provide guidance concerning equivalence substantiation in each proposed test rule. As proposed, EPA will grant a conditional exemption provided that the applicant's chemical is equivalent to the one which is to be tested and that study plans have been approved for all of the required tests.

Unless otherwise indicated in the test rule, only manufacturers (including importers) will be expected to submit exemption applications or study plans. Normally, processors will share the testing costs with the manufacturer through the pricing mechanism. However, if the exposure or risk upon which the test rule is based is associated with processing as well as manufacturing or with other downstream activities (use, distribution in commerce, and disposal), and if manufacturers fail to submit study plans, the Agency will publish a notice in the **Federal Register** and call upon processors to submit study plans or exemption applications.

V. Discussion of Final Rule

A. Steps in Test Rule Development

EPA's decision to utilize a two-phase rulemaking process employing test guidelines rather than mandatory test methodologies was made in response to comments that its original approach could prevent test sponsors from using new, more economical testing methodologies or making modifications in the recommended protocol that would yield more reliable data when testing a specific chemical. In order to provide this flexibility, while retaining EPA's opportunity to assure that the tests are designed so as to yield adequate and reliable data, the Agency is adopting a two-phase process composed of the following steps:

1. *Proposals of a Phase I test rule.* The proposed Phase I rule will discuss who should conduct testing (manufacturers or processors or both), the health and environmental effects or other characteristics for which testing will be required, appropriate Good Laboratory Practice requirements, EPA's recommendations for testing methodologies, and the representative substance or substances to be tested. Selection of a representative test substance or substances will be made based on information available in the literature and data EPA has received from industry, environmental groups and other members of the public. In making this selection, EPA will consider the effects of additives and impurities and how they might affect the risk which various forms or formulations of the chemical may present to human health or the environment.

Normally, EPA expects to select a single test substance to be representative of all forms of the chemical subject to the rule. Under these circumstances all other forms of the subject chemical will be considered "equivalent" for purposes of granting exemptions. In those rare cases in which the effects of additives and impurities or other differences in forms of the subject chemical make it necessary to test more than one test substance, the Phase I rule will define the substances for which the Agency proposes to require testing, its rationale for choosing those test substances, and how it proposes to determine equivalence.

2. *Public comment on proposed Phase I rule.* The Agency will accept comment on its proposal for 60 days. Comments will be solicited on EPA's findings under section 4(a), on the particular health or environmental effects or other characteristics for which testing is proposed, and on the test substance or substances proposed to be tested. EPA will be particularly interested in obtaining comment on additives and impurities which may significantly affect the outcome of testing. Commercial chemical formulations may contain many additives or contaminants which may or may not create differences in test data significant for assessing the risk which that chemical presents to human health or the environment. To test each of the many individual components of a commercial chemical separately would be costly, time consuming, and in most cases unnecessary. Therefore, EPA will ask the assistance of the public in identifying any additives and impurities which may be toxicologically significant as relating to a particular chemical under consideration. Public comments on EPA's proposed test substance(s) and its criteria for determining equivalence will be used to supplement information obtained earlier in the information-gathering phase of the test rule development process and may lead EPA to modify its proposals.

Shifting consideration of equivalency to an earlier phase of rulemaking will also address the concern expressed by several commenters that EPA was inappropriately assuming the burden of proving equivalency by assuming that, absent evidence to the contrary, a single test substance was representative of all forms of the chemical subject to the test rule. It was never the Agency's intent to disregard information concerning the effects of contaminants or to ignore such data in selecting a test substance. In the process adopted today, by considering additives and impurities early in the rulemaking process, the Agency will be better able to select representative test substances and to determine whether additives or impurities may make a significant difference in a chemical's effects and what types of data should be required to substantiate equivalency claims. The burden for providing equivalence information remains on the applicant; but it will be submitted in response to specific Agency guidance in the final Phase I test rule. It is in the public interest to eliminate unnecessary data submissions whenever possible by specifying what data are needed.

The Natural Resources Defense Council (NRDC) commented, and the Agency agrees, that EPA cannot guarantee that it will be able to identify, in advance, all of the toxicologically significant impurities in a chemical required to be tested. Nevertheless, due to the many diverse ways in which chemicals may be marketed or used, to absolutely "guarantee" that data generated will provide full answers for the many forms of a chemical, each form of the chemical would need to be tested at huge costs to society. Test rules are designed to gather information concerning subjects about which existing information is limited. They are, by necessity, written in a climate of uncertainty. Congress limited the time available for Agency response to ITC designations to 12 months (section 4(e)(1)(A)). A chemical designated for testing consideration may be manufactured in a variety of formulations and mixtures which can contain may additives and impurities. Any of these may or may not create significant differences in the data which

are obtained from testing. Just as it is impractical and unnecessary to require testing for all effects for all chemicals, so it is infeasible to require or evaluate detailed information concerning all of the additives and impurities that may be present. The Agency believes that by considering the effects of additives and impurities early in the rulemaking process, and by soliciting aid from the public in identifying those which may significantly affect test results, it is making the most efficient use practicable of the time and resources available for assessing risk.

Potential exemption applicants and other members of the public will have an opportunity to carefully examine EPA's plans for selection of test substances and determination of equivalence in the Phase I rule. It will also establish how equivalency claims are to be supported and judged. By commenting on EPA's proposals in the Phase I rule, the public will have an opportunity to provide information which may modify those plans.

3. *Publication of final Phase I test rule.* After considering public comments, EPA will publish a final Phase I rule specifying the health and environmental effects and other characteristics for which data are required to be developed, a reference to guidelines for the development of test data, the persons responsible for testing, and the required test substance(s), and, if more than one substance is to be tested, it will also give instructions for showing equivalence. The rule will specify who must respond by submitting either a notice of intent to conduct testing or an application for exemption based on the belief that testing will be performed by another. Who must respond and the form of the required response will vary as follows:

a. *Persons subject to final Phase I test rule.* Although both manufacturers and processors may be found under section 4(b)(3)(B) to be responsible for testing, EPA expects that only manufacturers ordinarily will be subject to the reporting provisions of the test rule. Once the test rule is in effect, 44 days after publication in the **Federal Register**, each current manufacturer will have 30 days to submit, for each required test, either a letter of intent to perform the test or an application for exemption. Each manufacturer who submits a letter of intent to perform a specific test will be obligated, first, to submit, within 90 days of the effective date of the Phase I test rule, a proposed study plan for that test and, ultimately, to perform testing.

If manufacturers perform all the required tests, processors will not be required to test or to submit exemption applications. EPA will automatically grant such processors exemptions without requiring the submission of exemption applications.

Manufacturers who wish to sponsor testing as part of a consortium may submit a single letter of intent to test provided that all members of the consortium sign it. If the rule requires testing of more than one representative substance, each member of the consortium must also provide equivalence data.

EPA believes that processors will rarely be called upon to sponsor testing directly. However, if the test rule's findings are based solely on exposure associated with processing, the rule will require processors to submit notices of intent to test or exemption applications and to follow the same study plan submission and approval steps as described in this rule for manufacturers.

It is expected that, in most cases, testing will be performed by the manufacturers and that part of the cost of testing will be passed on to processors through the pricing mechanism, thereby enabling them to share in the costs of testing. However, in those instances where manufacturers (including importers) and processors are jointly responsible under TSCA for the conduct and financing of testing, processors will be called upon to sponsor tests if manufacturers fail to do so, or may be required to provide reimbursement directly to those sponsoring this testing unless the exposure or possible risk associated with the chemical is due solely to manufacturing. (See Data Reimbursement rule 40 CFR 791.45.)

If no manufacturer submits a letter of intent to perform a particular test within the 30-day period, EPA will publish a notice in the **Federal Register** to notify all processors of the subject chemical. The notice will state that EPA has not received letters of intent to perform certain tests and that current processors will have 30 days to submit, for each test remaining, either a letter of intent to perform the test or an exemption application for that test. Each processor who submits a letter of intent to perform a specific test will be obligated, first, to submit, within 90 days of the publication of the **Federal Register** notice, a proposed study plan for the test and, ultimately, to perform the testing.

If no manufacturer or processor submits a letter of intent to perform a particular test, EPA will notify all manufacturers and processors, either by letter or by notice in the **Federal Register**, that all exemption applications will be denied and that within 30 days all manufacturers and processors will be in violation of the rule until a proposed study plan is submitted for that test.

Any person not manufacturing the chemical at the time the rule goes into effect or within the first 30 days after the rule goes into effect, who later begins manufacturing before the end of the reimbursement period, will be required to submit a letter of intent to test or an exemption application for each required test by the day the person begins manufacture. If EPA has published a notice in the **Federal Register** telling processors to submit letters of intent or exemption applications for certain tests, any person not processing the chemical at the time the rule goes into effect or within 30 days after the publication of the notice, who later begins processing before the end of the reimbursement period, will be required to submit a letter of intent to test or an exemption application for each test specified in the **Federal Register** notice by the day the person begins processing.

b. *Submission of letter of intent to test or exemption application.* Those responding to a Phase I test rule may do so either by submitting a letter of intent to perform testing, or by requesting an exemption from one or more of those testing requirements based on the belief that the tests will be performed by another.

Letters of intent to conduct testing must specify which study or studies the respondent will sponsor and, if more than one substance is to be tested, which test substance will be used in those studies. EPA will consider such notices as commitments to perform testing.

Exemption applications must list the test requirements for which an exemption is being sought and discuss the applicant's basis for believing that the tests will be performed by another party. If more than one representative substance is to be tested, the applicant must also state which test substance it believes its chemical to be equivalent to and support this assertion with the types of data called for in the test rule.

All responses must include the following:

i. The name, address and phone number of the applicant and the rule to which it is responding.

ii. The name, address and telephone number of the appropriate individual EPA should contact for further information.

iii. For applicants participating in a testing consortium, the names of all consortium members and the identity of the primary spokesperson for the consortium.

iv. The test requirements for which the applicant intends to submit study plans and conduct testing.

v. The test requirements, if any, for which the applicant is requesting an exemption, and its basis for believing that the tests will be performed by another.

Responses must also include any additional information called for in the test rule. In those cases in which more than one representative form of the chemical is to be tested this will include:

(1) For those indicating an intent to test—which test substance the submitter intends to use in each of the planned tests.

(2) For those requesting exemptions—the test substance the applicant believes its product to be equivalent to and all data supporting this assertion which were required in the test rule.

4. *Submission of study plans.* All those who submitted letters of intent to conduct tests must submit study plans for those tests unless EPA agrees to their substitution of an exemption application in instances where more than one company indicates an intent to sponsor equivalent tests. If testing is to be sponsored by a consortium, its spokesperson may submit study plans on behalf of all those who have given EPA notice of their intent to participate in that consortium. The procedural rule published today requires proposed study plans to be submitted by manufacturers within 90 days after the effective date of the Phase I rule unless: (1) The plans are being submitted by processors after manufacturers failed to do so; or (2) the Agency has granted those responsible for preparing the plans an extension of the deadline. In the first case, processors must submit study plans within 90 days from the publication of the notice requiring them to submit letters of intent.

Some commenters remarked that EPA's plan to allow 30 days for formation of a testing consortium and/or to indicate an intent to test, with an additional 60 days for study plan development, may not give sponsors adequate time. EPA's experience in negotiating testing agreements indicates that, in most cases, the 90 days allotted for development of study plans will be sufficient. However, if unusual circumstances make this difficult, EPA may grant requests for additional time for study plan development on a case-by-case basis.

Unless EPA has granted additional time for study plan development, manufacturers who indicate thay will perform testing, but do not submit proposed study plans within 90 days after the effective date of the rule, will be considered in violation of the test rule. Processors who indicate they will test, but do not submit a study plan by 90 days after the publication of the **Federal Register** notice requiring them to submit letters of intent, will be considered in violation of the rule.

The categories of information which must be contained in the proposed study plans are described in EPA's Good Laboratory Practice (GLP) Standards for use in testing under the Toxic Substances Control Act (40 CFR Part 792). They include the proposed test protocols and the rationale for their selection, as well as the identities of the sponsor(s) and the testing organization, and proposed schedule for conducting the testing and submitting required reports to EPA.

Test protocols must comply with EPA's GLP requirements and any specific requirements given in the test rule. TSCA, Organization for Economic Cooperation and Development (OECD), and Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) guidelines, as well as methods described in the scientific literature, may be referenced in the test rules as guidance for test methodology development. Sponsors may elect to use one of the protocols referenced in these guidelines, or they may develop their own. If testing is to be sponsored jointly by members of a consortium, that member who has been designated primary contact with EPA should submit study plans on behalf of the entire group.

5. *Proposed Phase II rule.* The proposed study plans will be made available for a 45-day public comment period during a second phase of the rulemaking. The proposed Phase II test rule will summarize the proposed study plans and inform the public that the detailed plans are available for review in EPA's public docket. The Agency will hold a public meeting if one is requested. Following the comment period, EPA will evaluate the proposed study plans in view of public comments and the data requirements in the test rule. The Agency will require whatever modifications of the study plans that it finds necessary to assure the development of adequate and reliable data for the purposes of the test rule. If substantial issues arise or substantial modifications of the study plans are required, the Agency may extend the 45-day comment period.

The Agency's evaluation of the study plans will include an assessment of the quality of the study design, including evidence of adherence to EPA GLP Standards, a determination as to whether the study as proposed will yield the proper types of data for the purposes of the test rule, and an assessment of the probability that the study design can be successfully implemented within the time specified in the test rule. These specific considerations will vary with the chemical being tested and the types of tests required in each test rule. The Agency cannot, therefore, as one commenter suggested, discuss all of the criteria for study plan evaluation in this procedural rule. Certain aspects of the evaluation will vary with the type of testing being required and the purposes for which the data are to be developed. Specific guidance concerning the factors which EPA considers important in the design of specific studies will be provided in the individual test rules and the testing guidelines referenced in those rules.

6. *Evaluation of exemption applications.* During the comment period on proposed study plans, EPA will examine exemption applications. Its review will be to determine that properly completed exemption applications have been received from all those not sponsoring testing or participating in a consortium sponsoring testing, and to evaluate equivalency claims. When a single representative substance is to be tested, all forms of the chemical will be considered equivalent to it, and the Agency will contact the applicant only if information is missing or unclear.

If two or more chemical substances are to be tested, equivalency claims will be assessed according to the criteria in the test rule. If the Agency finds an equivalency claim to be in error, or if information needed to make an equivalency determination is missing, the applicant will be notified. If the equivalency claim is being questioned because supporting data are inadequate, the applicant will be given 15 days to provide explanatory information. If EPA finds the applicant's chemical equivalent to a different test substance than was claimed in its application, EPA will notify the applicant in writing and explain why.

Exemption applications will receive notification that their applications for equivalency have been accepted or rejected. Those who have met the requirement for showing equivalency will be eligible for exemptions after study plans have been approved.

7. *Final Phase II test rule.* The Phase II test rule will summarize the testing requirements set forth in the Phase I rule, and the study plans which were approved and adopted by EPA for conducting those tests. It will also note that exemption applicants have been granted conditional exemptions.

Exemptions will be granted on the condition that the required testing is completed according to the study plans and the data submitted according to the prescribed schedules. The approved study plans will describe, in detail, the manner in which the study is to be conducted and will include protocols, rationale, testing facilities, schedules and reporting requirements. The study plans will serve as enforceable test requirements for the test rule and will constitute the chemical-specific test standards required by TSCA section 4(b)(1)(B). The study plans adopted in the Phase II test rule will also specify the time period during which persons subject to the test rule must submit test data as required by TSCA section 4(b)(1)(C).

This approach to providing test standards differs from EPA's May 9, 1979 (44 FR 27334) proposal in that the Agency will be providing standards for the development of data in the approved study plans, rather than through separate promulgation of standardized test methodology requirements. EPA has noted the point made by the Natural Resources Defense Council, that this approach may pose a greater administrative burden for the Agency than the use of codified test standards. EPA does not, however, agree that this burden will be so great that it will outweigh the benefit derived by allowing for the tailoring of test methodologies to specific testing requirements. Industry will not be the sole beneficiary of this approach. In addition to providing potential test sponsors the flexibility in test design requested in their comments, the revised approach allows EPA more control over the final testing scheme through the study plan approval process. By modifying protocols after public comment, the Agency will be able to tailor the test designs to the needs expressed in the specific test rules in a way that would not have been possible under a system of annually updated standardized methodologies.

Public comment on proposed study plans is an important part of this tailoring process. EPA disagrees with those commenters who believed that the requirement for submission of study plans should be eliminated or that only a general study design should be incorporated in the final test rule. General information concerning study objectives and methods will not provide EPA or the public with needed assurance that data are being developed in an adequate and reliable manner. Detailed protocols, schedules and reporting requirements are needed as well. Nor does EPA believe that it would be in the best interests of the regulated industries or the public as a whole to, as one commenter suggested, allow data to be developed with only general guidance and then require that testing be repeated if data were found to be inadequate. Such repetition would impose additional costs on the regulated industries, which would ultimately be passed on to the consuming public, would impose unnecessary administrative burdens on the Agency, and would cause serious delays in the identification and control of health and environmental risks.

Additionally, generic test standards developed for use on a number of chemicals might make chemical-specific test modifications which would produce fully adequate and reliable data at a reduced cost more difficult. Modifications which reduce testing costs for industry can be expected to reduce costs to the public at large and are to be encouraged so long as they do not jeopardize the validity or reliability of the data under development. More flexibility to allow for such modifications is provided for under the Agency's revised test rule development process.

The same commenter who advocated retaining rigid generic test methodology requirements for incorporation into chemical-specific rules approved of the two-phase test rule development process proposal only if it would result in the publication of a final rule containing specific test protocols within a year of EPA's receipt of the ITC's recommendations. The Agency maintains that such a schedule is impracticable and is not required under the law. Using the approach set forth in this notice, the Agency will satisfy TSCA's requirement that a rulemaking proceeding, if required, be "initiated" within 12 months of a chemical's designation by the ITC. At the same time it will allow public participation in the evaluation of testing plans, and the tailoring of those plans to chemical-specific testing needs.

8. *Approval of exemption applications.* Provided that the first condition for granting exemptions (equivalence to the test substance) has been satisfied, the second, duplicativeness of data, will be considered to have been met and conditional exemptions will be granted following EPA's approval of the study plans. Exemption applicants will be notified by certified mail or in the final Phase II rule thay they have received conditional exemptions. The exemptions will be conditional because they will be given based on the assumption that the test sponsors will complete the required testing according to the specifications and schedules in the adopted study plans. TSCA section 4(c)(4)(B) provides that if an exemption is granted prospectively (that is on the basis that one or more persons are developing test data, rather than on the basis of prior test data submissions), the Agency must terminate the exemption if any test sponsor has not complied with the test rule.

9. *Appeal of exemption denials.* Persons whose exemption applications are denied will be notified by certified mail or by **Federal Register** notice and may appeal that denial. Appeals must be filed with EPA within 30 days of the receipt of the letter or publication of the **Federal Register** notice denying the exemption. Appeals should include a detailed explanation of why the applicant disagrees with EPA's decision. The applicant may request a hearing. EPA will notify applicants of its decision within 60 days after EPA receives the appeal or 60 days after the hearing if the request for a hearing is granted.

10. *Termination of conditional exemptions.* Exemptions granted prospectively in the Phase II rule are conditional. The Agency will terminate the exemption if the test sponsors do not comply with the test rule. If EPA determines that one or more of the test requirements contained in a test rule has not been fully complied with either because: (a) No one subject to the rule has started testing by the date specified in the rule, (b) data required by the rule were not submitted by the date specified in the rule, or (c) data were not generated according to approved potocols or in accordance with EPA's Good Laboratory Practice requirements, EPA will notify holders of exemptions based on that testing by certified letter or **Federal Register** notice as to its basis for believing that the testing supporting the exemptions has not satisfied the test rule's requirements and of EPA's intent to terminate those conditional exemptions.

Such exemption holders may file written comments concerning EPA's intent to terminate such exemptions and may request an opportunity for a hearing to refute EPA's tenative decision or may submit a letter of intent to conduct the required test. Comments, hearing requests and letters of intent to test must be in writing and must be received by EPA within 30 days of receipt of the letter or publication of the **Federal Register** notice announcing the Agency's intent to terminate the exemptions. Persons who notify EPA of

their intent to conduct a test must submit study plan modifications concerning test sponsor, test facility and schedules within 60 days of receipt of the letter or notice announcing EPA's intent to terminate the exemptions. The comments and hearing requests should include a brief statement of the basis for the exemption holder's belief that the conditional exemption should not be terminated. If an exemption holder requests a hearing, a single hearing will be held by EPA to address the concerns of all conditional exemption holders objecting to the termination unless confidentiality claims preclude a joint hearing. Exemption holders will receive written notification of EPA's final decision as to whether the exemption will be terminated.

If the Agency finds it necessary to terminate conditional exemptions, it will notify the exemption holders to that effect, will explain the reason for the Agency's decision and will give instructions as to what actions the former exemption holders must take to avoid being found in violation of the test rule.

B. Confidentiality Issues

In addition to the topics discussed in the preceding sections of this preamble, the Agency also received comments concerning certain confidentiality aspects of its test rule and exemption process.

1. *Proposed confidentiality policy and public comment.* Under section 14(c) of TSCA, any person submitting data under the Act may assert a claim of confidentiality with regard to any piece of information. Sections 14 (a) and (b) of TSCA provide the criteria for the Agency's decision on whether a particular claim of confidentiality should be upheld by the Agency. As a general rule, under section 14(a) the Agency may not disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential. Section 14(a) contains several exceptions to this general rule of non-disclosure. Among these is section 14(a)(4), which provides that information may be disclosed "when relevant in any proceeding under this Act, except that disclosure in such a proceeding shall be made in such manner as to preserve confidentiality to the extent practicable without impairing the proceeding." Section 14(b) substantially modifies the effect of section 14(a) by stating that if the information submitted to EPA is a "health and safety study" section 14(a) does not prohibit disclosure of the information unless it "discloses processes used in the manufacturing or processing of a chemical substance or mixture, or in the case of a mixture, * * * disclos[es] the portion of the mixture comprised by any of the chemical substances in the mixture."

In the proposed exemption policy, EPA discussed what types of information submitted in conjunction with exemptions might be considered confidential, and how EPA intended to treat such claims. The Agency indicated that it regarded as "health and safety" data the identity and analysis of the test substance, the processes of manufacturing and processing of the test substance (to the extent necessary to identify the test substance), information on test protocols, and biological information submitted to establish equivalence. Under section 14(b), any of this information which revealed "process" or "mixture" information would normally be withheld; however, EPA reserved the right to release such data under section 14(a)(4) if the Agency determined this was necessary to avoid impairment of the test rule proceeding. Furthermore, the Agency indicated that it could not conceive of a situation in which the identity of the testing lab would be held confidential. EPA indicated that it did not consider information on the identity of the test sponsor or joint sponsors, or on the identity of exemption applicants to be health and safety data. However, the Agency stated that it was considering disclosing this information, under the authority of section 14(a)(4), to facilitate the exemption and reimbursement process. Finally, EPA proposed that persons submitting a claim of confidentiality for the identity of the principal test sponsor, identity of the test substance, or the process for manufacturing or processing the test substance, be required to substantiate these claims at the time the information is submitted to EPA.

Public comments generally concurred with EPA's belief that exemption application and study plan information would not usually be considered confidential by the submitter. Some commenters noted their view that, in any case, the entire study plan should be considered health and safety data and made public unless to do so revealed process or mixture information. On the other hand, many industry comments indicate a belief that the Agency's definition of health and safety study is too broad, and that only information "directly" related to the chemical substance's effects or constituting the basis for a study's conclusions falls into this category. In particular, these commenters objected to the general policy of including identity of the test substance and test protocol information as underlying data to a health and safety study. A comment also stated that, although identity of the testing laboratory would rarely be claimed confidential, if the submitter established grounds for confidential treatment, this information could only be released in accordance with section 14(a)(4). Finally, several commenters stated that there is no justification under TSCA for requiring that certain confidentiality claims be substantiated at the time the information is submitted.

2. *Final confidentiality procedures and policy.* Since the proposal, many aspects of EPA's test rule process have been modified. In addition, EPA has reexamined the need for disclosure of information in the process. As is explained below, because of these changes, many of the issues raised in the comments have been eliminated.

The question of confidential treatment for the identity of the test substance submitted by a test sponsor has been largely eliminated by the revisions to EPA's test rule development process. Comments pointed out that confidentiality only becomes an issue when EPA fails to specify a test substance. However, EPA will always specify a test substance or test substances in the final Phase I test rule. If a tester believes that the test substance's identity is not confidential *per se*, but rather because it is linked with the test sponsor's identification, it can address this problem by claiming its corporate identity to be confidential business information, as discussed below.

Under EPA's final exemption procedures, if the Agency identifies a single test substance, persons applying for exemption will not be required to provide any specific information on the identity of the substance they are manufacturing, because either all varieties of the chemical substance will be equivalent to the test substances, or the test rule itself will define which substances are equivalent to the test substance. (If a person believes that the fact that it is manufacturing a substance equivalent to the test substance is confidential business information, it would be necessary for the person to claim its corporate identity confidential.) However, if EPA identifies more than one test substance, an exemption applicant will be required to indicate to which of the chosen test substances equivalence is claimed, the identity of the applicant's substance, and to submit required data supporting this assertion. If a confidentiality claim is established adequately for the

identity of the substance that the exemption applicant manufactures or processes, EPA will not disclose the identity of the applicant.

If the exemption applicant claims data supporting its equivalence claim to be confidential, EPA will generally judge the confidentiality of this information under section 14(a) of TSCA. However, the Agency will generally consider data from biological tests submitted in support of a claim of equivalence to be health and safety data, and under section 14(b) such data will be withheld only if it would reveal "process" or "proportions of a mixture," which such information would not generally do. Manufacturers and processors may also in some cases be required to submit information on the manufacturing process for their substance, or proportions of a mixture, in order to establish equivalence. EPA will withhold this information if the submitter adequately asserts the claim that it is confidential business information.

EPA has reevaluated its proposed approach to the question of claims of confidentiality of the identity of the test sponsor. The Agency continues to believe that this information would rarely, if ever, be claimed confidential. EPA would expect it to be claimed confidential only when a person wishes to avoid disclosing that it manufactures or processes the substance subject to the rule. If a valid claim of confidentiality is asserted, the Agency no longer intends generally to disclose this information under section 14(a)(4) to facilitate the reimbursement process. The study sponsor is responsible, in the first instance, for paying the cost of the testing. If the sponsor, for whatever reason, does not seek reimbursement from an exemption holder, there would be no need to reveal the sponsor's identity. If the sponsor seeks reimbursement from any person, the sponsor can arrange for a third party to represent it in negotiations or in a reimbursement proceeding under the Agency's rules. Only if the confidentiality of the test sponsor's identity prevented a full and fair resolution of a formal reimbursement dispute would EPA consider it necessary to reveal this information under the authority of section 14(a)(4).

A claim of confidentiality for the identity of an exemption applicant poses a somewhat different problem. An exemption holder has an obligation under TSCA to provide reimbursement to the test sponsor. The test sponsor or a person who has already paid reimbursement to a test sponsor, and thus may wish a contribution from others subject to the rule, are the only persons who have a specific need to identify the exemption holders so that they can seek reimbursement from them. If exemption applicants assert a claim of confidentiality, EPA will withhold this information until the Agency receives a notification from a test sponsor of an intent to seek reimbursement from exemption holders. Then, under EPA confidentiality procedures, EPA will notify the exemption holders that it intends to release this information under section 14(a)(4) unless the exemption holder immediately takes steps to contact the requesting party (directly, or through an intermediary) or proposes a way for the reimbursement process to proceed without release of the exempted company's identity.

Under EPA's current process for developing enforceable test standards for test rules, the final Phase II test rule for a substance will specify the protocols which must be used for a particular test. While comments asserted that a study plan submitted by a party could contain confidential business information, EPA does not believe any test sponsor could assert a valid claim for confidentiality for the design of the proposed study. However, if such a claim were asserted, EPA believes that such protocol information is clearly included in the concept of "data underlying a health and safety study" and thus would disclose such information. The only statutory basis under section 14(b) for withholding such information would be that it revealed "process" or "mixture" information, and EPA cannot envision how a testing protocol could reveal such data. EPA will withhold this information only if the submitter substantiates the claim that it is confidential business information.

The only circumstance suggested by the comments under which the identity of the laboratory performing a test would be confidential would be if the test sponsor's identity were confidential and revealing the name of the lab would reveal the identity of the test sponsor. EPA has concluded that the identity of the lab performing a test is data underlying a health and safety study because the quality of testing may vary according to the caliber of the laboratory performing the test. Therefore, the disclosure of such information is governed by section 14(b) and would be released. EPA does not believe that revealing the identity of a lab would ever reveal process or mixture information. If a test sponsor is concerned about revealing its identity, it should select a test lab whose identity would not reveal this information.

EPA is requiring that test sponsors substantiate at the time of submission confidentiality claims for certain types of study plan information. EPA believes that unexpected disruption to the process may result if substantiation is not required at the time study plan information is submitted. EPA believes that its revised approach will severely limit the necessity for confidentiality claims and that this requirement for substantiation will not place a significant burden on the regulated industry.

VI. Rulemaking Record

EPA has established a public record for this rulemaking, docket number [OPTS–42052], which contains the following information:

(1) **Federal Register** notices pertaining directly to this rule consisting of:

(a) Notice of proposed rule pertaining to exemptions (45 FR 48512).

(b) Proposed rule related notice describing changes in EPA's test standards policy and test rule development process (47 FR 13012).

(2) **Federal Register** notices related to this rule consisting of:

(a) Proposed health effects testing standards (44 FR 27334 and 44 FR 44054).

(b) Proposed chemical fate and ecological effects testing standards 45 FR 77332).

(c) Final rule concerning EPA's good laboratory practice standards (48 FR 53922).

(d) Final rule concerning data reimbursement (48 FR 31786).

(3) List of comments pertaining to this rule.

(4) List of comment submitters.

(5) Written communications pertaining to this rule.

This record, which includes basic information considered by the Agency in developing this proposal and appropriate **Federal Register** notices, is available for inspection in the OPTS Reading Room, Room E–107, 401 M St., SW., Washington, D.C., from 8:00 a.m. to 4:00 p.m., Monday through Friday, except legal holidays. The Agency will supplement the record with additional information as it is received.

VII. Classification of Rule

Under Executive Order 12291, EPA must judge whether a regulation is "Major" and, therefore, subject to the requirement of a Regulatory Impact Analysis. This rule on test rule development and exemption application procedures is not major because it does not meet any of the criteria set forth in section 1(b) of the Order. The regulation is a procedural rule and will have virtually no effect on the economy. The rule describes the process EPA will use to develop test rules under section 4(a)

of TSCA and to grant exemptions from those test rules under section 4(c) of TSCA. It will not cause major price or cost increases but rather provides a mechanism to avoid duplicative testing, thereby reducing costs to the regulated community. The regulation will not significantly affect competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; rather, it encourages the development of innovative and cost-effective testing methodologies.

This rule was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Any comments from OMB to EPA, and any EPA response to those comments, will be included in the rulemaking record.

VIII. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (15 U.S.C. 601 *et seq.*, Pub. L. 96-354, Sept. 19, 1980), EPA is certifying that this rule will not have a significant impact on a substantial number of small entities.

By facilitating an exemption process in which a single manufacturer or processor can sponsor tests on behalf of all those subject to a TSCA section 4 test rule, this rule reduces the administrative and financial burden which those testing rules might otherwise impose on regulated industries. The impact which test rules are expected to have on small entities was discussed in the Dichloromethane, Nitrobenzene, and 1,1,1-Trichloroethane Proposed Rule, published in the Federal Register of June 5, 1981 (46 FR 30300). The revised exemption procedures described in this rule are expected to present an even smaller burden to the exemption applicant than those referred to in that test rule because test rules will henceforth give specific guidance as to what types of data, if any, are required to support equivalence assertions. This will reduce the possibility that an applicant may submit more data than the Agency requires to make a decision.

EPA's decision to provide testing guidance in the form of suggested guidelines rather than required protocols is also expected to reduce the administrative and financial burden on affected industries. Under this approach, firms whose existing testing facilities or practices differ from those described in EPA's recommended protocols need not modify their procedures unless EPA finds that these variations are great enough to significantly affect the data generated. Therefore, companies sponsoring testing are less likely to find it necessary to modify existing testing practices and will have more flexibility in selecting new ones.

IX. Paperwork Reduction Act

The information collection requirements contained in this rule have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* and have been assigned OMB control number 2070-0033.

List of Subjects in 40 CFR Part 790

Testing, Exemptions, Environmental protection, Hazardous materials, Chemicals.

Dated: September 28, 1984.

William D. Ruckelshaus,

Administrator.

Therefore, Chapter I of 40 CFR is amended by adding a new Part 790 to read as follows:

PART 790—TEST RULE DEVELOPMENT AND EXEMPTION PROCEDURES

Subpart A—General Provisions

Sec.

790.1 Scope, purpose, and authority.
790.2 Applicability.
790.3 Definitions.
790.5 Submission of information.
790.7 Confidentiality.

Subpart B—Two Phase Test Rule Development

790.20 Phase I test rule.
790.22 Persons subject to Phase I test rule.
790.25 Submission of letter of intent to test or exemption application.
790.28 Procedure if no one submits a letter of intent to conduct testing.
790.30 Submission of proposed study plans.
790.32 Proposed Phase II test rule.
790.34 Final Phase II test rule.
790.35 Modification of study plans during conduct of study.
790.39 Failure to comply with a test rule.

Subparts C-D—[Reserved]

Subpart E—Exemptions

790.80 Submission of exemption applications.
790.82 Content of exemption application.
790.85 Submission of equivalence data.
790.87 Approval of exemption applications.
790.88 Denial of exemption application.
790.90 Appeal of denial of exemption application.
790.93 Termination of conditional exemption.
790.97 Hearing procedures.
790.99 Statement of financial responsibility.

Authority: [TSCA, 15 U.S.C. 2603(b)(3)(A), 2603(c)].

Subpart A—General Provisions

§ 790.1 Scope, purpose, and authority.

(a) This part establishes the procedures to be used in promulgating test rules under section 4(a) of the Act and sets forth the process by which exemptions from those test rules will be granted.

(b)(1) Section 4(a) of the Act authorizes EPA to require manufacturers and processors of chemical substances and mixtures to test chemical substances and mixtures for health and/or environmental effects.

(2) Sections 4(b)(1) and 3(12)(A) of the Act specify that each test rule must include standards for the development of test data which prescribe the "health and environmental effects" and the "information relating to toxicity, persistence, and other characteristics which affect health and the environment" for which test data are to be developed.

(3) Sections 4(b)(1) and 3(12) of the Act authorize EPA to prescribe the manner in which tests are to be conducted in the development of such data and any other such requirements as are necessary to assure the development of adequate and reliable data.

(4) Section 4(c) of the Act permits any person subject to a test rule promulgated under section 4(a) of the Act to request an exemption from the requirements of such a rule. The Administrator is directed to approve an application for exemption if he/she determines that:

(i) The chemical to which the application pertains is equivalent to one for which data have been or are being developed pursuant to the same testing rule; and

(ii) Submission of additional data by the applicant would be duplicative of data already submitted or under development.

(5) Section 4(b)(3)(A) of the Act authorizes the Administrator to permit two or more persons subject to a test rule to designate one of themselves or a qualified third party to conduct testing and submit data on their behalf.

(6) Sections 4(c)(3) and 4(c)(4) of the Act provide that persons receiving exemptions provide reimbursement to all those persons who have contributed or are contributing to financing the development of the data on the basis of which the exemption was granted. Such reimbursement is to be for a portion of the costs incurred. If the persons involved cannot agree on the amount and method of reimbursement, EPA is required to order the person granted the exemption to provide fair and equitable

reimbursement to the appropriate parties.

§ 790.2 Applicability.

This part is applicable to manufacturers and processors of chemical substances or mixtures who are subject to the testing requirements of a rule promulgated under section 4(a) of the Act. These procedures are applicable to each test rule in Part 799 of this Chapter unless otherwise stated in specific test rules in Part 799 of this Chapter.

§ 790.3 Definitions.

Terms defined in the Act and not explicitly defined herein are used with the meaning given in the Act. For the purpose of this part:

"Act" means the Toxic Substances Control Act, 15 U.S.C. 2601 *et seq.*

"Additive" means a chemical substance that is intentionally added to another chemical substance to improve its stability or impart some other desirable quality.

"Chemical" means a chemical substance or mixture.

"Consortium" means an association of manufacturers and/or processors who have made an agreement to jointly sponsor testing.

"EPA" means the U.S. Environmental Protection Agency.

"Equivalence data" means chemical data or biological test data intended to show that two substances or mixtures are equivalent.

"Equivalent" means that a chemical substance or mixture is able to represent or substitute for another in a test or series of tests, and that the data from one substance can be used to make scientific and regulatory decisions concerning the other substance.

"Exemption" means an exemption from a testing requirement of a test rule promulgated under section 4 of the Act and Part 799 of this Chapter.

"Impurity" means a chemical substance which is unintentionally present with another chemical substance.

"Joint sponsor" means a person who sponsors testing pursuant to section 4(b)(3)(A) of the Act.

"Joint sponsorship" means the sponsorship of testing by two or more persons in accordance with section 4(b)(3)(A) of the Act.

"Person" means an individual, partnership, corporation, association, scientific or academic establishment, or organizational unit thereof, and any other legal entity.

"Principal sponsor" means an individual sponsor or the joint sponsor who assumes primary responsibility for the direction of a study and for oral and written communication with EPA.

"Protocol" means the plan and procedures which are to be followed in conducting a test.

"Reimbursement period" refers to a period that begins when the data from the last non-duplicative test to be completed under a test rule are submitted to EPA and ends after an amount of time equal to that which had been required to develop data or after five years, whichever is later.

"Sponsor" means the person or persons who design, direct and finance the testing of a substance or mixture subject to a test rule in Part 799 of this chapter.

"Test substance" means the form of chemical substance or mixture that is specified for use in testing.

§ 790.5 Submission of information.

All submissions to EPA under this part must bear the Code of Federal Regulations (CFR) section number of the subject chemical test rule (e.g. § 799.4400 for 1,1,1-trichloroethane) and must be addressed to:

Document Control Office (TS–793), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Washington, D.C. 20460.

In addition, a copy of the cover memo for all submissions must be addressed to:

Director, Compliance Monitoring Staff (EN–342), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Washington, D.C. 20460.

§ 790.7 Confidentiality.

(a) Any person subject to the requirements of a test rule promulgated under section 4 of the Act may assert a claim of confidentiality for certain information submitted to EPA in response to the test rule. Any information claimed as confidential will be treated in accordance with the procedures in Part 2 of this title and section 14 of the Act. Failure to assert a claim of confidentiality at the time the information is submitted will result in the information being made available to the public without further notice to the submitter.

(b) A claim of confidentiality must be asserted by circling or otherwise marking the specific information claimed as confidential and designating it with the words "confidential business information," "trade secret," or another appropriate phrase indicating its confidential character.

(c) If a person asserts a claim of confidentiality for study plan information described in § 790.30(c)(1)(iii)(D), (iv), (v), and (vi) of the part, the person must provide a detailed written substantiation of the claim by answering the questions in this paragraph. Failure to provide written substantiation at the time the study plan information is submitted will be considered a waiver of the claim of confidentiality, and the study plan information will be disclosed to the public without further notice.

(1) Would disclosure of the study plan information disclose processes used in the manufacture or processing of a chemical substance or mixture? Describe how this would occur.

(2) Would disclosure of the study plan information disclose the portion of a mixture comprised by any of the substances in the mixture? Describe how this would occur.

(3) What harmful effects to your competitive position, if any, do you think would result from disclosure of this information? How would a competitor use such information? How substantial would the harmful effects be? What is the causal relationship between disclosure and the harmful effects?

(4) For what period of time should confidential treatment be given? Until a specific date, the occurrence of a specific event, or permanently? Why?

(5) What measures have you taken to guard against disclosure of this information to others?

(6) To what extent has this information been disclosed to others? What precautions have been taken in connection with such disclosures?

(7) Has this information been disclosed to the public in any forms? Describe the circumstances.

(8) Has the information been disclosed in a patent?

(9) Has EPA, another Federal agency, or any Federal court made any pertinent confidentiality determination regarding this information? If so, copies of such determinations must be included in the substantiation.

(d) If the substantiation provided under paragraph (c) of this section contains information which the submitter considers confidential, the submitter must assert a separate claim of confidentiality for that information at the time of submission in accordance with paragraph (b) of this section.

Subpart B—Two Phase Test Rule Development

§ 790.20 Phase I test rule.

(a) If EPA determines that it is necessary to test a chemical substance or mixture under section 4 of the Act, it will promulgate a Phase I test rule in Part 799 of this chapter through a notice-

and-comment rulemaking which specifies the following:

(1) Identification of the chemical for which testing is required under the rule.

(2) The health or environmental effect or effects or other characteristics for which testing is being required.

(3) Which test substance(s) must be tested.

(4) A reference to appropriate guidelines for the development of test data.

(5) The EPA Good Laboratory Practice requirements for the required testing.

(6) Who must submit either letters of intent to conduct testing or exemption applications.

(7) What types of data EPA will examine in determining equivalence if more than one test substance is to be tested.

(b) [Reserved].

§ 790.22 Persons subject to Phase I test rule.

(a) Each Phase I test rule will specify whether manufacturers, processors, or both are subject to the requirement for testing of the subject chemical under section 4(b)(3)(B) of the Act and will indicate who will be required to submit letters of intent to submit study plans and to conduct testing.

(1) If testing is being required to allow evaluation of risks:

(i) Primarily associated with manufacture of the chemical, or

(ii) Associated with both manufacture and processing of the chemical, or

(iii) Associated with distribution in commerce, use, and/or disposal activities concerning the chemical, each manufacturer of the chemical will be subject and must respond to the test rule. While legally subject to the test rule in circumstances described in paragraph (a)(1) (ii) and (iii) of this section, processors of the chemical have no obligation to respond unless directed to do so in a subsequent notice as set forth in § 790.28(b) or § 790.39(a)(2) of this part.

(2) If testing is being required to allow evaluation of risks associated soley with processing of the chemical, processors will be subject and must respond to the test rule.

(b) [Reserved].

§ 790.25 Submission of letter of intent to test or exemption application.

(a) No later than 30 days after the effective date of a Phase I test rule, each person subject to that rule and required to respond to that rule as provided in § 790.22(a) must, for each test required, either notify EPA by letter of their intent to submit study plans and to conduct testing or submit to EPA an application for an exemption from the study plan submission and testing requirements for the test.

(b) EPA will consider letters of intent to test as commitments to submit study plans and to sponsor the tests for which they are submitted unless EPA agrees to the substitution of an exemption application in instances where more than one person indicates an intent to sponsor equivalent tests. Each letter of intent to conduct testing must include:

(1) Identification of test rule.

(2) Name, address, and telephone number of the firm(s) which will be sponsoring the tests.

(3) Name, address, and telephone number of the appropriate individual to contact for further information.

(4) For sponsors participating in a testing consortium—a listing of other members of the consortium signed by each member, and a designation of who is to serve as principal sponsor.

(5) A list of the testing requirements for which the sponsor(s) intends to submit study plans and conduct tests.

(6) If EPA is requiring testing of more than one representative substance—which test substance the sponsor(s) intends to use in each of the tests.

(c) Any person not manufacturing or processing the subject chemical as of the effective date of the final Phase I test rule or by 30 days after the effective date of the rule or, when both manufacturers and processors are subject to the rule, not processing as of the effective date of the final Phase I test rule or by 30 days after publication of the **Federal Register** notice described in § 790.28(b)(2) of this part who, before the end of the reimbursement period, manufactures or processes the test chemical and who is subject to and required to respond to the test rule must submit the letter of intent to test or exemption application required by paragraph (a) of this section or § 790.28(b)(3) of this part by the date manufacture or processing begins.

(d) Manufacturers subject to a Phase I test rule who do not submit to EPA either a letter of their intent to conduct tests or a request for an exemption from testing for each test for which testing is required in a Phase I test rule will be considered in violation of that rule beginning on the 31st day after the effective date of the Phase I test rule or on the date manufacturer begins as described in paragraph (c) of this section.

(e) Processors subject to a Phase I test rule and required to respond pursuant to § 790.22(a)(2) or a **Federal Register** notice as described in § 790.28(b)(2) of this part who do not submit to EPA either a letter of their intent to conduct tests or a request for an exemption for each test for which testing is required in a Phase I test rule will be considered in violation of that rule beginning on the 31st day after the effective date of the Phase I test rule or 31 days after publication of the **Federal Register** notice described in § 790.28(b)(2) of this part or on the date processing begins as described in paragraph (c) of this section, as appropriate.

§ 790.28 Procedure if no one submits a letter of intent to conduct testing.

(a) *If only manufacturers are subject to rule.* (1) This paragraph applies if testing is being required solely to allow evaluation of risks associated with manufacturing and the final Phase I test rule states that manufacturers only are responsible for testing.

(2) If no manufacturer subject to the rule has notified EPA of its intent to conduct one or more of the required tests within 30 days after the effective date of the final Phase I test rule, EPA will notify all the manufacturers by certified mail or publish a notice in the **Federal Register** of this fact specifying the tests for which no letter of intent has been submitted and will give the manufacturers an opportunity to take corrective action. If no manufacturer submits a letter of intent to conduct one or more of the required tests within 30 days after receipt of the certified letter or publication of the **Federal Register** notice described in this paragraph, all manufacturers subject to the rule will be in violation of the test rule from the 31st day after receipt of the certified letter or publication of the **Federal Register** notice described in this paragraph until a proposed study plan has been submitted for each required test.

(b) *If manufacturers and processors are subject to the rule.* (1) This paragraph applies if testing is being required to allow evaluation of risks associated with manufacturing and processing or with distribution in commerce, use or disposal of the chemical and the final Phase I test rule states that manufacturers and processors are responsible for testing.

(2) If no manufacturer subject to the rule has notified EPA of its intent to conduct testing for one or more of the required tests within 30 days after the effective date of the final Phase I test rule, EPA will publish a notice in the **Federal Register** of this fact specifying the tests for which no letter of intent has been submitted.

(3) No later than 30 days from the date of publication of the **Federal Register** notice described above in paragraph (b)(2) of this section, each person

processing the subject chemical as of the effective date of the final Phase I test rule or by 30 days after the date of publication of the **Federal Register** notice described in paragraph (b)(2) of this section must, for each test specified in the **Federal Register** notice, either notify EPA by letter of their intent to submit study plans and conduct testing or submit to EPA an application for an exemption from the study plan submission and testing requirements for the test.

(4) If no manufacturer or processor of the test chemical has submitted a letter of intent to conduct one or more of the required tests within 30 days from the date of publication of the **Federal Register** notice described in paragraph (b)(2) of this section, EPA will notify all manufacturers and processors by certified mail or publish a **Federal Register** notice of this fact specifying the tests for which no letter of intent has been submitted. This letter or **Federal Register** notice will give the manufacturers and processors an opportunity to take corrective action. If no person submits a letter of intent to conduct one or more of the required tests within 30 days after receipt of the certified letter or publication of the **Federal Register** notice, all manufacturers and processors subject to the rule will be in violation of the test rule from the 31st day after receipt of the certified letter or publication of the **Federal Register** notice until a proposed study plan has been submitted for each required test.

(c) *Only processors are subject to rule.* (1) This paragraph applies if testing is being required solely to allow evaluation of risks associated with processing and the final Phase I test rule states that only processors are responsible for testing.

(2) If no processor subject to the rule has notified EPA of its intent to conduct one or more of the required tests within 30 days after the effective date of the test rule, EPA will notify all the processors by certified mail or publish a notice in the **Federal Register** of this fact, specifying the tests for which no letter of intent has been submitted and give the processors an opportunity to take corrective action. If no processor submits a letter of intent to conduct one or more of the required tests within 30 days after receipt of the certified letter or publication of the **Federal Register** notice described in this paragraph, all processors subject to the rule will be in violation of the test rule from the 31st day after receipt of the certified letter or publication of the **Federal Register** notice described in this paragraph until a proposed study plan has been submitted for each required test.

§ 790.30 Submission of proposed study plans.

(a) *Who must submit study plans.* (1) Persons who notify EPA of their intent to conduct tests must submit proposed study plans for those tests on or before 90 days after the effective date of the Phase I rule; or, for processors responding to the notice described in § 790.28(b)(2) of this part, 90 days after the publication date of that notice; or 60 days after the date manufacture or processing begins as described in § 790.25(c) of this part, as appropriate. Only one set of study plans should be prepared and submitted by persons who are jointly sponsoring testing. Study plans must be prepared according to the requirements of this subpart and Part 792 of this chapter.

(2) Any person subject to a test rule may submit a proposed study plan for any test required by the rule at any time, regardless of whether the person previously submitted an application for exemption from testing for that test.

(3) Unless EPA has granted an extension of time for submission of study plans, manufacturers who notify EPA that they intend to conduct testing and who do not submit proposed study plans for those tests on or before 90 days after the effective date of the Phase I test rule or 60 days after the date manufacture begins as described in § 790.25(c) of this part will be considered in violation of the test rule as if no letter of intent to test had been submitted.

(4) Unless EPA has granted an extension of time for submission of study plans, processors who notify EPA that they intend to conduct testing and who do not submit proposed study plans for those tests on or before 90 days after the effective date of the Phase I test rule or 90 days after the publication date of the notice described in § 790.28(b)(2) of this part, or 60 days after the date processing begins as described in § 790.25(c) of this part, as appropriate, will be considered in violation of the test rule as if no letter of intent to test had been submitted.

(b) *Extensions of time for submission of study plans.* (1) The Agency may grant requests for additional time for study plan development on a case-by-case basis. Requests for additional time for study plan development must be made in writing to EPA. Each extension request must demonstrate why that extension should be granted. EPA will notify the submitter by certified mail of EPA's decision to grant or deny an extension request.

(2) Persons who have been granted an extension of time for submission of study plans as described in paragraph (b)(1) of this section and who do not submit proposed study plans in accordance with the new deadline granted by EPA will be considered in violation of the test rule as if no letter of intent to test had been submitted.

(c) *Content of study plans.* (1) All study plans are required to contain the following information:

(i) Identity of the test rule.

(ii) The specific test requirements of that rule to be covered by the study plan.

(iii)(A) The names and addresses of the test sponsors.

(B) The names, addresses and telephone numbers of the responsible administrative officials and project manager(s) in the principal sponsor's organization.

(C) The name, address, and telephone number of the appropriate individual to contact for oral and written communications with EPA.

(D)(*1*) The names and addresses of the testing facilities and the names, addresses, and telephone numbers of the testing facilities, administrative officials and project manager(s) responsible for the testing.

(*2*) Brief summaries of the training and experience of each professional involved in the study, including study director, veterinarian(s), toxicologist(s), pathologist(s), chemist(s), microbiologist(s), and laboratory assistants.

(iv) Identity and data on the chemical substance(s) being tested, including physical constants, spectral data, chemical analysis, and stability under test and storage conditions, as appropriate.

(v) Study protocol, including rationale for species/strain selection; dose selection (and supporting data); route(s) or method(s) of exposure; description of diet to be used and its source, including nutrients and contaminants and their concentrations; for *in vitro* test systems, a description of culture medium and its source; and a summary of expected spontaneous chronic diseases (including tumors), genealogy, and life span.

(vi) Schedule for initiation and completion of each short-term test and of each major phase of long-term tests; schedule for submission of interim progress and final reports to EPA.

(2) Information required under paragraph (c)(1)(iii)(D) of this section is not required in proposed study plans if the information is not available at the time of study plan submission; however,

the information must be submitted before the initiation of testing.

(d) *Incomplete study plans.* Upon receipt of a proposed study plan, EPA will review the study plan to determine whether it complies with paragraph (c) of this section. If EPA determines that the proposed study plan does not comply with paragraph (c) of this section, EPA will notify the submitter that the submission is incomplete and will identify the deficiencies and the steps necessary to complete the submission. The submitter will have 15 days from the day it receives this notice to submit appropriate information to make the study plan complete. If the submitter fails to provide appropriate information to complete the study plan on or before 15 days after receipt of the notice, the submitter will be considered in violation of the test rule as if no letter of intent to conduct the test had been submitted.

§ 790.32 Proposed Phase II test rule.

If EPA determines that the proposed study plan complies with § 790.30(c) of this part, EPA will publish a proposed Phase II test rule in the **Federal Register** requesting comments on the ability of the study plan to ensure that data from the test will be reliable and adequate. EPA will provide a 45-day comment period and will provide an opportunity for an oral presentation upon the request of any person. EPA may extend the comment period if it appears from the nature of the issues raised by EPA's review or from public comments that further comment is warranted.

§ 790.34 Final Phase II test rule.

After receiving and considering public comment, EPA will adopt the study plan, including the time deadlines and reporting schedules, as proposed or as modified in response to EPA review and public comments, in a final Phase II test rule as test standards and schedules for the required testing.

§ 790.35 Modification of study plans during conduct of study.

(a) *Application.* Any test sponsor who wishes to modify the adopted study plan for any test required under a test rule must submit an application in accordance with this paragraph. Application for modification must be made in writing to the Director, Compliance Monitoring Staff (EN-342), Office of Pesticides and Toxic Substances, EPA, or by phone, with written confirmation to follow within 10 working days. Applications must include appropriate explanation of why the modification is necessary.

(b) *Adoption.* To the extent feasible, EPA will seek public comment on all substantive changes in study plans. EPA will issue a notice in the **Federal Register** requesting comments on requested modifications. However, EPA will act on the requested modification without seeking public comment if either:

(1) EPA believes that an immediate modification to a study plan is necessary in order to preserve the accuracy or validity of an ongoing study, or

(2) EPA determines that a modification clearly does not pose any substantive issues. EPA will notify the sponsor of EPA's approval or disapproval. When EPA approves a modification, it will publish a notice in the **Federal Register** indicating that the study plan has been modified.

§ 790.39 Failure to comply with a test rule.

(a)(1) Persons who notified EPA of their intent to conduct a test required in a test rule in Part 799 of this chapter and who fail to conduct the test in accordance with the test standards and schedules adopted in the final Phase II test rule, or as modified in accordance with § 790.35 of this part, will be in violation of the rule.

(2)(i) If a person fails to conduct a test in accordance with the test standards and schedules adopted in the test rule, EPA will notify each holder of an affected conditional exemption by certified letter or by notice in the **Federal Register** that all conditional exemptions from performance of that test will be terminated unless, within 30 days of receipt of the certified letter or the publication of the notice, a person subject to the rule provides adequate information to rebut EPA's preliminary decision or notifies EPA by letter that they intend to perform that test in accordance with the test standards adopted in the test rule. Exemption holders may also request a hearing in accordance with the procedures in § 790.93 and § 790.97 of this part.

(ii) Within 60 days of receipt of the certified letter or publication of the **Federal Register** notice described in paragraph (a)(2)(i) of this section, persons who notify EPA of their intent to conduct a test must submit the study plan information described in § 790.30(c)(1) (iii), (iv), and (vi) of this part that requires modification from that in the test standards and schedules adopted in the test rule. EPA will adopt modifications to the test standards and schedules in accordance with the procedures described in § 790.35(b) of this part.

(iii) If no person subject to the rules provides adequate information to rebut EPA's preliminary decision or notifies EPA by letter of its intent to conduct the required test, EPA will notify all affected exemption holders by certified letter or **Federal Register** notice that all conditional exemptions for performance of that test are terminated.

(b) Any person who fails or refuses to comply with any aspect of this Part or a test rule under Part 799 of this chapter is in violation of section 15 of the Act. EPA will treat violations of the Good Laboratory Practice standards as indicated in § 792.17 of this part.

Subparts C–D—[Reserved]

Subpart E—Exemptions

§ 790.80 Submission of exemption applications.

(a) *Who should file applications.* (1) Any manufacturer or processor subject to a test rule in Part 799 of this chapter may submit an application to EPA for an exemption from submitting proposed study plans for and from performing any or all of the tests required under the test rule.

(2) Processors will not be required to apply for an exemption or conduct testing unless EPA so specifies in a test rule or in a special **Federal Register** notice as described in § 790.28(b)(2) of this part under the following circumstances:

(i) If testing is being required to allow evaluation of risks associated with manufacturing and processing or with distribution in commerce, disposal or use of the chemical and manufacturers do not submit notice(s) of intent to conduct the required testing; or

(ii) If testing is being required solely to allow evaluation of risks associated with processing of the chemical.

(b) *When applications must be filed.* Exemption applications must be filed within 30 days of the effective date of the final Phase I test rule or, if being submitted in response to the **Federal Register** notice described in § 790.28(b)(2) of this part, within 30 days of the publication of that notice. Exemption applications must be filed by the date manufacture or processing begins by any person not manufacturing or processing the subject chemical as of the effective date of the final Phase I test rule or by 30 days after the effective date of the Phase I test rule, or, when both manufacturers and processors are subject to the rule, not processing as of the effective date of the final Phase I test rule or by 30 days after publication of the **Federal Register** notice described

in § 790.28(b)(2) of this part who, before the end of the reimbursement period, manufactures or processes the test substance and who is subject to the requirement to submit either a letter of intent to test or an exemption application.

(c) *Scope of application.* A person may apply for an exemption from all, or one or more, specific testing requirements in a test rule in Part 799 of this chapter.

§ 790.82 Content of exemption application.

The exemption application must contain:

(a) The identity of the test rule and specific testing requirement(s) from which an exemption is sought.

(b) Name, address, and telephone number of applicant.

(c) Name, address, and telephone number of appropriate individual to contact for further information.

(d)(1) If required in the test rule to establish equivalence:

(i) The chemical identity of the test substance on which the application is based.

(ii) Equivalence data specified in § 790.85 of this part.

(2) If a test rule requires testing of a single representative substance, EPA will consider all forms of the chemical subject to that rule to be equivalent and will not require the submission of equivalence data as described in § 790.85 of this part.

§ 790.85 Submission of equivalence data.

If EPA requires in a test rule promulgated under section 4 of the Act the testing of two or more test substances which are forms of the same chemical, each exemption applicant must submit the following data:

(a) The chemical identity of each technical grade chemical substance or mixture manufactured and/or processed by the applicant for which the exemption is sought. The exact type of identifying data required will be specified in the test rule, but may include all characteristics and properties of the applicant's substance or mixture, such as boiling point, melting point, chemical analysis (including identification and amount of impurities), additives, spectral data, and other physical or chemical information that may be relevant in determining that the applicant's substance or mixture is equivalent to the specific test substance.

(b) The basis for the applicant's belief that the substance or mixture is equivalent to the test substance or mixture.

(c) Any other data which exemption applicants are directed to submit in the test rule which may bear on a determination of equivalence. This may include a description of the process by which each technical grade chemical substance or mixture for which an exemption is sought is manufactured or processed prior to use or distribution in commerce by the applicant.

§ 790.87 Approval of exemption applications.

(a) EPA will conditionally approve exemption applications if:

(1) EPA has received a complete proposed study plan for the testing from which exemption is sought and has adopted the study plan, as proposed or modified, as test standards in a final Phase II test rule, and

(2) The chemical substance or mixture with respect to which the application was submitted is equivalent to a test substance or mixture for which the required data have been or are being submitted in accordance with a final Phase II test rule, and

(3) Submission of the required test data concerning that chemical substance or mixture would be duplicative of data which have been or are being submitted to EPA in accordance with a test rule.

(b)(1) If a single representative substance is to be tested under a test rule, EPA will consider all forms of the chemical subject to that rule to be equivalent and will contact the exemption applicant only if information is missing or unclear.

(2) If two or more representative substances are to be tested under a test rule, EPA will evaluate equivalence claims made in each exemption application according to the criteria discussed in the test rule.

(i) If EPA finds an equivalence claim to be in error or inadequately supported, the applicant will be notified by certified mail. The applicant will be given 15 days to provide clarifying information.

(ii) Exemption applicants will be notified that equivalence has been accepted or rejected.

(c) The final Phase II test rule which adopts the study plans or a letter by certified mail will give exemption applicants final notice that they have received a conditional exemption. All conditional exemptions thus granted are contingent upon the test sponsors' successful completion of testing according to the specifications in the approved study plans.

§ 790.88 Denial of exemption application.

(a) EPA may deny any exemption application if:

(1) EPA determines that the applicant has failed to demonstrate that the applicant's chemical is equivalent to the test substance; or

(2) The exemption applicant fails to submit any of the information specified in § 790.82 of this part; or

(3) The exemption applicant fails to submit any of the information specified in § 790.85 of this part if required in the test rule; or

(4) EPA has not received an adequate study plan for the test for which exemption is sought; or

(5) The study sponsor(s) fails to initiate the required testing by the deadlines adopted in the final Phase II test rule; or

(6) The study sponsor(s) fails to submit data as required in the test standard and deadlines for submission of test data as adopted in the final Phase II test rule or as modified in accordance with § 790.35 of this part.

(b) EPA will notify the exemption applicant by certified mail or **Federal Register** notice of EPA's determination that the exemption application is denied.

§ 790.90 Appeal of denial of exemption application.

(a) Within 30 days after receipt of notification that EPA has denied an application for exemption, the applicant may file an appeal with EPA.

(b) The appeal shall indicate the basis for the applicant's request for reconsideration.

(c)(1) The applicant may also include a request for a hearing. Hearings will be held according to the procedures described in § 790.97 of this part.

(2) Hearing requests must be in writing and must be received by EPA within 30 days of receipt of the letter or publication of the **Federal Register** notice described in § 790.88(b) of this part. Hearing requests must provide reasons why a hearing is necessary.

(d) If EPA determines that there are material issues of fact, then the request for a hearing will be granted. If EPA denies a hearing request, EPA will base its decision on the written submission.

(e) EPA will notify the applicant of its decision within 60 days after EPA receives the appeal described in paragraph (a) of this section or within 60 days after completion of a hearing described in paragraph (c) of this section.

(f) The filing of an appeal from the denial of an exemption shall not act to stay the applicant's legal obligation under section 4 of the Act.

§ 790.93 Termination of conditional exemption.

(a) EPA shall terminate a conditional exemption if it determines that:

(1) The test which provided the basis for approval of the exemption application has not been started by the deadlines for initiation of testing adopted in the final Phase II test rule or modified in accordance with § 790.35 of this part; or

(2) Data required by the test rule have not been generated in accordance with the test standards or submitted in accordance with the deadlines for submission of test data that were adopted in the final Phase II test rule or modified in accordance with § 790.35 of this part; or

(3) The testing has not been conducted or the data have not been generated in accordance with the Good Laboratory Practice requirements in Part 792 of this chapter.

(b) If EPA determines that one or more of the criteria listed in paragraph (a) of this section has been met, EPA will notify each holder of an affected conditional exemption by certified mail or Federal Register notice of EPA's intent to terminate that conditional exemption.

(c) Within 30 days after receipt of a letter of notification or publication of a notice in the Federal Register that EPA intends to terminate a conditional exemption, the exemption holder may submit information to rebut EPA's preliminary decision or notify EPA by letter of its intent to conduct the required test.

(d)(1) The exemption holder may also include a request for a hearing. Hearings will be held in accordance with the procedures set forth in § 790.97 of this part.

(2) Hearing requests must be in writing and must be received by EPA within 30 days of receipt of the letter or publication in the Federal Register notice described in paragraph (b) of this section.

(e) EPA will notify the exemption holder by certified letter or by Federal Register notice of EPA's final decision concerning termination of conditional exemptions.

§ 790.97 Hearing procedures.

(a) Hearing requests must be in writing to EPA and must include the applicant's basis for appealing EPA's decision.

(b) If more than one applicant has requested a hearing on similar grounds, all of those appeals will be considered at the same hearing unless confidentiality claims preclude a joint hearing.

(c) EPA will notify each applicant of EPA's decision within 60 days after the hearing.

§ 790.99 Statement of financial responsibility.

Each applicant for an exemption shall submit the following sworn statement with his application:

I understand that if this application is granted before the reimbursement period described in section 4(c)(3)(B) of TSCA expires, I must pay fair and equitable reimbursement to the person or persons who incurred or shared in the costs of complying with the requirement to submit data and upon whose data the granting of my application was based.

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Wednesday
October 10, 1984

Part III

Consumer Product Safety Commission

16 CFR Part 1632

Standard for the Flammability of Mattresses (and Mattress Pads); Final Rule

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1632

Standard for the Flammability of Mattresses (and Mattress Pads); Final Amendment

AGENCY: Consumer Product Safety Commission.

ACTION: Final rule.

SUMMARY: The Commission issues final amendments of the flammability standard for mattresses and mattress pads to eliminate requirements for production testing of mattresses and mattress pads by manufacturers of these products. The amendments issued below also make other changes to to the standard and implementing regulations to improve their clarity, precision, and practicability. The Commission has considered comments received in response to the notice of proposed rulemaking published on December 30, 1983, and has responded to significant issues raised by those comments. The Commission concludes that the amendments issued in this notice will reduce costs of testing and recordkeeping for manufacturers of products subject to the standard without decreasing protection to the public from risks of fires associated with ignition of mattresses and mattress pads from smoldering cigarettes.

EFFECTIVE DATE: The amendments will become effective on April 10, 1985.

FOR FURTHER INFORMATION CONTACT: Elizabeth Gomilla, Division of Regulatory Management, Consumer Product Safety Commission, Washington, D.C. 20207; telephone (301) 492-6400.

SUPPLEMENTARY INFORMATION:

Background

The Standard for the Flammability of Mattresses (and Mattress Pads) (16 CFR Part 1632) was issued in 1972 to protect the public from risks of death, personal injury, and property damage associated with fires which have resulted from ignition of mattresses by cigarettes. (*1, 2*) *

The standard was issued by the Department of Commerce under provisions of the Flammable Fabrics Act (FFA, 15 U.S.C. 1191 *et seq.*), and has been in effect since June 22, 1973. In 1973, responsibility for issuance and amendment of flammability standards under the FFA was transferred to the Consumer Products Safety Commission by section 30(d) of the Consumer Product Safety Act (CPSA, 15 U.S.C. 2079(b)).

As originally issued, the standard required manufacturers of mattresses to perform both prototype and production testing. A prototype test involves the testing of a mattress design prior to production to demonstrate that the materials and method of construction will resist cigarette ignition. Prototype testing must be repeated if any of the materials which influence resistance to cigarette ignition are changed. Prototype testing is essentially a one-time test of the design of each basic type of mattress.

After successful completion of requirements for prototype testing, the standard in its original form required manufacturers to group mattresses which they manufactured into "production units," and to sample and test mattresses from each production unit. The original standard required manufacturers to perform production testing at specified intervals as long as a particular mattress type is manufactured. (*1, 4*)

As issued in 1972, the standard prescribed procedures for both prototype and production testing. Both prototype and production testing involved placement of lighted cigarettes at specified locations on the surface of a mattress. The standard set forth pass/fail criteria for both types of tests.

Regulations issued at the same time as the original standard required manufacturers to maintain records demonstrating compliance with the requirements for prototype and production testing. The records required by these regulations included written results of both prototype and production tests, and photographic evidence of each test of a mattress. (*1, 4*)

Review of Standard

In 1978, Congress enacted legislation (Pub. L. 97-631, 92 Stat. 3742, 15 U.S.C. 2076(m)) which required the Commission to review existing rules and standards with a view toward elimination or modification of requirements in appropriate cases. In 1979, the Commission voted to include the mattress standard among the first three rules to be reviewed. (*3*)

After the Commission staff completed its review of the mattress standard, the Commission voted in 1980 to direct the staff to prepare appropriate documents to amend the standard and implementing regulations to reduce or simplify the requirements of the standard for sampling and testing; to reduce the recordkeeping requirements; to simplify the language used in the standard; and to make technical changes needed to improve the clarity and precision of the standard. (*1*)

Thereafter, Congress enacted the Consumer Product Safety Amendments of 1981 (Pub. L. 97-35, 95 Stat. 703, 752). This legislation amends section 4 of the FFA to provide that any proceeding for the issuance or amendment of a flammability standard shall be initiated by publication of an advance notice of proposed rulemaking (ANPR) which must include information about the product, the risk of injury, and regulatory alternatives under consideration. The requirement for publication of an ANPR is codified at 15 U.S.C. 1193(g).

In the **Federal Register** of June 10, 1982 (47 FR 25159), the Commission published the ANPR to begin a proceeding for amendment of the mattress standard. (*9*)

If, after considering comments and other submissions received in response to an ANPR, the Commission decides to continue a proceeding for the issuance or amendment of a flammability standard, sections 4 (d) and (i) of the FFA (15 U.S.C. 1193 (d) and (i)) require publication of a second notice in the **Federal Register** to propose the amendment, invite written comments and oral presentations on the proposal, and describe potential costs and benefits of the proposed amendment, as well as alternatives considered by the Commission before proposing the amendment.

In the **Federal Register** of December 30, 1983 (48 FR 57502), the Commission proposed amendments of the mattress standard, and solicited written comments and oral presentations on the proposal. (*33*) As required by section 4(i) of the FFA, the notice of proposal contained the Commission's preliminary analysis of the anticipated costs and benefits of the proposed amendments, and discussed regulatory alternatives considered.

After consideration of comments received in response to the proposal, a briefing package prepared by the Commission staff, and other relevant information, the Commission issues the amendments on a final basis by publication of this notice. In compliance with requirements of section 4(j) of the FFA, this notice contains the Commission's final regulatory analysis of the amendments, including a description of potential costs and benefits and alternatives to the final amendments considered by the

* Numbers in parentheses identify reference documents listed in Bibliography at the end of this notice. Requests for inspection of any of these documents should be made at the Commission's public reading room, 1111 18th Street, NW., Washington, D.C., or by calling the Office of the Secretary at (301) 492-6800.

Commission, as well as a summary of significant issues raised by the comments and the Commission's assessment of those issues.

Summary of Final Amendments

A major change to the standard made by the amendments issued below is the elimination of requirements for periodic sampling and testing of mattresses from manufacturers' production. The requirements for production testing were contained in the "basic sampling plan" of the standard as originally issued at § 1632.4(b)(2)(i)(B). Section 1632.4(b)(1) of the original standard authorized the Commission to approve "alternate sampling plans," and the Commission has approved four such alternate sampling plans. (These alternate sampling plans were codified at 16 CFR 1632.11, 1632.12, 1632.14, and 1632.15.) Because these alternate sampling plans are concerned only with the selection of samples for production testing, they have been revoked by the amendments issued below.

Another major change to the standard contained in the amendments issued below is the elimination of provisions in the original standard which allowed two or more individual firms or plants to collaborate in the qualification of a mattress design by prototype testing. These provisions were codified at § 1632.4(b)(2)(i)(A) of the original standard, and had the effect of allowing some of the firms or plants using a common mattress design to perform fewer of the prototype qualification tests than would otherwise be required by the standard. Written comments objecting to the elimination of these provisions and the Commission's reasons for making this change are discussed below.

Several technical changes have been made to the text of the standard to improve its clarity, precision, and practicability. These changes affect language in the standard which describes various products subject to and exempted from the requirements of the standard; one item of test apparatus; and some aspects of the test procedure.

As proposed in the notice of December 30, 1983, the Commission issues final amendments of § 1632.1 of the standard which:

1. Provide that a product utilizing a water or air-filled core covered with upholstery and ticking materials is a mattress subject to the requirements of the standard;

2. Add "futons" to the list of products which fall within the standard's definition of the term "mattress" (a futon is a flexible sleeping mat consisting of a ticking filled with resilient material); and

3. Specifically exclude convoluted foam pads not totally encased in ticking from the standard's definition of the term "mattress pad."

The amendments issued below also eliminate language from § 1632.2(c) of the original standard which purported to exclude mattresses from the coverage of the standard if they were subject to Motor Vehicle Safety Standard No. 302 (MVSS 302), administered by the National Highway Traffic Safety Administration. The Commission proposed this change after receiving information to the effect that MVSS 302 applies only to mattress tickings, and not assembled mattresses.

As proposed in the notice of December 30, 1983, the Commission issues final amendments to specify a particular kind of nonmetallic surface to be used as the top surface of the mattress support system when testing thin mattresses and mattress pads. Specifications for the nonmetallic surface are in § 1632.4(a)(1)(ii) of the amended standard, published below.

Additionally, provisions of § 1632.4(d) have been amended to provide that if a test is not conducted in a test room which has been conditioned to the temperature and relative humidity specified in § 1632.4(c), the test must begin within 10 minutes after the mattress is removed from the conditioning room. The amendments issued below also modify § 1632.4(d)(1)(iii) to provide that if a cigarette pops out of position when tested on a tuft, or rolls off a test location, the test must be repeated with a freshly lit cigarette on a different location of the same type.

Finally, the amendments issued below modify language in § 1632.3(b) of the standard to specify that in determining the extent of charring at any individual cigarette test location, measurements shall be made in all directions, including downward into the mattress in case of burns which penetrate through the surface of the mattress.

Comments on Proposal

In response to the notice of December 30, 1983, the Commission received written comments from the National Association of Bedding Manufacturers (*34,35*), National Retail Merchants Association (*40*), Citizens Committee for Fire Protection (*36*), Burn Foundation (*37*), Trauma Center Foundation (*38*), and Senator Edward Zorinsky. (*39*)

Although the Commission announced opportunity for oral presentations of data, views, and arguments concerning the proposed amendments, no person requested to make an oral presentation.

Comments from the National Association of Bedding Manufacturers (NABM) (*34,35*), and National Retail Merchants Association (*40*) express support for the proposal to modify the standard by elimination of requirements for production testing. These comments state that the mattress industry's experience with production testing indicates that once a mattress or mattress pad design has been qualified by prototype testing in accordance with the standard, the likelihood is small that a mattress or mattress pad produced in accordance with that prototype will fail the test in the standard for resistance to cigarette ignition.

Comments from Citizens Committee for Fire Protection (CCFP) (*36*), Burn Foundation (*37*), and Trauma Center Foundation (*38*) oppose elimination of requirements for production testing. These comments express the view that the record of compliance with the standard by the mattress industry is poor and does not justify elimination of production testing.

These comments also express the view that in the absence of requirements for production testing, small manufacturing plants, which compromise the majority of production facilities within the mattress industry, will not maintain adequate control to assure that their products consistently pass the test in the standard.

The Commission decided to propose amendments eliminating requirements for production testing after considering results of testing conducted by mattress manufacturers, the Commission's laboratory, and the Bureau of Home Furnishings of the State of California. (*16,24,33*)

In response to the advance notice of proposed rulemaking, NABM submitted results of testing conducted by four large mattress manufacturers and eleven small firms during the years 1977, 1978, and 1979. (*16*)

The information submitted by NABM showed that during each of those three years, the fifteen firms had manufactured a total of about 6,300 production units of mattresses. (The basic sampling plan in the standard defines a "production unit" as 500 mattresses, or three months' production, whichever occurs first.) All of these production units were sampled, tested in accordance with the standard, and found to be acceptable. In a few cases, the first test of the production unit did not yield passing results, but the production unit was found to be acceptable after a second test yielded no failure at any cigarette test location,

as provided by § 1632.4(b)(2)(i)(B) of the original standard. (*16*)

Additionally, before deciding to propose elimination of requirements for production testing, the Commission considered test results from a sample collected by the Commission staff in 1982. This sample consisted of 25 mattresses, each produced by a different manufacturer. When tested by the Commission's laboratory in accordance with the standard, 24 of the mattresses yielded passing results. (*24*) Commission investigators found that the failing mattress was a renovated mattress which had not been qualified by prototype testing because the renovating firm mistakenly believed that it was not subject to the requirements of the standard. (*24*)

In a separate investigation, another mattress renovated by a different firm was tested and yielded failing results. This particular mattress was not subject to the requirements of the standard and had not been qualified by prototype testing. (*24*)

The Commission had also considered results of testing conducted by the Bureau of Home Furnishings of the State of California before publishing the notice of December 30. During 1983, that agency tested 52 mattresses. Forty-nine of these mattresses passed the test in the standard. Investigation by the state agency disclosed that two of the three mattresses which yielded failing results had not been subjected to production testing. (*24*)

The comment from CCFP refers to the results of testing by the Commission and the California Bureau of Home Furnishings and on the basis of these results argues that one of every 16 mattresses offered for sale today will not pass the test in the standard. (*36*)

After reviewing and reconsidering the results of testing conducted by the Commission and the State of California, the Commission concludes that they do not support the argument that one of every 16 mattresses sold at this time will fail the test in the standard.

Of the 78 mattresses tested by the California Bureau of Home Furnishings and the Commission's laboratory, about one-third were produced by manufacturers known to be large firms. CCFP is correct in asserting that the majority of mattress manufacturers are small firms; however the vast majority of mattresses manufactured in the United States, 86 to 90 percent, are produced by large firms. The total production of all small manufacturers accounts for only about 10 to 14 percent of the mattresses produced each year. (*41, 44*). Thus, the test results under consideration involved a sample of mattresses which was not truly representative of all mattresses sold in the United States because of the disproportionately large number of tests units produced by small manufacturers.

Additionally, as stated in the notice of proposal, no more than three, and possibly only two, of the five test failures were attributable to factors which might have been detected by production testing. (*33*)

After consideration of the comments from both CCFP and NABM, the results of testing conducted by the California Bureau of Home Furnishings and the Commission laboratory, and the results of other testing described above and in the notice of proposal, the Commission concludes that elimination of requirements for production testing is not likely to lead to a deterioration of quality control programs by small or large manufacturers, or an increase in the rate of test failures in mattresses produced by those firms. (*41, 44*)

The comment from CCFP also contends that because entry into the mattress manufacturing industry is "relatively easy," many small firms may begin production of mattresses within the next few years. (*36*) The comment states that if requirements for production testing are eliminated, within a decade a substantial portion of the mattress industry may not be aware of the existence of the standard because prototype testing is required only when the basic design of a mattress is changed. Comments from CCFP (*36*) and Burn Foundation (*37*) assert that requirements for production testing are necessary to remind mattress manufacturers of the standard's existence and of the test which it prescribes.

Although CCFP is correct in asserting that the cost of entering the mattress industry is relatively low, in the past new firms were frequently founded by individuals who had some experience in the production of mattresses, usually as employees of an established mattress manufacturer. The comment from CCFP does not contain any information to show that this pattern is not likely to continue in the future. Consequently, the Commission anticipates that most firms which enter the mattress industry after the amended standard becomes effective will continue to be founded by persons with previous experience in the industry, including some knowledge of the existence and requirements of the mattress flammability standard.

Moreover, as noted above, small manufacturers account for only about 10 to 14 percent of the total production in terms of numbers of units manufactured. Whatever the number of small firms that enter or leave the industry, most mattresses will continue to be produced by large manufacturers.

Having considered all comments favoring and opposing elimination of requirements for production testing from the standard, the Commission concludes that once a mattress design has been qualified as acceptable by prototype testing, the likelihood is small that mattresses manufactured by using the same materials and methods of construction will yield failing test results. For this reason, the Commission concludes that requirements for production testing can be removed from the standard without significantly reducing the level of protection from risks of fires associated with ignition of mattresses by smoldering cigarettes.

Because provisions of alternate sampling plans codified at 16 CFR 1632.11, 1632.12, 1632.14, and 1632.15 are concerned exclusively with selection of samples for production testing, these alternate sampling plans have also been eliminated from the amended standard issued below.

As noted above, comments from CCFP, the Burn Foundation, and the Trauma Center Foundation expressed concern about quality control methods of small manufacturers, and questioned whether those methods would be adequate to assure continued production of mattresses which pass the test in the standard if requirements for production testing are eliminated.

The Commission observes that after the amendments issued below become effective, the standard will continue to require each manufacturer to perform prototype qualification testing with acceptable results for each basic combination of materials and construction methods used to manufacture mattresses before beginning production for sale in commerce. All mattresses of a particular prototype subsequently manufactured for sale to consumers must continue to be assembled from the same materials and by using the same construction methods as those utilized in the mattress prototype which has been accepted after prototype qualification testing. Materials may be substituted in the production of mattresses for sale in commerce only after successful completion of new prototype qualification testing, or after performing the ticking or tape edge substitution tests in the amended standard.

Additionally, § 1632.31(c) of the regulations issued below to implement the amended standard continues to require each manufacturer to maintain records of the manufacturing

specifications and description of each mattress prototype qualified by prototype testing. Such records should describe all materials used in each mattress prototype and the methods of assembly used to construct each mattress prototype in sufficient detail that in any subsequent examination by the Commission of mattresses currently being produced, the manufacturer can demonstrate that no changes have been made from the mattresses qualified by prototype testing. The description of each mattress prototype should indicate the order in which the component materials appear in the finished mattress from the outermost layer of material to the core; the composition of each component and amount of flame-retardant treatment, if any, which is present; and the type, density and thickness of any foam used in the mattress.

The implementing regulations also require the maintenance of records to demonstrate successful completion of all required prototype testing, as well as results of any testing in accordance with the amended standard relied upon to support substitution of ticking or tape edge materials.

On the basis of all currently available information, the Commission believes that compliance with the requirements of the amended standard and implementing regulations will assure that mattresses offered for sale to consumers will resist ignition from smoldering cigarettes.

During the months immediately following the effective date of the amended standard, the Commission will conduct a compliance program involving inspection of mattress manufacturing plants and collection of sample mattresses for testing. The FFA authorizes the Commission to initiate judicial and administrative proceedings to enforce flammability standards issued under that act. In its enforcement of the amended standard, the Commission can seek orders for flammability testing of mattresses or component materials if the circumstances of a particular case warrant such measures.

Change in Test Procedures

A comment from Trauma Center Foundation suggests that the test procedure in the amended standard should provide that certain cigarette test locations must be covered by two layers of sheeting material rather than one layer as specified in the notice of proposal and in the standard as originally issued.(*38*)

The comment does not furnish test data or other information demonstrating the effect of the requested change, and does not explain how such a change would improve the standard.

The change requested by this comment has not been incorporated in the amended standard issued below.

"Pooling" Prototype Test Results

In its original form, the standard contained provisions allowing two or more firms or plants producing mattresses from the same basic materials and methods of construction to "pool" prototype testing. Under the "pooling" provisions, if six surfaces of the common prototype are tested with acceptable results at a central location, every other firm or plant producing mattresses from that prototype is required to test only two surfaces with acceptable results to satisfy the requirements of the standard for prototype testing.

The notice of December 30, 1983, proposed to eliminate the provisions for "pooling" of prototype testing set forth in § 1632.4(b)(2)(i)(A) of the standard as originally issued.

A comment from NABM (*34*) urged the Commission not to eliminate provisions allowing firms and plants to "pool" prototype test results. NABM argues that such a change would result in a substantial increase in costs and burden to firms and plants which now rely on the prototype "pooling" provisions in the standard. NABM argues that requiring each firm or plant producing mattresses from a common prototype design will not reveal any defects in the prototype design beyond those which would be found if the prototype were qualified under existing provisions of the standard which allow "pooling" of prototype test results.

The Commission observes that two factors influence the ability of a mattress to withstand ignition from cigarettes: (a) The design of the mattress, and (b) the materials used in the construction of the mattress. (*41,46*)

When two or more firms "pool" prototype test results, six surfaces must be tested successfully at one production facility. The other plants or firms producing mattresses from the common prototype must each test two more surfaces with acceptable results.

All mattresses of any given prototype must be made from the same materials. However, when two or more plants at widely separated locations purchase the same component materials from local suppliers, some differences may exist in the materials received at each plant. To assure that any differences which may be present in the materials utilized by each manufacturing facility will not affect cigarette ignition, six mattress surfaces must be tested with acceptable results by each plant. (*41,46*)

When the standard contained requirements for sampling and testing mattresses from each plant's regular production, any differences which might be present in the materials used at each plant were of less significance, because any local variation great enough to adversely affect ignition resistance of any mattress prototype qualified by "pooled" prototype testing probably would be detected during the first two production tests. (*41,46*)

However, since requirements for production testing are eliminated by the amendments issued below, no further evaluation of materials used in the construction of a mattress is required once prototype testing is successfully completed. The Commission concludes that testing six mattress surfaces of each mattress prototype at each plant where those mattresses will be manufactured is a reasonable step to detect any differences in materials which may exist from one plant to another and adversely influence the ability of the mattress to pass the test in the standard. (*41,46*)

NABM is correct in asserting that elimination of the "pooling" provisions will increase costs of prototype testing. However, the increase would be equivalent to requiring two production tests following successful completion of prototype testing under the provisions which allowed "pooling" of prototype tests. The Commission does not believe that elimination of the "pooling" provisions for prototype testing will impose a significant increase in costs of prototype testing when that change is made together with the elimination of all requirements for production testing of mattresses.

For these reasons, the Commission has eliminated provisions which allowed "pooling" of prototype test results from the amended standard issued below.

Ticking Classification and Substitution

Included in the proposed amendments were provisions which set forth a test for classification of ticking materials (the outer covering of fabric on a mattress) and allowed substitution of certain ticking materials without the requirement for additional prototype testing.

Use of the ticking classification test is not mandatory. However, if ticking materials are not classified by using this test, a mattress manufacturer must perform new prototype qualification testing whenever the manufacturer changes ticking materials. As proposed in the notice of December 30, 1983, the

test for classification of ticking materials could be performed by a manufacturer of ticking materials on products which that firm sells to mattress manufacturers, or by a mattress manufacturer on ticking materials purchased from suppliers.

Comments from NABM and NRMA favored issuance of these provisions on a final basis. (*34,40*) The comment from NABM urged the Commission to add provisions for quilted tickings sewn together from two or more layers of fabric. (*34*)

The comment from NABM indicates that in some cases, mattress manufacturers produce quilted tickings from fabric, thread, and backing materials purchased from several suppliers. NABM requested addition of language to provide that mattress manufacturers which produce quilted tickings may rely on certifications from suppliers to the effect that a change in the component material produced by the supplier will not affect the classification of a quilted ticking assembled by using that particular material. (*34*)

NABM contends that if a mattress manufacturer assembling its own quilted ticking is required to perform the ticking classification test whenever any component material used in the quilted ticking is changed, the provision in the proposed amendments allowing substitution of ticking materials without performing additional prototype tests will be of little benefit to such a manufacturer.

As noted above, the ticking classification test can be performed either by the mattress manufacturer, or by the ticking supplier. A mattress manufacturer assembling its own quilted ticking from component materials assumes the function of a ticking supplier.

The ticking classification test measures the performance of the ticking material as it is used in the construction of a mattress. That test does not measure the performance of any individual component used in the production of ticking material. Consequently, the provisions for classification of ticking material in the proposed amendment furnish no basis for any supplier of thread, fabric, or backing material used in production of quilted ticking to certify that substitution of one particular component material for another will not affect the classification of a quilted ticking.

For this reason, the additional provision concerning certification by suppliers of materials used to produce quilted tickings requested in the comment from NABM have not been included in the amended standard issued below.

Substitution of Tape Edge Materials

The proposal of December 30, 1983, also prescribed a test to measure performance of binding tape materials used at the edges of the sleeping surfaces of a mattress, and allowed substitution of one tape edge material for another without requirements for additional prototype testing under specified conditions. A comment from NRMA expressed the view that the tape edge test provisions in the proposal were incomplete because they did not specify the procedure to be used. The provisions relating to testing of tape edge materials in the notice of proposal stated:

> A prototype mattress or mattress pad incorporating the substitute materials has been tested with 36 cigarettes [18 per surface—9 bare and 9 two-sheet) placed at tape edge locations with no ignitions occurring * * *.

The comment from NRMA suggests that language should be added to specify that the testing shall be performed by following the applicable procedures of § 1632.4 of the amended standard and applying the test criterion of § 1632.3(b). (*40*) While the test procedures of § 1632.4 are the only ones which could be used under the conditions specified in the language quoted above, the Commission finds that addition of the language suggested in this comment would not detract from, and might improve, the clarity of the amended standard, particularly to persons not familiar with the standard as originally issued. The change requested in the comment from NRMA has been incorporated in § 1632.7(b)(3) of the amended standard issued below.

Effective Date of Amended Standard

Section 4(b) of the FFA [15 U.S.C. 1193(b)] provides that an amendment of a flammability standard shall become effective twelve months after the date of its issuance on a final basis, unless the Commission finds for good cause shown that an earlier or later effective date is in the public interest, and publishes its reasons for that finding.

In the notice of proposal, the Commission solicited comments addressed to the issue of an appropriate effective date for the amended standard if it is issued on a final basis.

Two comments from NABM (*34,35*) and a third from Senator Edward Zorinsky (*39*) addressed the issue of an effective date for the amendment of the mattress standard.

A comment from a member firm of NABM which is a small business urged the Commission to make the amendment of the standard effective immediately upon publication. (*35*) This comment asserts that because the amendment eliminates existing requirements for production testing, any delay in the effective date of the amendment will result in unnecessary costs of such testing and recordkeeping for manufacturers. (*35*)

This comment states that the costs of production testing can be significant for small manufacturers. (*35*)

This comment also expresses the view that the only purpose of the statutory requirement for a delayed effective date of one year is to afford manufacturers of products which may be subject to a new or amended flammability standard adequate time to develop complying products and to obtain test equipment or locate commercial testing facilities. Since the proposed amendment of the standard eliminates requirements for production testing, this comment states that no delay is needed. (*35*)

The comment from Senator Zorinsky expressed support for the arguments advanced by the small manufacturer for an immediate effective date. (*39*)

A separate comment from NABM also expressed support for the small manufacturer's comment regarding the effective date of the amended standard. (*34*) However, NABM requested that all ticking material in production or in inventory on the effective date of the standard be exempted from provisions of § 1632.6 of the amended standard which concern classification of ticking materials. (*34*)

NABM states that exemption of ticking materials in production or in inventory is needed because mattress manufacturers will have unclassified ticking materials in their inventories on the effective date of the amended standard, and will not have the expertise to classify those materials in accordance with provisions of the amended standard. This comment contends that without the requested exemption of ticking materials in production or in inventory, mattress manufacturers will be required to return those materials to ticking suppliers for classification. (*34*)

As stated earlier, classification of ticking materials in accordance with provisions of § 1632.6 of the amended standard issued below is not mandatory. Rather, the amended standard allows substitution of certain ticking materials classified in accordance with provisions of § 1632.6 without the necessity of additional prototype testing.

However, the Commission acknowledges that the ability to

substitute one ticking material for another without the necessity for additional prototype testing will be of great practical value for most mattress manufacturers. The Commission also acknowledges that many mattress manufacturers may not have the expertise to classify ticking materials in accordance with provisions of the amended standard. (*41,47*)

Information about manufacturing practices within the mattress industry indicates to the Commission that some manufacturers turn over their inventories of component materials as frequently as ten times a year; others turn over inventories of component materials only two times a year. (*41,44*)

From this information, the Commission concludes that if the amended standard became effective six months after publication, almost all mattress manufacturers would have depleted their inventories of component materials, and would be able to obtain ticking materials classified in accordance with provisions of § 1632.6 of the amended standard by its effective date.

A delayed effective date of six months would reduce to a large extent the costs of production testing which were the concern of the comment from the small manufacturer. At the same time, such an effective date would provide almost all manufacturers the opportunity to exhaust existing inventories of unclassified ticking materials and to obtain new ticking materials classified in accordance with provisions of the amended standard.

Therefore, the Commission finds for good cause shown that an effective date six months after publication of the amended standard is in the public interest, for the reasons set forth above.

As provided by section 4(b) of the FFA (15 U.S.C. 1193(b)), mattresses and mattress pads which are "in inventory or with the trade" on the effective date of the amended standard are exempt from its requirements, but must comply with applicable requirments of the original standard.

Final Regulatory Analysis

Section 4(j) of the FFA (15 U.S.C. 1193(j)) requires the Commission to include a final regulatory analysis of potential costs and benefits in the notice by which it issues a final amendment of a flammability standard.

Information considered by the Commission at the time it proposed amendments of the mattress standard indicated that if the standard were modified to eliminate requirements for production testing, total savings to all mattress manufacturers might amount to as much as $2.4 million each year. At that time, the Commission also expressed the expectation that elimination of requirements for production testing from the standard would not have a significant adverse affect on resistance to cigarette ignition of mattresses offered for sale to consumers.

A comment from Burn Foundation (*37*) expressed the view that the proposed amendments would "considerably weaken" protection of the public from bedding fires without "a significant reduction of the economic impact" of standards as originally issued. In support of that assertion, the comment relied on information contained in the comment from CCFP (*36*) discussed above under the heading "Comments on Proposal."

After consideration of the comments from Burn Foundation and CCFP, and all others submitted in response to the notice of proposal, the staff briefing package, and other relevant information, the Commission concludes that the estimated reduction in costs of testing to the mattress industry cited in the notice of proposal is generally accurate. The Commission affirms the expectation that the modifications to the standard made by the amendments issued below, including elimination of requirements for production testing, will not have a significant adverse affect on the ability of mattresses offered for sale to consumers to resist ignition from cigarettes.

An additional but unquantifiable benefit of the amended standard issued below is that it is shorter, easier to understand, and more precise than the standard in its original form.

As an alternative to the provisions of the amended standard issued below, the Commission considered the possibility of allowing manufacturers to collaborate in qualification of mattress designs by "pooling" prototype qualification test results, as discussed above. However, the Commission finds that provisions to allow "pooling" of prototype test results could result in failure to detect differences in materials which may exist from one manufacturing facility to another and which may adversely affect resistance of mattresses to cigarette ignition. The Commission concludes that any additional costs imposed by provisions in the amended standard which require each manufacturing facility to test six surfaces of each mattress prototype will not be significant if those provisions become effective at the same time that all requirements for production testing are eliminated.

The Commission also considered the possibility of allowing mattress manufacturers who assemble quilted ticking to rely on certifications from suppliers of component materials that a change in those materials will not affect the classification of a quilted ticking assembled from such component materials. However, the Commission concluded that no provision of the amended standard furnishes a basis to support such a certification by a supplier of materials used in the assembly of a quilted ticking.

Finally, the Commission considered the possibility of modifying the standard to require certain cigarette test locations to be covered with two layers of sheeting material rather than one. The Commission did not include such a requirement in the amended standard issued below because it has no information to show what effect such a change would have on the test in the standard.

As required by section 4(j)(2) of the FFA, the Commission finds that the benefits expected from the amended standard issued below bear a reasonable relationship to its costs, and that the amended standard imposes the least burdensome requirement which prevents or adequately reduces risks of injury associated with fires from mattresses ignited by cigarettes.

As required by section 4(b) of the FFA (15 U.S.C. 1193(b)), the Commission finds that the amended standard issued below:

- Is needed to adequately protect the public against unreasonable risk of the occurrence of fire leading to death, injury, or significant property damage;
- Is limited to the products which have been determined to present such unreasonable risks;
- Is reasonable, technologically practicable, and appropriate; and
- Is stated in objective terms.

Environmental Considerations

As stated in the notice of proposal, the Commission's environmental review procedures provide at 16 CFR 1021.5(c)(1) that issuance or amendment of safety standards falls within the categories of Commission actions that have little or no potential for affecting the human environment.

The Commission does not foresee any special or unusual circumstances surrounding the amended standard issued below. For this reason, neither an environmental assessment or an environmental impact statement is required.

List of Subjects in 16 CFR Part 1632

Consumer protection, Flammable materials, Labeling, Mattresses and mattress pads, Records, Textiles, Warranties.

Conclusion and Promulgation

Therefore, having considered the products and the nature of the risks of the occurrence of fires leading to death, personal injury, or significant property damage which are addressed by the mattress flammability standard, comments received in response to the notice proposing amendment of the mattress standard, alternative provisions for amendment of the mattress standard, potential costs and benefits of an amendment of the standard, and other relevant information, pursuant to provisions of the Flammable Fabrics Act (15 U.S.C. 1193, 1194) and the Consumer Product Safety Act (15 U.S.C. 2079(b)), the Commission hereby amends Title 16, Chapter XVI, Chapter II, Subchapter D by revising Part 1632 to read as follows:

PART 1632—STANDARD FOR THE FLAMMABILITY OF MATTRESSES AND MATTRESS PADS (FF 4-72, AMENDED)

Subpart A—The Standard

Sec.

1632.1 Definitions.
1632.2 Purpose, scope and applicability.
1632.3 General requirements.
1632.4 Mattress test procedure.
1632.5 Mattress pad test procedure.
1632.6 Ticking substitution procedure.
1632.7 Tape edge substitution procedure.
1632.8 Glossary of terms.

Subpart B—Rules and Regulations

1632.31 Mattresses/mattress pads—labeling, recordkeeping, guaranties and "one of a kind" exemption.

Subpart C—Interpretations and Policies

1632.61 [Reserved]
1632.62 [Reserved]
1632.63 Policy clarification on renovation of mattresses.

Subpart A—The Standard

§ 1632.1 Definitions.

In addition to the definitions given in section 2 of the Flammable Fabrics Act as amended (15 U.S.C. 1191), the following definitions apply for the purpose of the standard.

(a) "Mattress" means a ticking filled with a resilient material used alone or in combination with other products intended or promoted for sleeping upon.

(1) This definition includes, but is not limited to, adult mattresses, youth mattresses, crib mattresses including portable crib mattresses, bunk bed mattresses, futons, water beds and air mattresses which contain upholstery material between the ticking and the mattress core, and any detachable mattresses used in any item of upholstered furniture such as convertible sofa bed mattresses, corner group mattresses, day bed mattresses, roll-a-way bed mattresses, high risers, and trundle bed mattresses. See § 1632.8 Glossary of terms, for definitions of these items.

(2) This definition excludes sleeping bags, pillows, mattress foundations, liquid and gaseous filled tickings such as water beds and air mattresses which do not contain upholstery material between the ticking and the mattress core, upholstered furniture which does not contain a detachable mattress such as chaise lounges, drop-arm love seats, press-back lounges, push-back sofas, sleep lounges, sofa beds (including jackknife sofa beds), sofa lounges (including glide-outs), studio couches and studio divans (including twin studio divans and studio beds), and juvenile product pads such as car bed pads, carriage pads, basket pads, infant carrier and lounge pads, dressing table pads, stroller pads, crib bumpers, and playpen pads. See § 1632.8 Glossary of terms, for definitions of these items.

(b) "Mattress Pad" means a thin, flat mat or cushion, and/or ticking filled with resilient material for use on top of a mattress. This definition includes, but is not limited to, absorbent mattress pads, flat decubitus pads, and convoluted foam pads which are totally enclosed in ticking. This definition excludes convoluted foam pads which are not totally encased in ticking.

(c) "Ticking" means the outermost layer of fabric or related material that encloses the core and upholstery materials of a mattress or mattress pad. A mattress ticking may consist of several layers of fabric or related materials quilted together.

(d) "Core" means the main support system that may be present in a mattress, such as springs, foam, hair block, water bladder, air bladder, or resilient filling.

(e) "Upholstery material" means all material, either loose or attached, between the mattress or mattress pad ticking and the core of a mattress, if a core is present.

(f) "Tape edge" (edge) means the seam or border edge of a mattress or mattress pad.

(g) "Quilted" means stitched with thread or by fusion through the ticking and one or more layers of upholstery material.

(h) "Tufted" means buttoned or laced through the ticking and upholstery material and/or core, or having the ticking and upholstery material and/or core drawn together at intervals by any other method which produces a series of depressions on the surface.

(i) "Manufacturer" means an individual plant or factory at which mattresses and/or mattress pads are produced or assembled.

(j) "Mattress prototype" means mattresses of a particular design, sharing all materials and methods of assembly, but excluding differences in mattress size. If it has been shown as a result of prototype qualification testing that an upholstery material or core will not reduce the ignition resistance of the mattress prototype, substitution of another material for such material shall not be deemed a difference in materials for prototype definition. (See § 1632.31(c)(4) for records required to demonstrate that a change of materials has not reduced ignition resistance of a mattress prototype.) If it is determined or suspected that a material has influenced the ignition resistance of the mattress prototype, a change in that material, excluding an increase in thickness, shall be deemed a difference in materials for purposes of prototype definition unless it is previously shown to the satisfaction of the Consumer Product Safety Commission that such change will not reduce the ignition resstance of the mattress prototype. Ticking materials may be substituted in accordance with § 1632.6. Tape edge materials may be substituted in accordance with § 1632.7.

(k) "Mattress pad prototype" means mattress pads of a particular design, sharing all materials and methods of assembly, but excluding differences in mattress pad size. A change in existing material, except an increase in thickness, shall be deemed a difference in materials for purposes of prototype definition unless it is previously shown to the satisfaction of the Consumer Product Safety Commission that such change will not reduce the ignition resistance of the mattress pad prototype. Ticking materials may be substituted in accordance with § 1632.6. Tape edge materials may be substituted in accordance with § 1632.7.

(l) "Surface" means one side of a mattress or mattress pad which is intended for sleeping upon and which can be tested.

§ 1632.2 Purpose, scope, and applicability.

(a) *Purpose.* (1) This standard prescribes requirements for testing of prototype designs of mattresses and mattress pads before the sale in commerce or the introduction in commerce of any mattress or mattress

pad which is subject to the standard. The standard prescribes a test to determine the ignition resistance of a mattress or a mattress pad when exposed to a lighted cigarette.

(2) The standard sets forth a test at § 1632.6 which may be used to classify ticking materials for resistance to cigarette ignition.

(3) The standard sets forth a test at § 1632.7 which may be used to demonstrate that the substitution of tape edge materials will not reduce the ignition resistance of a mattress prototype or a mattress pad prototype.

(b) *Scope.* (1) All mattresses, as defined in § 1632.1(a), and all mattress pads, as defined in § 1632.1(b), manufactured or imported after the effective date of this amendment are subject to the requirements of the standard as amended.

(2) All mattresses, as defined in § 1632.1(a), and all mattress pads, as defined in § 1632.1(b), manufactured or imported after June 22, 1973, and before the effective date of this amendment are subject to those requirements of the Standard for the Flammability of Mattresses (and Mattress Pads) (16 CFR Part 1632) which were in effect before the effective date of this amendment.

(3) Manufacturers or importers desiring to use the ticking substitution procedure provided in § 1632.6 may classify the ticking being used on each mattress prototype before or after the effective date of this amendment using the test procedure set forth in that section.

(4) One-of-a-kind mattresses and mattress pads may be excluded from testing under this standard in accordance with rules established by the Consumer Product Safety Commission. (See § 1632.31(f): exemption for mattresses and mattress pads prescribed by a physician.)

(c) *Applicability.* (1) The requirements for prototype testing prescribed by this standard are applicable to each "manufacturer" (as that term is defined in § 1632.1(i)) of mattresses or mattress pads subject to the standard which are manufactured for sale in commerce. The requirements of this standard for prototype testing are also applicable to all other persons or firms initially introducing mattresses or mattress pads into commerce, including importers; each such firm shall be deemed to be a "manufacturer" for purposes of this standard.

(2) The test at § 1632.6 for classification of ticking materials may be used by manufacturers of mattresses or mattress pads and by manufacturers of ticking materials. The test at § 1632.7 may be used by manufacturers of mattresses to demonstrate that substitution of tape edge materials will not reduce ignition resistance of a mattress prototype or a mattress pad prototype. Use of the tests in §§ 1632.6 and 1632.7 is optional.

§ 1632.3 General requirements.

(a) *Summary of test method.* The method measures the ignition resistance of a mattress or mattress pad by exposing the surface to lighted cigarettes in a draft-protected environment. The surfaces to be tested include smooth, tape edge, and quilted or tufted locations, if they exist on the mattress or mattress pad surface. A two-sheet test is also conducted on similar surface locations. In the latter test, the burining cigarettes are placed between the sheets.

(b) *Test criterion.* When testing the mattress or mattress pad surface in accordance with the testing procedure set forth in § 1632.4 *Mattress test procedure,* individual cigarette test locations pass the test if the char length is not more than 2 inches (5.1 cm) in any direction from the nearest point of the cigarette. In the interest of safety, the test operator should discontinue the test and record a failure before reaching the 2 inch char length if an obvious ignition has occurred.

(c) *Pre-market testing.* Each manufacturer required to perform prototype testing by the standard shall perform the testing required by the standard with acceptable results before selling in commerce or introducing in commerce any mattress or mattress pad which is subject to the standard.

(d) *Specimen selection and qualification.* (1) Each manufacturer required to perform prototype testing by the standard shall construct or select enough units of each proposed mattress prototype or proposed mattress pad prototype to provide six surfaces for testing. A minimum of three mattresses or mattress pads are required if both sides can be tested; six mattresses or mattress pads are required if only one side can be tested. Test each of the six surfaces according to § 1632.4(d). If all the cigarette test locations on all six mattress surfaces yield passing results using the criterion specified in § 1632.3(b), accept the mattress prototype. If all six surfaces of a mattress pad yield passing results using the criterion in § 1632.3(b), and all other applicable requirements prescribed by § 1632.5 are met, accept the mattress pad prototype. If one or more of the cigarette test locations on any of the six surfaces fail to meet the test criterion of § 1632.3(b), reject the mattress prototype or the mattress pad prototype.

(2) Prototype qualification testing may be repeated after action has been taken to improve the resistance of the mattress prototype or the mattress pad prototype to cigarette ignition by changes in design, construction methods, materials selection, or other means. When prototype qualification is repeated after rejection of a prototype, such qualification testing shall be conducted in the same manner as original qualification testing.

(3) Each mattress prototype and each mattress pad prototype must be accepted in prototype qualification before any mattress or mattress pad manufactured in accordance with such mattress prototype or mattress pad prototype is sold in commerce or introduced in commerce. Any manufacturer required to perform testing by the standard may rely on prototype tests performed before the effective date of this amended standard, provided that such tests were conducted in accordance with all requirements of §§ 1632.1(i), 1632.3(d), and 1632.4, and yield passing results when the test criterion of § 1632.3(b) is applied. If the ticking classification test at § 1632.6 is to be used when relying on prototype tests performed before the effective date of the standard, the ticking currently used on that mattress prototype must be classified before substitution of ticking using § 1632.6.

(4) Rejected prototype mattresses or prototype mattress pads shall not be retested, offered for sale, sold, or promoted for use as a mattress (as defined in § 1632.1(a)) or for use as a mattress pad (as defined in § 1632.1(b)) except after reworking to improve the resistance to ignition by cigarettes, and subsequent retesting and acceptance of the mattress prototype (as defined in § 1632.1(j)) or the mattress pad prototype (as defined in § 1632.1(k)).

§ 1632.4 Mattress Test Procedure.

(a) *Appraratus and Test Materials.—(1) Testroom.* The testroom shall be large enough to accommodate a full-scale mattress in a horizontal position and to allow for free movement of personnel and air around the test mattress. The test area shall be draft-protected and equipped with a suitable system for exhausting smoke and/or noxious gases produced by testing. The testroom atmospheric conditions shall be greater than 18°C (65°F) and at less than 55 percent relative humidity.

(i) The room shall be equipped with a support system (*e.g.* platform, bench) upon which a mattress may be placed flat in a horizontal position at a

reasonable height for making observations.

(ii) If thin flexible mattresses or mattress pads are being testing the room shall also be equipped with a glass fiberboard test surface. The glass fiberboard shall be approximately 1 inch (2.5 cm) thick and have a thermal conductivity of 0.30 ± 0.05 cal (g) / hr cm^2 °C/cm (0.24 ± 0.04 Btu/hr ft^2 °F/in) at 23.9°C (75°F).[1]

(2) *Ignition source.* The ignition source shall be cigarettes without filter tips made from natural tobacco, 85 ±2 mm long with a tobacco packing density of 0.270 ± 0.02 g/cm^3 and a total weight of 1.1 ± gm.

(3) *Fire extinguisher.* A pressurized water fire extinguisher, or other suitable fire extinguishing equipment, shall be immediately avaliable.

(4) *Water bottle.* A water bottle fitted with a spray nozzle shall be used to extinguish the ignited portions of the mattress.

(5) *Scale.* A linear scale graduated in millimeters, 0.1 inch, or 1/16 inch divisions shall be used to measure char length.

(6) *Sheets or Sheeting Material.* White, 100 percent cotton sheets or sheeting material shall be used. It shall not be treated with a chemical finish which imparts a characteristic such as permanent press or flame resistance. It shall have 120–210 threads per square inch and fabric weight of 3.7±0.8 oz/yd^2 (125±28 gm/m^2). The size of the sheet or sheeting material shall be appropriate for the mattress being tested.

(7) *Other apparatus.* In addition to the above, a thermometer, a relative humidity measuring instrument, a thin rod, straight pins, a knife or scissors, and tongs are required to carry out the testing.

(b) *Test Preparation.*

(1) *Mattress samples.* The mattress shall be removed from any packaging prior to conditioning. The mattress surface shall be divided laterally into two sections (see fig. 1), one section for the bare mattress tests and the other for the two-sheet tests.

(2) *Sheets or sheeting material.* The sheets or sheeting material shall be laundered once before use in an automatic home washer using the hot water setting and longest normal cycle with the manufacturer's recommended quantity of a commercial detergent, and dried in an automatic home tumble dryer.

(i) The sheet shall be cut across the width into two equal parts after washing.

(ii) Sheeting material shall be cut in lengths to cover ½ of a mattress as described in § 1632.4(d)(3).

(3) *Cigarettes.* Unopened packages of cigarettes shall be selected for each series of tests. The cigarettes shall be removed from packaging prior to conditioning.

(c) *Conditioning.* The mattresses, laundered sheets or sheeting material, and loose cigarettes shall be conditioned in air at a temperature greater than 18°C (65°F) and a relative humidity less than 55 percent for at least 48 continuous hours prior to test. The mattresses, laundered sheets or sheeting material, and cigarettes shall be supported in a suitable manner to permit free movement of air around them during conditioning. The mattress meets this conditioning requirement if the mattress and/or all its component materials, except the metallic core, if present, have been exposed only to the above temperature and humidity conditions for at least 48 continuous hours prior to testing the mattress.

(d) *Testing—(1) General.* Mattress specimens shall be tested in a testroom with atmospheric conditions of a temperature greater than 18°C (65°F) and a relative humidity less than 55 percent. If the test is not performed in the conditioning room, at least one lit cigarette shall be placed on the mattress surface within 10 minutes of removal from the conditioning room. The other side of the mattress shall be tested immediately after completion of the first side.

(i) At least 18 cigarettes shall be burned on each mattress test surface, 9 in the bare mattress tests and 9 in the 2-sheet tests. If three or more mattress surface locations (smooth surface, tape edge, quilted, or tufted areas) exist in the particular mattress surface under test, three cigarettes shall be burned on each different surface location. If only two mattress surface locations exist in the particular mattress surface under test (tape edge and smooth surface), four cigarettes shall be burned on the smooth surface and five cigarettes shall be burned on the tape edge.

(ii) Light and place one cigarette at a time on the mattress surface. (If previous experience with a similar type of mattress has indicated that ignition is not likely, the number of cigarettes which may be lighted and placed on the mattress at one time is left to the test operator's judgment. The number of cigarettes must be carefully considered because a smoldering or burning mattress is extremely hazardous and difficult to extinguish.) The cigarettes must be positioned no less than 6 inches apart on the mattress surface. Each cigarette used as an ignition source shall be well lighted but not burned more than 4 mm (0.16 inch) when placed on the mattress. (Fire extinguishing equipment must be readily available at all times.)

(iii) If a cigarette extinguishes before burning its full length on any mattress surface location, pops out of position when tested on a tuft, or rolls off a test location, the test must be repeated with a freshly lit cigarette on a different portion of the same type of location on the mattress surface until either: the number of cigarettes specified in § 1632.4(d)(1)(i) have burned their full lengths; the number of cigarettes specified in § 1632.4(d)(1)(i) have extinguished before burning their full lengths; or failure has occurred according to § 1632.3(b) *Test criterion.*

(2) *Bare mattress tests*—(i) *Smooth surface.* Each burning cigarette shall be placed directly on a smooth surface location on the test surface on the half reserved for bare mattress tests. The cigarettes should burn their full lengths on a smooth surface without burning across a tuft, or stitching of a quilted area. However, if this is not possible because of mattress design, then the cigarettes shall be positioned on the mattress in a manner which will allow as much of the butt ends as possible to burn on smooth surfaces. Report results for each cigarette as pass or fail as defined in the test criterion (see § 1632.3(b)). CAUTION: Even under the most carefully observed conditions, smoldering combustion can progress to the point where it cannot be readily extinguished. It is imperative that a test be discontinued as soon as ignition has definitely occurred. Immediately wet the exposed area with a water spray (from water bottle), cut around the burning material with a knife or scissors and pull the material out of the mattress with tongs. Make sure that all charred or burned material is removed. Ventilate the room.

(ii) *Tape edge.* Each burning cigarette shall be placed in the depression between the mattress top surface and the tape edge, parallel to the tape edge of the half of the test surface reserved for bare mattress tests. If there is only a seam or no depression at the edge, support the cigarettes in place along the edge and parallel to the edge with straight pins. Three straight pins may be inserted through the edge at a 45° angle such that one pin supports the cigarette at the burned end, one at the center, and

[1] Class fiberboard that meets Federal Specification HH–I–558B is acceptable. Under this specification, the board must be Form A, Class 1, and plain faced. Copies of the specifications may be obtained from the Business Service Centers of the General Services Administration Regional Offices.

one at the butt. The heads of the pins must be below the upper surface of the cigarette (see fig. 2). Report results for each cigarette as pass of fail as defined in the test criterion (see § 1632.3(b)).

MATTRESS PREPARATION

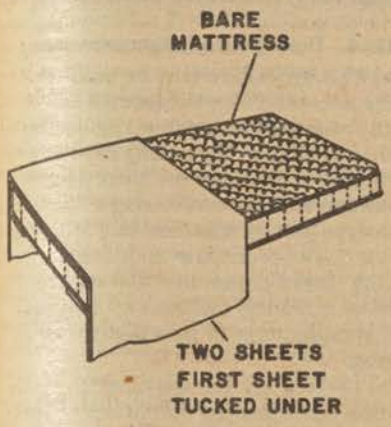


FIGURE 1

CIGARETTE LOCATION

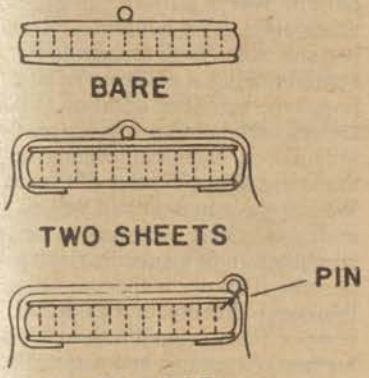


FIGURE 2

(iii) *Quilted location.* If quilting exists on the test surface, each burning cigarette shall be placed on quilted locations of the test surface. The cigarettes shall be positioned directly over the thread or in the depression created by the quilting process on the half of the test surface reserved for bare mattress tests. If the quilt design is such that the cigarettes cannot burn their full lengths over the thread or depression, then the cigarettes shall be positioned in a manner which will allow as much of the butt ends as possible to burn on the thread or depression. Report results for each cigarette as pass or fail as defined in the test criterion (see § 1632.3(b)).

(iv) *Tufted location.* If tufting exists on the test surface, each burning cigarette shall be placed on tufted locations of the test surface. The cigarettes shall be positioned so that they burn down into the depression caused by the tufts and so that the butt ends of the cigarettes burn out over the buttons or laces used in the tufts or the depressions made by the tufts on the half of the test surface reserved for bare mattress tests. Report results for each cigarette as pass or fail as defined in the test criterion (see § 1632.3(b)).

(3) *Two-sheet tests.* Spread a section of sheet or sheeting material smoothly over the mattress surface which has been reserved for the two-sheet test and tuck under the mattress. Care must be taken that hems or any other portion of the sheet which is more than one fabric thickness, is neither directly under nor directly over the test cigarette in the two-sheet test.

(i) *Smooth surfaces.* Each burning cigarette shall be placed directly on the sheet covered mattress in a smooth surface location as defined in the bare mattress test. Immediately cover the first sheet and the burning cigarette loosely with a second, or top sheet (see fig. 2). Do not raise or lift the top sheet during testing unless obvious ignition has occurred or until the cigarette has burned out. Whether a cigarette has extinguished may be determined by holding the hand near the surface of the top sheet over the test location. If no heat is felt or smoked observed, the cigarette has burned out. (If ignition occurs, immediately remove the sheets and cigarette and follow the cautionary procedures outlined in the bare mattress test. Report results for each cigarette as pass or fail as defined in the test criterion (see § 1632.3(b)).

(ii) *Tape edge.* (A) Each burning cigarette shall be placed in the depression between the top surface and the tape edge on top of the sheet, and immediately covered with a second sheet. It is important the air space be eliminated, as much as possible, between the mattress and the bottom sheet at the test location before testing. Depress the bottom sheet into the depression using a thin rod or other suitable instrument.

(B) In most cases, the cigarettes will remain in place throughout the test. However, if the cigarettes show a marked tendency to roll off the tape edge location, they may be supported with straight pins. Three straight pins may be inserted through the bottom sheet and tape at a 45° angle such that one pin supports the cigarette at the burning end, one at the center, and one at the butt. The heads of the pins must be below the upper surface of the cigarette (see fig. 2). Report results for

each cigarette as pass or fail as defined in the test criterion (see § 1632.3(b)).

(iii) *Quilted locations.* If quilting exists on the test surface, each burning cigarette shall be placed in a depression caused by quilting, directly over the thread and on the bottom sheet, and immediately covered with the top sheet. It is important that the air space be eliminated, as much as possible, between the mattress and the bottom sheet at the test location before testing. Depress the bottom sheet into the depression using a thin rod or other suitable instrument. If the quilt design is such that the cigarettes cannot burn their full lengths over the thread or depression, then the cigarettes shall be positioned in a manner which will allow as much of the butt ends as possible to burn on the thread or depresssion. Report results for each cigarette as pass or fail as defined in the test criterion (see § 1632.3(b)).

(iv) *Tufted locations.* If tufting exists on the test surface, each burning cigarette shall be placed in the depression caused by tufting, directly over the tuft and on the bottom sheet, and immediately covered with the top sheet. It is important that the air space be eliminated, as much as possible, between the mattress and the bottom sheet at the test location before testing. Depress the bottom sheet into the depression using a thin rod or other suitable instrument. The cigarettes shall be positioned so that they burn down into the depression caused by the tuft and so that the butt ends of the cigarettes burn out over the buttons or laces, if used in the tufts. Report results for each cigarette as pass or fail as defined in the test criterion (see § 1632.3(b)).

(e) *Records.* Records of all prototype test results, and the disposition of rejected prototypes shall be maintained by the person or firm required to perform testing by the standard in accordance with § 1632.31(c).

§ 1632.5 Mattress pad test procedure.

(a) *Testing.* All mattress pads shall be tested, in the condition in which they are intended to be sold, according to § 1632.4 Mattress test procedure, using the glass fiberboard substrate.

(b) *Flame Resistant Mattress Pads.* The following additional requirements shall be applicable to mattress pads which contain a chemical fire retardant.

(1) These mattress pads shall be tested in accordance with § 1632.4 Mattress test procedure after they have been washed and dried 10 times as described in § 1632.5(b)(2).

(i) Such laundering is not required of mattress pads which are intended for one time use and/or are not intended to be laundered, as determined by the Consumer Product Safety Commission.

(ii) Mattress pads which are not susceptible to being laundered and are labeled "dryclean only" shall be drycleaned by a procedure which has previously been found acceptable by the Consumer Product Safety Commission.

(2) *Laundering Procedure.*

(i) The washing procedure to be used for flame resistant mattress pads is prescribed in AATCC Test Method 124–82, "Appearance of Durable Press Fabrics After Repeated Home Laundering" washing procedures 6.2(III), with a water temperature of 60°±2.8 °C (140°±5 °F)

(ii) The drying procedure to be used for flame resistant mattress pads is prescribed in AATCC Test Method 124–82, "Appearance of Durable Press Fabrics After Repeated Home Laundering," drying procedure 6.3.2(b).

(iii) Maximum load shall be 3.46 kg (8 lb) and may consist of any combination of test items and dummy pieces.

(iv) AATCC Test Method 124–82, "Appearance of Durable Press Fabrics After Repeated Home Laundering," is found in the Technical Manual of the American Association of Textile Chemist and Colorists, Vol. 58, 1982 (incorporated by reference). Copies of this document are available from the American Association of Textile Chemist and Colorists, Post Office Box 12215, Research Triangle Park, North Carolina 27709.

This document is also available for inspection at the Office of the Federal Register, Room 8401, 1100 L Street, NW., Washington, D.C. 20408. This incorporation by reference was approved by the Director of the Federal Register. These materials are incorporated as—they exist in the edition which has been approved by the Director of the Federal Register and which has been filed with the Office of the Federal Register.

(v) A different number of wash and dry cycles using another procedure may be specified and used, if that procedure has previously been found to be equivalent by the Consumer Product Safety Commission.

(3) *Labeling*—(i) *Treatment label.* If a mattress pad contains a chemical fire retardant, it shall be labeled with the letter "T" pursuant to rules and regulations established by the Consumer Product Safety Commission.

(ii) *Care label.* All mattress pads which contain a chemical fire retardant treatment shall be labeled with precautionary instructions to protect the pads from agents or treatments which are known to cause deterioration of their flame resistance. Such labels shall be permanent and otherwise in accordance with rules and regulations established by the Consumer Product Safety Commission in § 1632.31(b).

(iii) *Exception.* One time use products as defined in § 1632.5(b)(1)(i) are not subject to these labeling requirements.

§ 1632.6 Ticking substitution procedure.

(a) This procedure may be used to verify acceptable equivalency if a mattress or mattress pad manufacturer wishes to change the ticking used on a particular mattress or mattress pad prototype without conducting a prototype test as specified in § 1632.4 or § 1632.5. The procedure includes a ticking classification test that may be used by a ticking, mattress or mattress pad manufacturer or by a distributor of ticking.

(b) *Definitions.* For the purpose of this section the following definitions apply in addition to those in § 1632.1.

(1) *Mattress Ticking Prototype.* Means a ticking of a specific construction, color, or combination of colors or color pattern, weave pattern design, finish application, fiber content, and weight per unit area. With respect to film-coated ticking, a mattress ticking prototype means in addition to the factors listed above, a given method of application, chemical formula, and thickness of application of film coating. With respect to a quilted ticking, a mattress ticking prototype means the combination of a specific ticking as described above; a specific filling, thickness, density, and chemical composition; a specific thread; a specific method of quilting; and a specific backing fabric construction, weave, finish, fiber content, and weight.

(2) *Mattress Pad Ticking Prototype* (i) Means a ticking of a specific construction, color, or combination of colors or color pattern, weave pattern design, finish application, fiber content, and weight per unit area. With respect to film-coated ticking, a mattress pad ticking prototype means in addition to the factors listed above, a given method of application, chemical formula, and thickness of application of film coating.

(ii) Quilted ticking is excluded from this definition. Therefore, the following procedures may not be used to substitute quilted ticking used on or as a mattress pad.

(c) *Scope and application.* (1) This procedure provides an independent evaluation of the cigarette ignition characteristics of ticking and for the classification of ticking into one of three performance classes. Class A represents tickings evaluated as acting as barriers

against cigarette ignition; Class B represents tickings evaluated as having no effect on cigarette ignition; and Class C represents tickings evaluated as having the potential, in some manner, to act as a contributor to cigarette ignition.

(2) Substitution of any ticking which has been evaluated as Class A using the procedure in this § 1632.6 for any other ticking material shall not be a "difference in materials" as that phrase is used in §§ 1632.1 (j) and (k). Consequently, any ticking material evaluated as Class A under this test procedure may be used on any qualified mattress prototype or on any qualified mattress pad prototype without conducting new prototype tests.

(3) Substitution of any ticking which has been evaluated as Class B using the procedure in this § 1632.6 for the ticking material used on any mattress prototype or on any mattress pad prototype which was qualified in prototype testing with a testing material evaluated as Class B or a Class C shall not be a "difference in materials" as that phrase is used in §§ 1632.1 (j) and (k). Consequently, any ticking material evaluated as Class B under this test procedure may be used on any mattress or mattress pad which wa qualified in prototype testing with a Class B or Class C ticking material without conducting new prototype tests. However, if Class B ticking material is to be used on any mattress or mattress pad which was qualified in prototype testing with a Class A ticking material, the mattress prototype or mattress pad prototype must be requalified, using a Class B ticking.

(4) A ticking material which has been evaluated as Class C using the procedure in this § 1632.6 may be used only on a mattress or mattress pad which was qualified in prototype testing with that particular Class C ticking material. Consequently, a ticking material evaluated as Class C under this test procedure may not be used on any mattress or mattress pad which was qualified in prototype testing using another Class C ticking material, or a Class A or Class B ticking material, without conducting new prototype tests.

(d) *General Requirements.*

(1) This procedure is a ticking prototype performance classification test. Ticking not classified according to this procedure may be used on mattresses or mattress pads if the mattress prototype or mattress pad prototype has been qualified utilizing the unclassified ticking in question.

(2) *Test Criterion.*

(i) Cigarette—An individual cigarette test location passes the test if the char length is not more than 1 inch (2.54 cm) in any direction from the nearest point of the cigarette, and the cotton felt is not ignited.

CAUTION: In the interest of safety, the test operator should discontinue the test and record a failure before reaching the 1 inch (2.54 cm) char length if, in his opinion, an obvious ignition has occurred.

(ii) Test Specimen—An individual test specimen passes the test if all three cigarette test locations meet the cigarette test criterion of this paragraph.

(3) *Specimen selection.* Three specimens shall be used for each ticking prototype classification test, with each specimen measuring no less than 20 inches by 20 inches (50.8 cm x 50.8 cm) square. The three specimens shall be selected from any fabric piece taken from a ticking prototype. The specimens shall be representative of the ticking prototype.

(4) *Ticking Classification.* A ticking prototype is classified as Class A, Class B, or Class C, in accordance with the following schedules.

(i) Class A—A ticking prototype is classified as Class A when three specimens, tested in accordance with § 1632.6(e), meet the test criterion in § 1632.6(d)(2) when the ticking is tested directly over the cotton felt on the test box.

(ii) Class B—A ticking prototype is classified as Class B when three specimens, tested according to § 1632.6(e), meet the test criterion in § 1632.6(d)(2) when the ticking is tested on a ¼ inch ± 1/32 inch (6.3 mm ± .8 mm) thick urethane foam pad covering the cotton felt on the test box.

(iii) Class C—A ticking prototype is classified as Class C when any specimen tested according to § 1632.6(e), fails to meet the test criterion in § 1632.6(d)(2) when the ticking is tested on a ¼ inch ± 1/32 inch (6.3 mm ± .8 mm) thick urethane foam pad covering the cotton felt on the test box.

(e) *Test Procedure.*

(1) *Apparatus.* For the purpose of this section the following apparatus and materials are required in addition to that which is listed in § 1632.4 (a) and (b).

(i) *Sheet and Sheeting Material.* Test covers made from sheets or sheeting material shall not be less than 12 inches by 12 inches (30.48 cm by 30.48 cm) square.

(ii) *Template.* Designed to allow for a one inch marking around the placement of the cigarette (see figure 3). Use of this template is optional.

(iii) *Stapler or masking tape* or other means of attachment to secure fabric to test box.

(iv) *Mounting Box.* A 6 inch deep, 12 inch square plywood box. The box contains two ½ inch in diameter ventilation holes. (See figure 4.)

(v) *Cotton Felt.* (A) The cotton felt shall be a thoroughly-garnetted mixture of all new material consisting of not less than 67% linters and of not more than 33% clean picker blend or equivalent binder and not more than 5% non-cellulosic total content. The felt shall not be bleached, moistened or chemically treated in any way.

(B) The felt may be re-used repeatedly after completion of each test by removing all of the smoldering, charred, heat-discolored fibers, or fibers exposed to water as a result of extinguishing the cotton ignited by previous test.

(vi) *Urethane Foam.* The urethane foam shall have a density of 1.2 to 1.5 pounds per cubic foot, an indention load deflection of 22 to 35 pounds, with each test specimen measuring no less than 12 inches by 12 inches (30.48 cm by 30.48 cm) square, having a thickness of ¼ inch ± 1/32 inch (6.3 mm ± .8 mm). The foam shall not be treated with a flame retardant chemical.

(2) *Conditioning.* The test specimens, cigarettes, laundered sheets or sheeting material, foam and felt shall be conditioned as described in § 1632.4(c).

(3) *Specimen Preparation.*

(i) Place 907.2 ± 4 grams (two pounds) of cotton felt in the test box, allowing the felt to protrude above the opening of the box to a height of up to 3 inches (7.62 cm) at the crown.

(ii) For the first part of this test, place a 12 inches by 12 inches (30.48 cm by 30.48 cm) square urethane foam pad on top of the cotton felt. Stretch the ticking specimen over the foam pad and fasten it to the sides of the test box using a stapler or tape. Be careful to avoid wrinkles in the fabric and have sufficient tautness to assure firm contact between the fabric and the filling materials in the test box.

(4) *Testing.*

(i) Ticking specimens shall be tested in a testroom with atmospheric conditions of a temperature greater than 18 °C (65 °F) and a relative humidity less than 55%.

(ii) Three cigarettes shall be burned on each ticking specimen, with no more than one cigarette burning at any time. At least one cigarette shall be placed on the most prominent part of the color and weave pattern design in the ticking. If the ticking is quilted, one cigarette shall be placed over the thread or in the depression created by the quilting process. Each cigarette must be positioned no less than two inches (5.08 cm) from any other cigarette or the edge of the box.

(iii) Light and place one cigarette on the test specimen. Immediately cover the burning cigarette with a sheet test cover. The cigarette shall be well lighted but not burned more than 4 mm (0.16 inch) when placed on the test specimen. The cigarette may be supported by three straight pins such that one pin supports the cigarette at the burning end, one at the center and one at the butt. The heads of the pins must be below the upper surface of the cigarette. Upon completion of the three cigarette burns and removal of the fabric and foam specimens, remove all of the char or heat discoloration on the cotton felt as stated in § 1632.6(e)(v)(B). Fresh new felt shall be added to replace the discarded fibers in the amount necessary to maintain the full 907.2±4 grams (two pounds) of felt for each test.

(iv) If the cigarette extinguishes before burning its full length, the test must be repeated with a freshly lit cigarette on a different portion of the ticking specimen until either three cigarettes have burned their full lengths or three cigarettes have extinguished. Report result for each cigarette as pass or fail as defined in Test Criterion § 1632.6(d)(2). An obvious ignition is recorded as a failure.

(v) If ignition occurs with any of the three cigarette burns on the ticking specimen, terminate testing of that specimen and classify according to § 1632.6(d)(4).

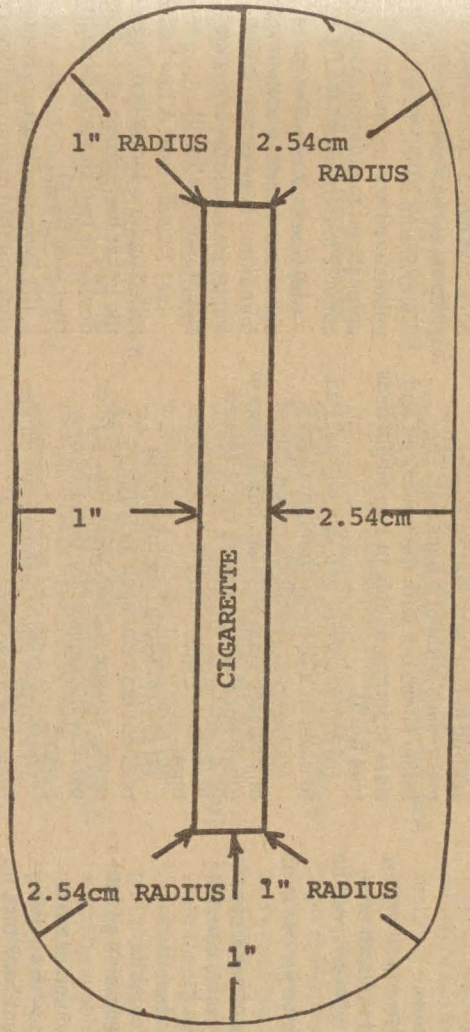
(vi) If all cigarette test locations meet the Test Criterion in § 1632.6(d)(2), repeat procedure outlined in § 1632.6(e)(4)(iii) for the second part of the test with new ticking specimens that will be retested directly over the cotton felt, without the urethane foam pad. Remove the urethane foam pad and charred or heat discolored area from the cotton felt as specified in § 1632.6(e)(v)(B) prior to testing. Record the test results as pass or fail as defined in *Test Criterion* § 1632.6(d)(2) and classify according to § 1632.6(d)(4).

(5) *Records.* Records of any ticking classification test results relied upon by the mattress or mattress pad manufacturer or importer shall be maintained in accordance with rules and regulations established by the Consumer Product Safety Commission in § 1632.31(c). As provided by § 1632.31(c)(6), manufacturers or importers of mattresses or mattress pads may rely on a certification of compliance with this section of the standard provided by the ticking manufacturer or distributor; however, if a mattress or mattress pad fails to comply with the standard, the mattress or mattress pad manufacturer or importer must assume full responsibility under the standard. The Commission has no authority under this standard to compel ticking manufacturers or distributors to comply with this section or to establish, maintain and provide upon request, the records specified in § 1632.31(c).

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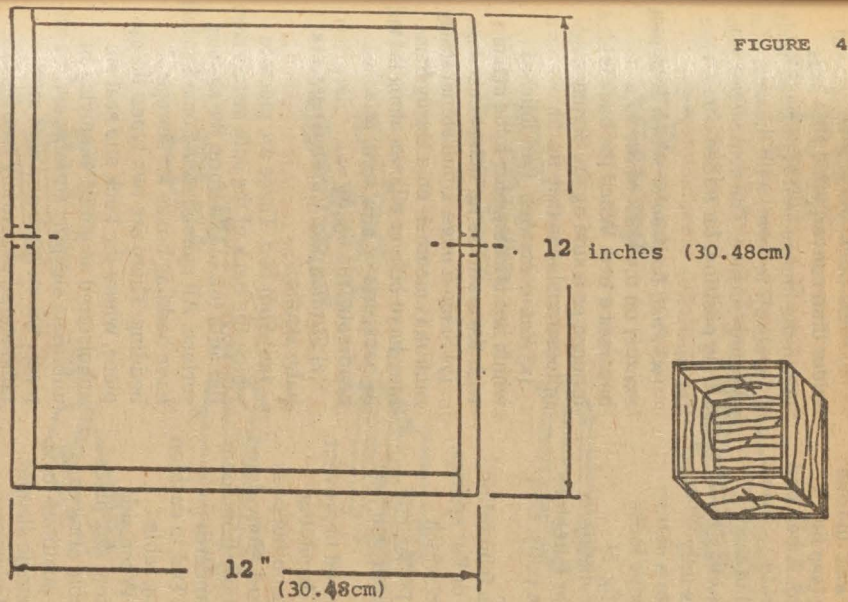
FIGURE 3

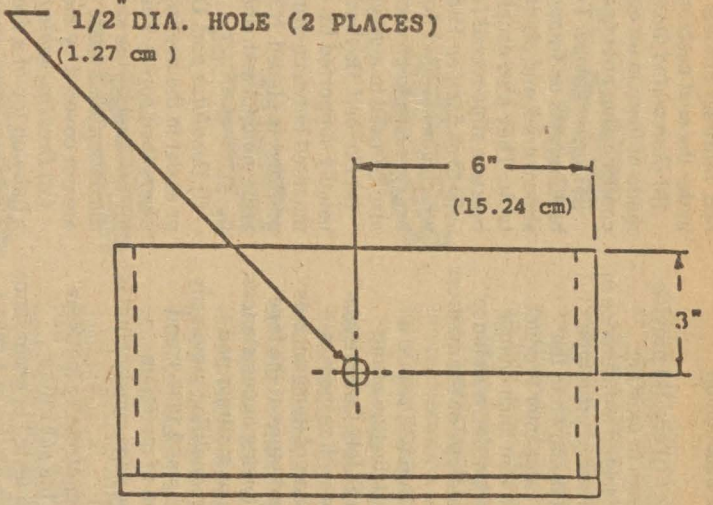


1 INCH (2.54cm) TEMPLATE

TOLERANCES + 1/32" - 0"

FIGURE 4





TEST BOX

MATERIAL 1/2" PLYWOOD

TOLERANCES + 1/32 " - 0"

§ 1632.7 Tape edge substitution procedure.

(a) Sections 1632.1 (j) and (k) provide in part that "a change in existing material shall be deemed a difference in materials for purposes of prototype definition unless it is shown to the satisfaction of the Consumer Product Safety Commission that such change will not reduce the ignition resistance" of the mattress prototype or the mattress pad prototype.

(b) The Commission will regard a showing "to the satisfaction of the Consumer Product Safety Commission" to have been made with respect to materials substitution of items such as flange materials and tapes at the tape edge under the following circumstances:

(1) The mattress or mattress pad prototype has been qualified previously under the provisions of § 1632.3; and

(2) A substitution of materials involving only tape edge construction is contemplated; and

(3) A prototype mattress or mattress pad incorporating the substitute materials has been tested in accordance with applicable procedures in § 1632.4 by placing 36 cigarettes (18 per surface—9 bare and 9 two-sheet) at tape edge locations with no test failure as determined by applying the test criterion of § 1632.3(b); and

(4) Records are maintained setting forth the details of the materials substitution and showing the results of the testing referred to in paragraph (b)(3) of this section. The records are to be maintained in accordance with regulations established by the Consumer Product Safety Commission (see § 1632.31).

§ 1632.8 Glossary of terms.

(a) *Absorbent pads.* Pad used on top of mattress. Designed to absorb urine thereby reducing skin irritation, can be one time use.

(b) *Basket pad.* Cushion for use in an infant basket.

(c) *Bunk beds.* A tier of beds, usually two or three, in a high frame complete with mattresses (see fig. 5).

(d) *Car bed.* Portable bed used to carry a baby in an automobile.

(e) *Carriage pad.* Cushion to go into a baby carriage.

(f) *Chaise lounge.* An upholstered couch chair or a couch with a chair back. It has a permanent back rest, no arms, and sleeps one (see fig. 5).

(g) *Convertible sofa.* An upholstered sofa that converts into an adult sized bed. Mattress unfolds out and up from under the seat cushioning (see fig. 5).

(h) *Convoluted foam pad.* A bed pad made of foam in an egg-crate configuration not encased in ticking.

(i) *Corner groups.* Two twin size bedding sets on frames, usually slipcovered, and abutted to a corner table. They also usually have loose bolsters slipcovered (see fig. 5).

(j) *Crib bumper.* Padded cushion which goes around three or four sides inside a crib to protect the baby. Can also be used in a playpen.

(k) *Daybed.* Daybed has foundation, usually supported by coil or flat springs, mounted between arms on which mattress is placed. It has permanent arms, no backrest, and sleeps one (see fig. 5).

(l) *Decubitus pad.* Designed to prevent or assist in the healing of decubitus ulcers (bed sores). Flat decubitus pads are covered by the standard. Convoluted decubitus pads made entirely from foam are not covered by the standard.

(m) *Dressing table pad.* Pad to cushion a baby on top of a dressing table.

(n) *Drop-arm loveseat.* When side arms are in vertical position, this piece is a loveseat. The adjustable arms can be lowered to one of four positions for a chaise lounge effect or a single sleeper. The vertical back support always remains upright and stationary (see fig. 5).

(o) *Futon.* A flexible mattress generally used on the floor that can be folded or rolled up for storage. It usually consists of resilient material covered by ticking.

(p) *High riser.* This is a frame of sofa seating height with two equal size mattresses without a backrest. The frame slides out with the lower bed and rises to form a double or two single beds (see fig. 5).

(q) *Infant carrier and lounge pad.* Pad to cushion a baby in an infant carrier.

(r) *Mattress foundation.* Consists of any surface such as foam, box springs or other, upon which a mattress is placed to lend it support for use in sleeping upon.

(s) *Pillow.* Cloth bag filled with resilient material such as feathers, down, sponge rubber, urethane, or fiber used as the support for the head of a person.

(t) *Playpen pad.* Cushion used on the bottom of a playpen.

(u) *Portable crib.* Smaller size than a conventional crib. Can usually be converted into a playpen.

(v) *Press-back lounges.* Longer and wider than conventional sofa beds. When the lounge seat is pressed lightly, it levels off to form, with the seat, a flat sleeping surface. The seat slopes, in the sitting position, for added comfort (see fig. 5).

(w) *Push-back sofa.* When pressure is exerted on the back of the sofa, it becomes a bed. When the back is lifted, it becomes a sofa again. Styled in tight or loose cushions (see fig. 5).

(x) *Roll-away-bed.* Portable bed which has frame which folds in half with the mattress for compact storage.

(y) *Sleep lounge.* Upholstered seating section is mounted on a sturdy frame. May have bolster pillows along the wall as backrests or may have attached headrests (see fig. 5).

(z) *Stroller pad.* Cushion used in a baby stroller.

(aa) *Sofa bed.* These are pieces in which the back of the sofa swings down flat with the seat to form the sleeping surface. All upholstered. Some sofa beds have bedding boxes for storage of bedding. There are two types: the one-piece, where the back and seat are upholstered as a unit, supplying an unbroken sleeping surface; and the two-piece, where back and seat are upholstered separately (see fig. 5).

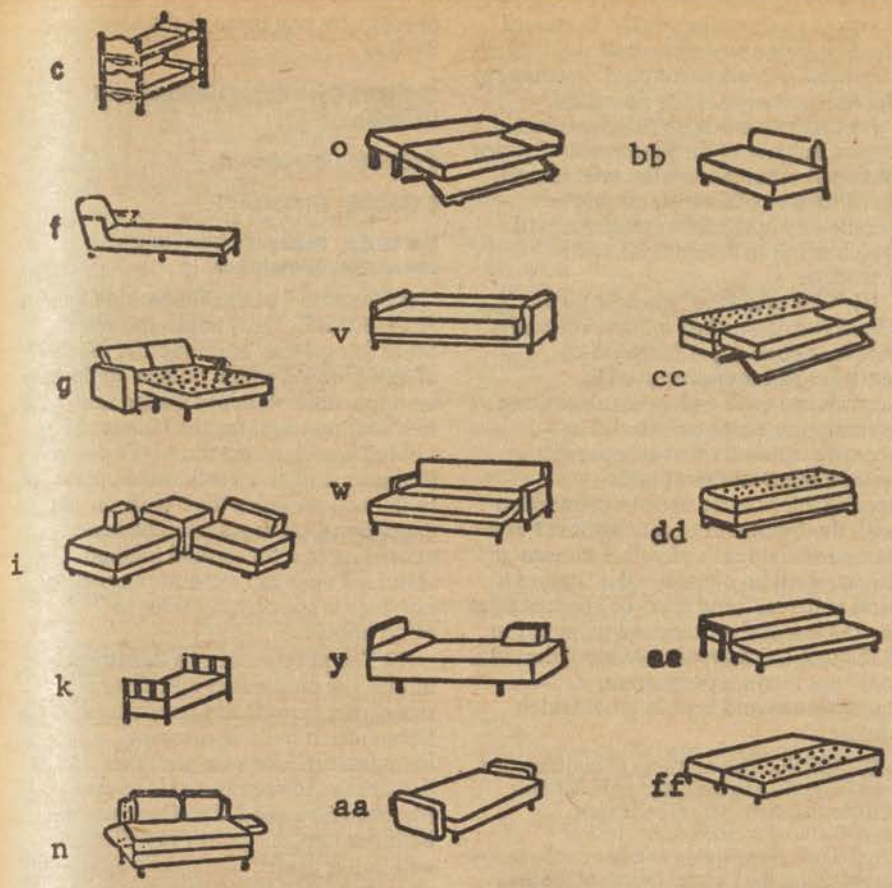
(bb) *Sofa lounge*—(includes glideouts). Upholstered seating section is mounted on springs and in a special frame that permit it to be pulled out for sleeping. Has upholstered backrest bedding box that is hinged. Glideouts are single sleepers with sloping seats and backrests. Seat pulls out from beneath back and evens up to supply level sleeping surface (see fig. 5).

(cc) *Studio couch.* Consists of upholstered seating section on upholstered foundation. Many types convert to twin beds (see fig. 5).

(dd) *Studio divan.* Twin size upholstered seating section with foundation is mounted on metal bed frame. Has no arms or backrest, and sleeps one (see fig. 5).

(ee) *Trundle bed.* A low bed which is rolled under a larger bed. In some lines, the lower bed springs up to form a double or two single beds as in a high riser (see fig. 5).

(ff) *Twin studio divan.* Frames which glide out (but not up) and use seat cushions, in addition to upholstered foundation to sleep two. Has neither arms nor back rest (see fig. 5).



Effective date: The amended standard shall become effective on April 10, 1985. As required by section 4(b) of the Flammable Fabrics Act (15 U.S.C. 1193(b)), mattresses and mattress pads which are in inventory or with the trade on the effective date of the amended standard are exempt from its requirements, but must comply with all applicable requirements of the original standard.

Subpart B—Rules and Regulations

§ 1632.31 Mattresses/Mattress Pads—Labeling, recordkeeping, guaranties and "one of a kind" exemption.

(a) *Definitions.* For the purposes of this section, the following definitions apply:

(1) "Standard for the Flammability of Mattresses" or "Standard" means the Standard for the Flammability of Mattresses and Mattress Pads (FF 4–72, amended), (16 CFR Part 1632, Subpart A).

(2) The definition of terms set forth in the § 1632.1 of the Standard shall also apply to this section.

(b) *Labeling.* (1) All mattress pads which contain a chemical fire retardant shall be labeled with precautionary instructions to protect the pads from agents or treatments which are known to cause deterioration of their flame resistance. Such labels shall be permanent, prominent, conspicuous, and legible.

(2) If a mattress pad contains a chemical fire retardant, it shall be prominently, conspicuously, and legibly labeled with the letter "T".

(3) Each mattress or mattress pad subject to the Standard shall bear a permanent, accessible, and legible label containing the month and year of manufacture and the location of the manufacturer. (See § 1632.1(i) of the Amended Standard).

(4) The information required on labels by this section shall be set forth separately from any other information appearing on such label. Other information, representations, or disclosures, appearing on labels required by this section or elsewhere on the item, shall not interfere with, minimize, detract from, or conflict with the required information.

(5) No person, other than the ultimate consumer, shall remove or mutilate, or cause or participate in the removal or mutilation of, any label required by this section to be affixed to any item.

(6) Products intended for one time use (see § 1632.5(b)(1)(i)) are not subject to the requirements of paragraphs (1) and (2) of this § 1632.31(b).

(c) *Records—manufacturers, importers, or persons initially introducing items into commerce.* Every manufacturer, importer, or other person initially introducing into commerce mattresses or mattress pads subject to the standard, irrespective of whether guarantees are issued relative thereto, shall maintain the records hereinafter specified.

(1) Manufacturing specifications and description of each mattress or mattress pad prototype with an assigned prototype identification number.

(2) Test results and details of each prototype test performed in accordance with § 1632.4 or § 1632.5, including prototype identification number, ticking classification if known, test room condition, cigarette locations, number of relights for each location, whether each cigarette location passed or failed, name and signature of person conducting the test and date of test. These records shall include a certification by the person overseeing the testing as to the test results and that the test was carried out in accordance with the Standard.

(3) Photograph (color or black and white) of the bare surface of each mattress or mattress pad tested, in accordance with § 1632.4 or § 1632.5, with the prototype identification number of the mattress or mattress pad and a clear designation as to which part of the mattress or mattress pad was sheeted and which part was tested bare.

(4) Records to support any determination that a particular material, other than the ticking or tape edge material used in a mattress or mattress pad prototype, did not influence the ignition resistance of the prototype and could be substituted by another material. Such record should include photographs or physical specimens.

(5) Manufacturing specifications and description of any new ticking or tape edge material substituted in accordance

with § 1632.6 or § 1632.7, with the identification number of the prototype involved.

(6) The test results and details of any ticking classification test conducted in accordance with § 1632.6, including the ticking classification (A, B, or C), the test room condition, the number of relights, whether each cigarette location passed or failed, the name and signature of the person conducting the test and the date of the test, *or* a certification from the ticking supplier. The certification should state the ticking classification and that the ticking was tested in accordance with § 1632.6.

(7) The test results and details of any test of tape edge materials conducted in accordance with § 1632.7, including prototype identification number, test room condition, number of relights, whether each cigarette passed or failed, name and signature of person conducting the test and date of test. The record shall include a certification by the person overseeing the testing as to the test results and that the test was carried out in accordance with § 1632.7.

(8) Photograph (color or black and white) of the bare surface of each mattress or mattress pad tested in accordance with § 1632.7, with the prototype identification number of the mattress or mattress pad and a clear designation as to which part of the mattress or mattress pad was sheeted and which part was tested bare.

(9) Details of any approved alternate laundering procedure used in laundering mattress pads required by the Standard to be laundered during testing.

(10) Identification, composition, and details of the application of any flame retardant treatments employed relative to mattress pads or mattress pad components.

(11) Disposition of all failing or rejected prototype mattress or mattress pads. Such records must demonstrate that the items were retested and reworked in accordance with the Standard prior to sale or distribution and that such retested or reworked mattresses or mattress pads comply with the Standard, or must otherwise show the disposition of such items.

(12) The records required by this paragraph shall be maintained for as long as the prototype is in production, the ticking is being used on the mattresses or mattress pad prototype, and/or the tape edge material is being used on the mattress or mattress pad prototype, and shall be retained for 3 years thereafter.

(d) *Tests for guaranty purposes.* Reasonable and representative tests for the purpose of issuing a guaranty under section 8 of the Act for mattress or mattress pads subject to the Standard shall be those prototype and substitution tests performed, pursuant to the requirements of the Standard.

(e) *Compliance with this section.* No person subject to the Flammable Fabrics Act shall manufacture for sale, import, distribute, or otherwise market or handle any mattress or mattress pad which is not in compliance with § 1632.31.

(f) *"One of a kind" exemption for physician prescribed mattresses and mattress pads.* (1) A mattress or mattress pad manufactured in accordance with a physician's written prescription or manufactured in accordance with other comparable written medical therapeutic specification, to be used in connection with the treatment or management of a named individual's physical illiness or injury, shall be considered a "one of a kind mattress" and shall be exempt from testing under the Standard pursuant to § 1632.2(b)(4) thereof: Provided, that the mattress bears a permanent, conspicuous and legible label which states:

WARNING: This mattress or mattress pad may be subject to ignition and hazardous smoldering from cigarettes. It was manufactured in accordance with a physician's prescription and has not been tested under the Federal Standard for the Flammability of Mattresses (FF 4–72).

Such labeling must be attached to the mattress or mattress pad so as to remain on or affixed thereto for the useful life of the mattress or mattress pad. The label must be at least 40 square inches (250 sq. cm) with no linear dimension less than 5 inches (12.5 cm). The letters in the word "WARNING" shall be no less than 0.5 inch (1.27 cm) in height and all letters on the label shall be in a color which contrasts with the background of the label. The warning statement which appears on the label must also be conspicuously displayed on the invoice or other sales papers that accompany the mattress in commerce from the manufacturer to the final point of sale to a consumer.

(2) The manfacturer of a mattress or mattress pad exempted from testing under this paragraph shall, in lieu of the records required to be kept by paragraph (c) of this section, retain a copy of the written prescription or other comparable written medical therapeutic specification for such mattress or mattress pad during a period of three years, measured from the date of manufacture.

(3) For purposes of this regulation the term "physician" shall mean a physician, chiropractor or osteopath licensed or otherwise permitted to practice by any State of the United States.

Subpart C—Interpretations and Policies

§ 1632.61 [Reserved]

§ 1632.62 [Reserved]

§ 1632.63 Policy clarification on renovation of mattress.

(a) Section 3 of the Flammable Fabrics Act (15 U.S.C. 1192) prohibits, among other things, the "manufacture for sale" of any product which fails to conform to an applicable standard issued under the act. The standard for the Flammability of Mattresses, as amended (FF 4–72) (Subpart A of this part), issued pursuant to the act, provides that, with certain exceptions, mattress must be tested according to a prescribed method. The standard does not exempt renovation; nor does it specifically refer to renovation.

(b) The purpose of this document is to inform the public that mattresses renovated for sale are considered by the Commission to be mattresses manufactured for sale and, therefore, subject to the requirements of the Mattress Standard. The Commission believes that this policy clarification will better protect the public against the unreasonable risk of fires leading to death, personal injury or significant property damage, and assure that purchasers of renovated mattresses receive the same protection under the Flammable Fabrics Act as purchasers of new mattresses.

(c) For purposes of this document, mattress renovation includes a wide range of operations. Replacing the ticking or batting, stripping a mattress to its springs, rebuilding a mattress, or replacing components with new or recycled materials, are all part of the process of renovation. Any one, or any combination of one or more, of these steps in mattress renovation is considered to be mattress manufacture.

(d) If the person who renovates the mattress intends to retain the renovated mattress for his or her own use, or if a customer or a renovator merely hires the services of the renovator and intends to take back the renovated mattress for his or her own use, "manufacture for sale" has not occurred and such a renovated mattress is not subject to the mattress standard.

(e) However, if a renovated mattress is sold or intended for sale, either by the renovator or the owner of the mattress who hires the services of the renovator, such a transaction is considered to be "manufacture for sale".

(f) Accordingly, mattress renovation is considered by the Commission to be "manufacture for sale" and, therefore, subject to the Mattress Standard, when renovated mattresses are sold or intended for sale by a renovator or the customer of the renovator.

(g) A renovator who believes that certain mattresses are entitled to one-of-a-kind exemption, may present relevant facts to the Commission and petition for an exemption. Renovators are expected to comply with all the testing requirements of the Mattress Standard until an exemption is approved.

Authority: 15 U.S.C. 1193, 1194; 15 U.S.C. 2079(b).

Dated: October 2, 1984.

Sheldon D. Butts,

Deputy Secretary, Consumer Product Safety Commission.

Bibliography

(*1*) Briefing paper concerning amendments to the mattress flammability standard; 9 pages; March 30, 1982.

(*2*) Rule Review Report, TAB 3—Mattress Flammability Standard, by J.F.Hoebel; 23 pages; February 14, 1980.

(*3*) Report of Consumer Product Safety Commission to Congress concerning review of Commission rules; 44 pages; May 1980.

(*4*) Memorandum from Liz Jones, CARM, to James F. Hoebel, OPM, concerning amendment of mattress standard; 9 pages; April 24, 1981.

(*5*) Evaluation of the impact of the mattress and carpet and rug flammability standard upon industry, by Technology and Economics, Inc.; 107 pages; February 2, 1981.

(*6*) Memorandum from Bea Harwood, HIEI, to Jim Hoebel, OPM, concerning injury findings to support amendment of mattress standard; 3 pages; September 8, 1981.

(*7*) Memorandum from Patricia Fairall, ESMT, to Harleigh Ewell, OGC, concerning amendment of the mattress flammability standard, with attachments; 64 pages; April 24, 1981.

(*8*) Current Industrial Reports, Mattresses, Foundations, and Sleep Furniture, Summary for 1980; issued by the U.S. Department of Commerce; 6 pages; August 1981.

(*9*) **Federal Register** notice, "Standard for the Flammability of Mattresses (and Mattress Pads): Advance Notice of Proposed Rulemaking," published by Consumer Product Safety Commission; 6 pages; June 10, 1982 (47 FR 25159).

(*10*) Comments on ANPR from Meridian Mattress Factory, Inc.; 5 pages; June 15 and June 22, 1982.

(*11*) Comment on ANPR from the Govmark Organization, Inc.: 1 page; June 24, 1982.

(*12*) Comment on ANPR from Doris Eichenwald; 1 page; July 22, 1982.

(*13*) Comment on ANPR from Bureau of Home Furnishings, Department of Consumer Affairs, State of California; 3 pages; July 21, 1982.

(*14*) Comment on ANPR from National Fire Protection Association; 6 pages; August 6, 1982.

(*15*) Comment on ANPR from Juanita W. Fleming, R.N., Ph.D., F.A.A.N.; 1 page; July 23, 1982.

(*16*) Comment on ANPR from National Association of Bedding Manufacturers, with attachments; 64 pages; undated.

(*17*) Comment on ANPR from the Procter & Gamble Company; 1 page; August 2, 1982.

(*18*) Comment on ANPR from Citizens Committee for Fire Protection; 7 pages; undated.

(*19*) Comment on ANPR from Flexible Polyurethane Foam Manufacturers Association; 3 pages; August 9, 1983.

(*20*) Staff briefing package, including transmittal memorandum from Office of Program Management to the Commission concerning comments on ANPR and staff recommendations for amendment of the mattress standard; 16 pages; December 12, 1983. The tabs of this package are listed separately below.

Tab A

Advance notice of proposed rulemaking; same document as item 9, above.

(*21*) Draft **Federal Register** notice to propose amendments of the mattress standard; 105 pages; undated.

Tab B

(*22*) Summary of comments in response to ANPR: 4 pages; undated. Comments received in response to ANPR; same documents as items 10 through 19, above.

Tab C

(*23*) Memorandum from L.J. Sharman, OPM, to Edgar Morgan, Executive Director, concerning amendment of the mattress flammability standard; 5 pages; October 25, 1982.

Tab D

(*24*) Memorandum from Liz Gomilla, CARM, to L.J. Sharman, Fire Program Officer, concerning results of testing to determine compliance with the mattress standard, with attachments; 23 pages; June 13, 1983.

(*25*) Memorandum from Liz Gomilla, CARM, to L.J. Sharman, Fire Program Officer, concerning analysis of comments received in response to ANPR; 4 pages; June 24, 1983.

(*26*) Memorandum from Liz Gomilla, CARM, to L.J. Sharman, Fire Program Officer, concerning mattress compliance program for fiscal year 1985; 1 page; June 24, 1983.

Tab E

(*27*) Memorandum from Patricia Fairall, ESMT, to L.J. Sharman, OPM, concerning analysis of comments received in response to ANPR; 6 pages; July 27, 1983.

(*28*) Memoradum from Pat Fairall and Jean Williams, ESMT, to L. James Sharman, OPM, concerning technical changes to amended mattress standard; 8 pages; July 29, 1983.

(*29*) Technical rationale for mattress ticking substitution test, by Patricia Fairall, Engineering Sciences; 15 pages; July 1983.

Tab F

(*30*) Memorandum from Barbara Morton, ECCP, to L.J. Sharman, OPM, concerning comments received in response to ANPR: 2 pages; April 26, 1983.

(*31*) Minutes of executive session of Consumer Product Safety Commission on October 3, 1975, with attachment; 8 pages; undated.

(*32*) Vote Sheet concerning proposal of amendments to the mattress standard; 2 pages; December 14, 1983.

(*33*) **Federal Register** notice proposing amendments to the mattress standard; 23 pages; December 30, 1983.

(*34*) Comment on proposed amendments from National Association of Bedding Manufacturers; 6 pages; undated.

(*35*) Comment on proposed amendments from Irving Veitzman for National Association of Bedding Manufacturers; 6 pages; undated.

(*36*) Comment on proposed amendments from Citizens Committee for Fire Protection; 3 pages; February 23, 1984.

(*37*) Comment on proposed amendments from Burn Foundation; 2 pages; February 27, 1984.

(*38*) Comment on proposed amendments from Trauma Center Foundation; 1 page; February 27, 1984.

(*39*) Comment on proposed amendments from Senator Edward Zorinsky; 1 page; February 10, 1984.

(*40*) Comment on proposed amendments from National Retail Merchants Association; 2 pages; March 14, 1984.

(*41*) Staff briefing package including transmittal memorandum from Office of Program Management to the Commission concerning comments on proposal for amendment of the mattress standard and recommendations for issuance of final amendments; 5 pages; July 6, 1984. The tabs of this package are listed separately below

Tab A

Notice of proposed rulemaking for amendment of the mattress standard; same document as item 33, above.

(*42*) Draft **Federal Register** notice to issue amended standard on final basis; 81 pages; undated.

Tab B

(*43*) Summary of comments in response to notice proposing amendments of mattress standard; 2 pages; undated.

Comments received in response to notice of proposed rulemaking; same documents as items 34 through 40, above.

Tab C

(*44*) Memorandum from Barbara J. Morton, Directorate for Economic Analysis to L. James Sharman, Office of Program Management concerning economic aspects of comments on proposed amendments of the mattress standard; 5 pages; April 20, 1984.

(*45*) "Market Sketch—Mattresses" by Barbara J. Morton, Directorate for Economic Analysis; 11 pages; March, 1984.

Tab D

(*46*) Memorandum from Linda Fansler, Directorate for Engineering Sciences to James Sharman, Office of Program Management concerning engineering aspects of comments on proposed amendments of mattress standard; 2 pages; April 20, 1984.

Tab E

(*47*) Memorandum from Elizabeth Gomilla, Directorate for Compliance and Administrative Litigation, to L.J. Sharman, Office of Program Management, concerning issues raised by comments on proposed amendments of the mattress standard; 4 pages; April 20, 1984.

[FR Doc. 84-26539 Filed 10-9-84; 8:45 am]
BILLING CODE 6355-01-M

federal register

Wednesday
October 10, 1984

Part IV

Environmental Protection Agency

40 CFR Part 799

Identification of Specific Chemical 1 Substance and Mixture Testing Requirements; 1,1,1-Trichloroethane; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 799

[OPTS-42059; FRL-2626-7]

Identification of Specific Chemical Substance and Mixture Testing Requirements; 1,1,1-Trichloroethane

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: In June 1981, the EPA proposed the testing of 1,1,1-trichloroethane (TCEA) under section 4(a) of the Toxic Substances Control Act (TSCA) for teratogenicity and for a number of environmental effects (46 FR 30300). Public comments on the proposal have been received and reviewed. The EPA has decided to promulgate a final test rule requiring that manufacturers and processors of 1,1,1-trichloroethane test this chemical for teratogenic effects or, more appropriately, developmentally toxic effects. EPA has decided not to require any environmental effects testing at this time due to its reevaluation of the available data. This rule requires that testing of this chemical be performed according to protocols submitted to and approved by the Agency.

DATES: These regulations shall be promulgated for purposes of judicial review at 1:00 p.m. eastern standard time on October 24, 1984. These regulations shall become effective on November 23, 1984.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Rm. E-543; 401 M St., SW., Washington, DC 20460. Toll free: (800-424-9065). In Washington, D.C.: (554-1404). Outside the USA: (Operator-202-554-1404).

SUPPLEMENTARY INFORMATION: In the **Federal Register** of June 5, 1981 (46 FR 30300), EPA issued a proposed rule under section 4(a) of TSCA to require testing of TCEA for teratogenic effects and a number of environmental effects. The Agency is now promulgating a final rule requiring testing of TCEA for teratogenic effects or, more appropriately, develop mentally toxic effects, but not for environmental effects due to reevaluation of available data.

The rule was originally proposed under 40 CFR Part 773—Identification of Chemical Substances and Mixtures to be Tested. Part 773 has since been recodified to Part 799—Identification of Specific Chemical Substance Testing Requirements. This test rule for 1,1,1-trichloroethane is now being promulgated under 40 CFR 799.4400.

I. Introduction

This notice is part of the overall implementation of section 4 of the Toxic Substances Control Act (TSCA, Pub. L. 94-469, 90 Stat. 2003 *et seq.*, 15 U.S.C. 2601 *et seq.*) which contains authority for EPA to require development of data relevant to assessing the risks to health and the environment posed by exposure to particular chemical substances or mixtures.

Under section 4(a)(1) of TSCA, EPA must require testing of a chemical substance to develop health or environmental data if the Administrator finds that:

(A) (i) the manufacture, distribution in commerce, processing, use, or disposal of a chemical substance or mixture, or that any combination of such activities, may present an unreasonable risk of injury to health or the environment,

(ii) there are insufficient data and experience upon which the effects of such manufacture, distribution in commerce, processing, use, or disposal of such substance or mixture or of any combination of such activities on health or the environment can reasonably be determined or predicted, and

(iii) testing of such substance or mixture with respect to such effects is necessary to develop such data; or

(B) (i) a chemical substance or mixture is or will be produced in substantial quantities, and (I) it enters or may reasonably be anticipated to enter the environment in substantial quantities or (II) there is or may be significant or substantial human exposure to such substance or mixture,

(ii) there are insufficient data and experience upon which the effects of the manufacture, distribution in commerce, processing, use, or disposal of such substance or mixture or of any combination of such activities on health or the environment can reasonably be determined or predicted, and

(iii) testing of such substance or mixture with respect to such effects is necessary to develop such data.

For a more complete understanding of the statutory section 4 findings, the reader is directed to the Agency's first proposed test rule package (chloromethane and chlorinated benzenes, published July 18, 1980; 45 FR 48510) and to the second package (dichloromethane, nitrobenzene, and 1,1,1-trichloroethane, published June 5, 1981; 46 FR 30300) for in-depth discussions of the general issues applicable to this action.

II. Background

A. Profile

1,1,1-Trichloroethane ($Cl_3C_2H_3$, methyl chloroform, TCEA, CAS No. 71-55-6) is a colorless, non-flammable, volatile liquid at standard temperature and pressure. Approximately 586 million pounds of TCEA were produced in the United States in 1983, of which about 57 million pounds were exported. Imports of the chemical were essentially negligible (Ref. 8).

The major use of TCEA is in the metal cleaning industry, primarily in cold cleaning and vapor degreasing processes. It is also used as a solvent in commercial and consumer products such as aerosols, adhesives, textiles, paints, inks, drain cleaners, film cleaners, spot removers, pharmaceuticals, and leather tanners (Ref. 6).

In the National Occupational Hazard Survey, approximately 2.6 million workers were estimated to be exposed to TCEA (Ref. 3), largely through inhalation during industrial uses of the chemical. Consumers are exposed to unknown levels of TCEA through use of the many consumer products containing it.

TCEA is released to the environment from evaporative losses during manufacture, processing, use and disposal. It has been found at levels of 1-10 ppb in air, soil, fresh and marine water, groundwater and rainwater (Ref. 6).

B. ITC Recommendations

The Interagency Testing Committee (ITC) designated 1,1,1-trichloroethane for priority testing consideration in its Second Report, published in the **Federal Register** on April 19, 1978 (43 FR 16684). The ITC recommended that the Agency consider requiring industry to test TCEA for the following health effects: carcinogenicity, mutagenicity, teratogenicity, other chronic effects (with specific attention to the neurological, cardiovascular and renal systems) and that an epidemiologic study be performed. The ITC did not recommend that environmental effects testing for TCEA be considered.

The ITC's recommendations were based on U.S. production in 1976 of approximately 630 million pounds, an estimated 300 million pounds which could be released to the atmosphere, an estimation on the part of the ITC of 3 million persons exposed to TCEA in the workplace, and its view that there was a lack of data from which to reasonably determine or predict the various effects for which it recommended testing.

C. Proposed Rule

EPA issued a proposed rule published in the **Federal Register** of June 5, 1981 (46 FR 30300) which would require that testing of TCEA be performed for teratogenicity and for the effects listed below:

1. Aquatic vertebrates-acute toxicity and chronic toxicity.
2. Aquatic invertebrates-chronic toxicity.
3. Terrestrial plants-root elongation/seed germination and early seedling growth.
4. Bioconcentration-plant uptake/translocation.

In the proposal, the EPA based its testing requirements on the authority of section 4(a)(1)(B) of TSCA. It found that: 1,1,1-trichloroethane was produced in substantial quantities; substantial numbers of persons were exposed to 1,1,1-trichloroethane both in occupational settings involving the manufacture, processing and use of the chemical, and as consumers of products containing the chemical; there was substantial release to the environment; and, with respect to the above listed areas, there were insufficient data and experience to reasonably determine or predict the effects on health and the environment of the manufacture, processing, distribution in commerce, use or disposal of 1,1,1-trichloroethane and that testing was necessary to develop such data.

EPA also presented its reasons for not proposing testing for several other effects of concern. Testing was not proposed for acute health effects, reproductive effects, chemical fate or for certain environmental effects (acute toxicity to aquatic invertebrates, toxicity to mammals, acute bird toxicity, toxicity to algae, and aquatic vertebrate and invertebrate bioconcentration) because EPA had concluded that existing information was sufficient to reasonably predict or determine these effects. EPA planned to perform testing for some environmental effects for which no test standards were available at the time.

Oncogenicity testing of 1,1,1-trichloroethane was being performed by the National Toxicology Program (NTP), and EPA believed that the NTP studies would be sufficient to reasonably predict or determine the oncogenicity of TCEA; therefore, no oncogenicity testing was proposed. Similarly, no chronic effects testing was proposed because EPA was awaiting the results of the NTP study which it expected to provide sufficient data on chronic effects.

EPA believed that mutagencity testing according to a testing sequence would be appropriate, and planned to perform the initial testing itself because no criteria specifying the progression from initial tests to higher level tests were available at the time the proposed rule was issued. EPA planned to propose a test rule requiring manufacturers and processors of TCEA to perform higher tier tests if needed, based on analysis of lower tier results.

The EPA also decided not to propose an epidemiologic study at the time because a suitable study population had not been identified. The scientific support used by EPA at that time for the proposed section 4 findings and the proposed rule was set forth in the 1,1,1-Trichloroethane Support Document (Ref. 6), which is available from the Office of Toxic Substances' TSCA Assistance Office and in the public record for this rulemaking.

III. Public Comment

The comments received by the Agency in response to the proposed rule for TCEA were from the affected industry and several trade associations. The Agency did not receive any comments which in the Agency's judgment rebutted the substantial production and substantial human exposure findings for TCEA. Major issues identified during the comment period are discussed below.

A. Health Effects Testing

1. Developmental Toxicity

a. *Terminology.* Comments on EPA's proposed test rule for the testing of TCEA for teratogenicity in June 1981, have shown that use of the term "teratogenicity" may be interpreted differently by different scientists and in its strictest definition could be limited to just the production of structural malformations. Recognizing that abnormal development may be manifested not only as the production of structural malformations, but also as *in utero* death, growth retardation, or functional deficits (Ref. 14), the Agency believes that the term "developmental toxicity" is more appropriate in summarizing its concern for agents that adversely affect development. Although the terminology in this final rule may be different from that in the proposed rule, the Agency in its proposed rule clearly expressed the concern that TCEA should be evaluated not only for structural malformations, but also for fetal resorptions, decreased fetal body weight, and other adverse developmental effects which are encompassed by the term "developmental toxicity." *See* 46 FR 30300, 30303 and 30311 (June 5, 1981) and 44 FR 44054, 44088 (July 29, 1979).

b. *Review of existing teratology studies.* The Agency has identified three studies that address the potential of 1,1,1-trichloroethane to cause adverse developmental effects: Schwetz et al. (Ref. 5), York et al. (Ref. 7), and Lane et al. (Ref. 1). The Schwetz and York studies were evaluated by the Agency in preparing the proposed rule (46 FR 30300; June 5, 1981) and were discussed in its accompanying support document (Ref. 6).

In the Schwetz et al. study pregnant female rats and mice were exposed by the inhalation route of exposure to 875, ppm of TCEA for 7 hours daily at days 6–15 of gestation. Schwetz et al. concluded that TCEA did not cause significant maternal, embryonal or fetal toxicity and was not teratogenic in either mice or rats at 875 ppm.

In the York et al. study, female rats were exposed by inhalation to TCEA at a concentration of 2,100 ppm. Study animals were divided into the following three groups depending upon the timing of exposure to TCEA: (A) those exposed for two weeks prior to mating and during pregnancy, (B) those exposed prior to mating only, and (C) those rats exposed during pregnancy only. The control group was exposed to filtered air before mating and during pregnancy. The York study reported decreased fetal weights and some developmental anomalies (predominantly skeletal and kidney development) in offspring of exposed dams. However, the developmental anomalies occurred only in the offspring of those rats exposed to 2,100 ppm two weeks prior to mating and then during gestation. Although there were statistically significant decreases in fetal bodyweight in exposure groups A and C, soft-tissue and skeletal anomalies were not significant in the offspring of rats exposed to 2,100 ppm TCEA during gestation only, possibly due to the shorter dosing period. York et al. questioned the biological significance of the skeletal anomalies and fetal weight reductions, noting that the skeletal malformations were relatively rare structural changes not obviously detrimental to the offspring and that the depression in body weights was not present postnatally. The York et al. study reported no evidence of maternal toxicity in any of three exposure groups.

In its proposed test rule for TCEA (46 FR 30300, June 5, 1981), EPA concluded that the Schwetz et al. and York et al. studies were insufficient to reasonably determine whether exposure to TCEA would pose a risk of developmental effects in humans. The Agency reached this conclusion in large part because although developmental effects had not been observed in the Schwetz et al. study or in the offspring of animals in the York et al. study exposed only during gestation, the failure of both studies to employ a maternally toxic dose level fails to provide adequate

assurance that developmentally toxic effects will not occur at exposure levels designed to protect adult humans from adverse health effects.

In a study obtained after publication of the proposal, Lane et al. (Ref. 1) examined the effects of TCEA in drinking water on reproduction and development in mice. Concentration levels of 0, 0.58, 1.75, and 5.83 mg/ml were administered; these concentrations were designed by the investigators to yield doses of 0, 100, 300 or 1,000 mg/kg/day. Nine to fifteen litters were examined per dose group. The authors reported no evidence of reproductive or teratologic effects in this study and no evidence of maternal toxicity.

c. *EPA response to industry comments.* Industry commentors (Dow and Vulcan) took the position that the three studies taken together clearly demonstrate that TCEA does not represent a teratogenic risk to humans. With regard to the lack of maternal toxicity, they pointed out that TCEA is of very low toxicity in adult animals and that the primary adverse effect of TCEA is central nervous system (CNS) depression. In their view, conventional measurements of maternal toxicity, such as weight loss, would not be observed at test concentrations below those which produce CNS depression. The commentors further stated that the studies have been conducted at sufficiently high levels and that, in the light of the available data, EPA cannot justify a finding of insufficient data to determine or reasonably predict the teratogenic effects of TCEA.

EPA had seriously considered these points. The results of these studies (Refs. 1, 5 and 7) do not preclude the possibility that the conceptus may be uniquely susceptible to adverse effects of TCEA. None of these studies reported evidence of biologically significant teratogenic effects; however, maternal toxicity at the highest dose level, a requirement of an adequate teratogenicity of developmental toxicity test according to the TSCA Guidelines (Ref. 17), was not demonstrated in any of the studies.

With regard to their comments on CNS depression, the Agency believes that Dow and Vulcan have failed to demonstrate that signs of CNS depression will indeed occur prior to other indications of maternal toxicity, such as weight loss. In none of the three available developmental toxicity studies which the Agency has reviewed was there any evidence that adverse CNS effects would occur prior to other signs of maternal toxicity. In fact, there were no indications of CNS depression or maternal toxicity in any of the three studies.

The Agency also disagrees with the commentors' position that the studies have been conducted at sufficiently high dose levels. In general, the Agency believes that the highest dose level delivered to an animal in a developmental toxicity study should produce maternal toxicity; this is to ensure that a chemical has been tested at a high enough exposure level. If the highest dose delivered to an animal produces neither maternal toxicity nor development toxicity, one would not be able to determine if the chemical would be a hazard to the developing embryo or fetus at some higher exposure level in the absence of maternal effects. Most teratology/developmental toxicity guidelines (i.e. TSCA, OECD, FDA's Segment II) recommend testing of a substance at at least three dose or exposure levels with the highest producing some degree of maternal toxicity and the lowest producing no effect on either the embryo/fetus or the dam. This view is in agreement with recognized developmental toxicologists who have conducted state-of-the-art studies (Refs. 13 and 14). This approach allows for assessment of the relationship between the concentration needed to adversely affect the dam and that needed to adversely affect the developing organism and, as such, enables the identification of those agents to which the embryo/fetus is more susceptible than the dam. This dose regimen not only establishes potential developmental effects which may occur independent of adult toxicity, but also establishes a no effect level for developmental effects.

There may be some instances where the Agency will not need to require testing at a dose level that produces maternal toxicity. If developmental effects have been identified at doses below the maternally toxic dose of the chemical, then higher dose levels that would exhibit some form of maternal toxicity are not essential because exposure reduction would be based on developmental toxicity rather than on maternal toxicity. There is uncertainty that the effects observed in the York et al. study indicate biologically significant developmental toxicity. The Agency does not believe the York et al. study or the other studies discussed above are sufficient to reasonably determine or predict the developmental toxicity of TCEA. Another instance where the Agency may not need to require maternal toxicity is when the no observed effect levels are well above those levels identified for human exposure. However, in this particular case, the Agency believes that the difference between the levels of TCEA workplace exposures (Refs. 16 and 18) and the highest dose levels of TCEA utilized in the existing teratogenicity studies (Refs. 1, 5, and 7) do not enable EPA to reasonably predict that offspring of female workers exposed to TCEA would be adequately protected from adverse developmental effects. Therefore, EPA finds that further testing of TCEA for developmental toxicity is necessary.

2. *Chronic effects and oncogenicity.* The Agency identified two chronic studies when preparing the proposed rule: NCI (Ref. 2) and Quast et al. (Ref. 4). EPA concluded that neither study was adequate to characterize the chronic effects of TCEA. However, EPA did not propose chronic effects or oncogenicity testing for TCEA because a National Toxicology Program (NTP/NCI) oncogenicity study underway at the time was expected to be sufficient to reasonably determine or predict the chronic effects and oncogenicity of TCEA. The NTP study has since been completed. The results are still being evaluated and the final report has not yet been released by NTP.

Dow commented that the NTP study could suffer from shortcomings such as grossly high exposure levels which would make it inappropriate for assessing chronic effects. Dow noted that it is currently conducting a "state of the art" study which should more adequately characterize the chronic effects of 1,1,1-trichloroethane. According to Dow, they are in the final stages of a 2-year chronic toxicity/oncogenicity study of TCEA in rats and mice. Both species were exposed using the inhalation route to 150, 500, or 1,500 ppm of TCEA for 6 hours/day, 5 days/week for 24 months. Dow Chemical Company has submitted to the Agency a final report on the chronic inhalation toxicity and oncogenicity of a commercial preparation containing greater than 90% TCEA (Ref. 23). The Agency is currently evaluating the study and the evaluation will be placed into the public docket when completed. The Agency is awaiting the final report from the NTP study. Should the Agency decide that a data insufficiency exists after Agency review of the final NTP report then EPA reserves the right to require an additional oncogenicity study.

3. *Mutagenicity.* Industry commentors stated that the preponderance of available data support the position that 1,1,1-trichloroethane lacks any significant genetic activity and,

therefore, mutagenicity testing is unnecessary. The Agency did not believe existing data were sufficient to predict the mutagenicity of TCEA and has gone forward with its own testing as outlined in the notice of proposed rulemaking (46 FR 30300).

EPA has examined 1,1,1-trichloroethane (Aldrich Chemical Co., 97 percent pure) in a number of *in vitro* assays for genotoxicity. Specifically, TCEA was found to be non-mutagenic under the conditions of the test for Salmonella tester strains TA1535, TA1537, and TA100 in the Ames test in the presence and absence of S–9 activation systems. When examined in the hepatocyte primary culture/DNA repair test, TCEA elicited a positive response at 10^{-6} to 10^{-3}M (noncytotoxic doses) using hepatoytes from male B6C3F1 mice, but did not affect DNA repair when hepatocytes from Osborne Mendel rats were used. TCEA was also able to transform BALB/C–3T3 cells, *in vitro*, at noncytotoxic doses of 20 μg/ml to 250 μg/ml. In addition, TCEA significantly enhanced transformation of Syrian hamster embryo cells by SA7 adenovirus (Refs. 19, 20, 21, and 22).

Experiments to test TCEA in the Drosphila sex-linked recessive lethal assay are currently underway and results from this assay are expected to be available to the Agency in October, 1984. The Agency reserves the right to initiate rulemaking to require higher-tiered mutagenicity studies after it has completed a review of all the ongoing lower-tiered study results (see Unit III. D).

B. Environmental Effects Testing

A number of industry commentors addressed issues involving environmental testing of 1,1,1-trichloroethane. Although the commentors agreed that TCEA is produced in substantial quantities, they believed that the volatility (vapor pressure equals 99.75 mm Hg at 20 °C) of TCEA would not allow TCEA to be found in the environment in concentrations sufficient to produce adverse environmental effects. The commentors further maintained that the environmental information submitted to the Agency is sufficient to reasonably determine or predict the risk that TCEA may present to the environment. In support of their contention, the commentors supplied the Agency with information on the environmental concentrations of TCEA, the chemical fate of TCEA, and the aquatic and avian toxicity of TCEA.

Subsequent to the proposed rule, the Agency has performed a materials balance analysis for TCEA, has reevaluated the chemical and physical properties of TCEA, and has reexamined the toxicity data in relation to both the monitoring and environmental fate data. In addition, the Agency has reviewed and evaluated the comments and data submitted by industry. Based on its review of industry comments and the evaluation of the available data, the Agency now believes that sufficient data are available to reasonably predict the environmental effects of TCEA.

EPA agrees with the comments noted above which state that TCEA's volatility make it unlikely that substantial concentrations of the chemical will be found in the aquatic or terrestrial environments. Available monitoring data confirm that environmental concentrations are quite low. Most of these reported levels are in the low ppb range (water=8–17 ppb, soil/sediments=3–6 ppb, air=10–15 ppb) (Ref. 6).

Moreover, these measured concentration levels of TCEA are far below those concentrations which cause acute toxicity in mammalian, aquatic, avian and terrestrial species. For example, the acute oral toxicity (LD_{50}'s) for TCEA in the mouse and rat are between 11 to 12 g/kg. Acute toxicity tests performed on aquatic vertebrates and invertebrates yielded LC_{50} values of 9.7 to 52.8 mg/l (9.7 to 52.8 ppm) in flow-through experiments or in experiments where procedures to limit losses due to volatilty were followed (Ref. 6). Studies done on species of algae gave EC_{50}'s greater than 669 mg/l (669 ppm). Acute toxicity in avian species produced an oral LD_{50} greater than 2,510 mg/kg. As shown above, levels of TCEA in water, air and soil are in the low ppb range. Because TCEA produces toxicity in a large variety of sensitive species only at doses which are far above (by a factor of 500 or greater) the levels found in the environment, the Agency has concluded that it can reasonably predict that the chemical (at present levels of environmental exposure) does not pose an unreasonable risk to mammalian, aquatic, avian, or terrestrial species.

Finally, the materials balance analysis and environmental fate data (Ref. 12) also allow the Agency to predict TCEA's fate and distribution in the environment. These data provide additional support for the belief that the concentrations of TCEA found in the environment are low.

Therefore, taking all of these data into consideration, EPA believes that sufficient data are now available to reasonably determine or predict the environmental effects of TCEA. Thus, EPA is withdrawing its proposal to require environmental effects testing of TCEA.

C. Test Substance

Bendix Environmental Research stated that a test substance stabilized with 0.5 percent butylene oxide is not appropriate because if positive results are seen in any test it will have to be repeated to find out whether TCEA or butylene oxide is responsible for the effect observed. The Agency agrees that this is a problem encountered when testing mixtures. However, the Agency has chosen TCEA stabilized with butylene oxide because of the difficulty in obtaining and working with the pure chemical. Based on the NTP testing experience, the Agency has decided to require that testing be conducted utilizing a TCEA of purity greater than 99.7 percent and stabilized with less than 0.1 percent butylene oxide. NTP obtained this formulation from the Dow Chemical Company.

D. EPA Testing

Both Proctor and Gamble and Atlantic Richfield noted that EPA intended to perform certain tests (i.e., mutagenicity) for which test standards had not yet been adopted by EPA. They questioned how the Agency will be able to perform the tests itself if it is unable to provide suitable guidance to others.

Subsequent to the proposal, the Agency developed guidelines for conducting mutagenicity testing, including triggers to go from lower to higher tier testing. However, in the case of TCEA a separate proposal would be required if the Agency wanted to have industry conduct the mutagenicity testing. Because it wanted at least preliminary mutagenicity results sooner than would be possible through rulemaking, the Agency decided to proceed with EPA-sponsored testing. After the Agency has evaluated the results of the lower-tiered mutagenicity tests, EPA may propose a test rule to require higher tiered mutagenicity tests if needed.

IV. Final Test Rule for 1,1,1-Trichloroethane

A. Findings

The EPA is basing the final testing requirements for TCEA on the authority of section 4(a)(1)(B). of TSCA. EPA finds that TCEA is produced in substantial quantities and that there is substantial occupational and consumer exposure to TCEA resulting from its manufacture, processing, and use. The bases for these findings, which are summarized below, are set forth in the Agency's TCEA support document (Ref. 6), which is hereby incorporated by reference.

Approximately 586 million pounds of TCEA were produced in the United States in 1983 (Ref. 8). TCEA is used in the metal cleaning industry which provides the potential for a large number of people to be exposed to TCEA. In the National Occupational Hazard Survey (NOHS) approximately 2.6 million workers were estimated to be exposed to TCEA (Ref. 3). TCEA has been identified in a substantial number of consumer products with the potential for many millions of people exposed to TCEA as a consequence of consumer use (Ref. 6).

In addition, the Agency believes that available data are insufficient to reasonably predict or determine the developmental toxicity of TCEA and that testing is necessary to develop such data. (See Unit III.A.1)

B. Required Testing

The Agency believes that adequate developmental toxicity tests for TCEA should be done in two mammalian species (a rat and a non-rodent species). It is well documented that various animal species have differing sensitivities to chemicals being tested for developmental toxicity (Refs. 9, 10, and 11). Thus, a negative developmentally toxic response in a single mammalian species does not necessarily mean that the chemical being tested is not a developmental hazard. The Agency believes that multispecies testing is a more sensitive means of detecting developmental hazards than single species testing (Refs. 9, 10 and 11). Testing TCEA in the rat and a non-rodent mammalian species will provide the Agency with the data needed to reasonably determine or predict whether TCEA poses a risk of developmental toxicity to humans.

Therefore, the Agency believes that developmental toxicity testing should be performed via inhalation in the rat and a non-rodent mammalian species and that some sign of maternal toxicity should be demonstrated at the highest dose in each species.

The EPA is requiring that a developmental toxicity study or studies on TCEA be conducted by the inhalation route. Although the Agency is currently preparing a guideline for inhalation developmental toxicity, which is expected to be available by Fall, 1984, at the present time there is no TSCA Guideline for this test and EPA suggests using a modified version of the protocol submitted by the Chemical Manufacturers Association (CMA) for inhalation teratogenicity of isophorone in the rat and mouse. A copy of this protocol is in the public record for this rulemaking, docket number [OPTS-42029]. The Agency believes that two modifications should be made to this protocol:

1. Rats and a non-rodent mammalian species should be utilized instead of rats and mice. EPA recommends, but does not require, rabbits as the non-rodent species.

2. EPA does not specify the strains or precise ages of the animals to be used; it recommends only that young adult rats and rabbits be used. The CMA protocol can be easily revised to reflect developmental toxicity protocols for TCEA and test sponsors will need to specify species, age, strain and number of animals used, dose delivery system for inhalation exposure, and chamber monitoring procedures. All data must be developed and reported in accordance with the TSCA Good Laboratory Practice Standards in 40 CFR Part 792.

Should the TSCA Guideline for inhalation developmental toxicity become available at a time consistent with the time requirements for submission of study plans, then the Guideline should also be consulted for appropriate study design.

C. Test Substance

EPA is requiring a 1,1,1-trichloroethane test substance containing less than 0.1 percent butylene oxide stabilizer for use in the test required in this rule. This product is 99.7 percent pure and contains the least amount of stabilizer of any product available. It is similar to the formulation used in NTP's oncogenicity bioassay on 1,1,1-trichloroethane and can be obtained from the Dow Chemical Company.

D. Persons Required To Test

Several industry commentors stated that only manufacturers and not processors should be required to conduct the tests. One commentor recommended that the Agency categorically exclude "downstream or indirect processors."

Section 4(b)(3)(B) of TSCA specifies that the activities for which the Administrator makes section 4(a) findings (manufacture, processing, distribution, use and/or disposal) determine who bears the responsibility for testing. Manufacturers are required to test if the findings are based on manufacturing ("manufacture" is defined in section 3(7) of TSCA to include "import"). Processors are required to test if the findings are based on processing. Both manufacturers and processors are required to test if the exposures giving rise to the potential risk occur during use, distribution, or disposal. Because EPA has found that the manufacturing, processing, and use of 1,1,1-trichloroethane give rise to substantial human exposure to TCEA, EPA is requiring that persons who manufacture or process, or who intend to manufacture or process this chemical, at any time from the effective date of this test rule to the end of the reimbursement period, be subject to the rule. The end of the reimbursement period will be 5 years after the final TCEA developmental toxicity report is submitted. As discussed in the Agency's test rule and exemption procedures (40 CFR Part 790), EPA expects that manufacturers will conduct testing and that processors will ordinarily be exempted from testing.

EPA is, however, exempting those manufacturers and processors which produce and process TCEA only as an impurity from these testing requirements. "Impurity" is defined in 40 CFR 790.3 to mean "a chemical substance which is unintentionally present with another chemical substance." The Agency is exempting those manufacturers and processors because the EPA's findings under section 4(a)(1)(B) are based on exposures to TCEA which are a result of intentional manufacture, processing, and use. In addition, it will be difficult for both EPA and manufacturers and processors to identify with complete assurance all chemical substances which contain TCEA as an impurity. Finally, the Agency would find it difficult to apply both the exemption and reimbursement processes to those who manufacture and/or process TCEA as an impurity. In fact, the Agency's reimbursement regulations issued pursuant to section 4(c) state that those who manufacture or process chemical substances as impurities will not be subject to test requirements unless the rule specifically states otherwise (40 CFR 791.48b).

Because TSCA contains provisions to avoid duplicative testing, not every person subject to this rule must individually conduct testing. Section 4(b)(3)(A) of TSCA provides that EPA may permit two or more manufacturers or processors who are subject to a test rule to designate one such person or a qualified third person to conduct the tests and submit data on their behalf. Section 4(c) provides that any person required to test may apply to EPA for an exemption from that requirement. The Agency anticipates that the current manufacturers of 1,1,1-trichloroethane will form the reimbursement pool and sponsor the testing required. Manufacturers and processors who are subject to the testing requirements of

this rule must comply with the test rules and exemption procedures in 40 CFR Part 790.

EPA is not requiring the submission of equivalence data as a condition for exemption from the required testing. As noted in Unit IV. C, EPA is interested in evaluating the effects attributable to TCEA itself and has specified a relatively pure substance for testing.

E. Test Rule Development

Under the regulations in 40 CFR Part 790, test rule development for TCEA will be a two-phase process. In the two-phase process, Phase I test rules will be promulgated for individual chemicals specifying the health and environmental effects and other characteristics for which test data are to be developed. In Phase II, following promulgation of the Phase I test rule, those persons subject to the rule will be required to develop study plans for the development of data pertaining to the effects and characteristics specified in the Phase I rule. Within 30 days from the effective date of the final Phase I test rule, manufacturers must submit to EPA a letter stating their intention to sponsor testing or an application for exemption. Test sponsors must submit their study plans to EPA within 90 days from the effective date of the Phase I test rule. After an opportunity for public comment, EPA will promulgate a rule adopting the study plans, as proposed or modified, as the chemical-specific test standards and schedules for the tests required by the Phase I rule. Testing would also be subject to EPA's generic TSCA GLP standards. Persons who submit the study plans will be obligated to perform the tests in accordance with the test standards and schedules developed. Modification to the adopted study plans can be made only with EPA approval.

Processors of TCEA will not be required to submit letters of intent, exemption applications and study plans and to conduct testing unless manufacturers fail to sponsor the required tests. The basis for this decision is that manufacturers are expected to indirectly pass the costs of testing on to processors through any price increase of TCEA.

F. Reporting Requirements

EPA is requiring that all data developed under this rule be reported in accordance with the TSCA Good Laboratory Practice (GLP) standards which were published in 40 CFR Part 792 (See 48 FR 53922, November 29, 1983). These final GLP standards apply to this rule.

EPA is required by TSCA section 4(b)(1)(C) to specify the time period during which persons subject to a test rule must submit test data. These deadlines will be established in the second phase of this rulemaking in which study plans are approved. The procedures for the second phase rulemaking are described in 40 CFR Part 790.

TSCA section 14(b) governs Agency disclosure of all test data submitted pursuant to section 4 of TSCA. Upon receipt of data required by this rule, the Agency will publish a notice of receipt in the Federal Register as required by section 4(d).

G. Enforcement Provisions

The Agency considers failure to comply with any aspect of a section 4 rule to be a violation of section 15 of TSCA. Section 15(1) of TSCA makes it unlawful for any person to fail or refuse to comply with any rule or order issued under section 4. Section 15(3) of TSCA makes it unlawful for any person to fail or refuse to: (1) Establish or maintain records, (2) submit reports, notices, or other information, or (3) permit access to or copying of records required by the Act or any regulation issued under TSCA.

Additionally, TSCA section 15(4) makes it unlawful for any person to fail or refuse to permit entry or inspection as required by section 11. Section 11 applies to any "establishment, facility, or other premises in which chemical substances or mixtures are manufactured, processed, stored, or held before or after their distribution in commerce . . . ." The Agency considers a testing facility to be a place where the chemical is held or stored and, therefore, subject to inspection. Laboratory audits/inspections will be conducted periodically in accordance with the procedures outlined in TSCA section 11 by designated representatives of the EPA for the purpose of determining compliance with the final rule for 1,1,1-trichloroethane. These inspections may be conducted for purpsoes which include verification that testing has begun, that schedules are being met, that reports accurately reflect the underlying raw data and interpretations and evaluations thereof, and that the studies are being conducted according to the TSCA GLP standards and the test standards established in the second phase of this rulemaking.

EPA's authority to inspect a testing facility also derives from section 4(b)(1) of TSCA, which directs EPA to promulgate standards for the development of test data. These standards are defined in section 3(12)(B) of TSCA to include those requirements necessary to assure that data developed under testing rules are reliable and adequate, and such other requirements as are necessary to provide such assurance. The Agency maintains that laboratory inspections are necessary to provide this assurance.

Violators of TSCA are subject to criminal and civil liability. Persons who submit materially misleading or false information in connection with the requirement of any provision of this rule may be subject to penalties calculated as if they had never submitted their data. Under the penalty provision of section 16 of TSCA, any person who violates section 15 could be subject to a civil penalty of up to $25,000 per day for each violation. Intentional violations could lead to the imposition of criminal penalties of up to $25,000 for each day of violation and imprisonment for up to one year. Other remedies are available to EPA under sections 7 and 17 of TSCA, such as seeking an injunction to restrain violations of TSCA section 4.

Individuals as well as corporations could be subject to enforcement actions. Sections 15 and 16 of TSCA apply to "any person" who violates various provisions of TSCA. EPA may, at its discretion, proceed against individuals as well as companies themselves. In particular, this includes individuals who report false information or who cause it to be reported. In addition, the submission of false, fictitious, or fraudulent statements is a violation under 18 U.S.C. 1001.

V. Economic Analysis of Rule

To assess the economic impact of this rule, EPA has prepared an economic evaluation (Ref. 8) that examines the cost to the required testing and analyzes four market characteristics of TCEA: (1) Price sensitivity of demand, (2) industry cost characteristics, (3) industry structure, and (4) market expectations. The costs of conducting the developmental toxicity test are estimated to range from $62,134 to $186,403, with annualized costs ranging from $16,000 to $48,300 (Ref. 8). Based on these test costs and an analysis of the four market characteristics of TCEA, the economic evaluation indicates that the potential for a significant adverse economic impact as a result of this test rule is low. This conclusion is based on the following observations (Ref. 8):

1. The demand for 1,1,1-trichloroethane is relatively inelastic due to select performance advantages in its major uses.

2. The market expectations for 1,1,1-trichloroethane are generally favorable.

3. The relative magnitude of the test cost is negligible (i.e., an estimated 0.008 cents per pound in the upper bound case); this represents 0.03% of the sales value of TCEA.

VI. Availability of Test Facilities and Personnel

Section 4(b)(1) of TSCA requires EPA to consider "the reasonably foreseeable availability of the facilities and personnel needed to perform the testing required under the rule." Therefore, EPA conducted a study to assess the availability of test facilities and personnel to handle the additional demand for testing services created by section 4 test rules and test programs negotiated with industry in place of rulemaking. Copies of the study, "Chemical Testing Industry: Profile of Toxicological Testing," October, 1981, can be obtained through the NTIS under publication number PB 82–140773.

On the basis of this study, the Agency believes that there will be available test facilities and personnel to perform the testing required in this test rule.

VII. Judicial Review

Judicial review of this final rule may be available under section 19 of TSCA in the United States Court of Appeals for the District of Columbia Circuit or for the circuit in which the person seeking review resides or has its principal place of business. To provide all interested persons an equal opportunity to file a timely petition for judicial review and to avoid so-called "races to the courthouse," EPA has decided to promulgate this rule for purposes of judicial review two weeks after publication in the **Federal Register**, as reflected in **"DATES"** in this notice. The effective date has, in turn, been calculated from the promulgation date.

VIII. Rulemaking Record

EPA has established a record for this rulemaking (docket number OPTS–42059). This record includes the basic information the Agency considered in developing this rule, and appropriate **Federal Register** notices. The Agency will supplement the record with additional information as it is received. Confidential Business Information (CBI), while part of the record, is not available for public review. A public version of the record, from which CBI has been deleted, is available for inspection from 8:00 a.m. to 4:00 p.m., Monday through Friday, except legal holidays, in Room E–107, 401 M Street, SW, Washington, D.C.

This record includes the following information:

(1) **Federal Register** notices pertaining to this rule consisting of:

(a) Notice of final rule on 1,1,1-trichloroethane.

(b) Notice of proposed rule on 1,1,1-trichloroethane (46 FR 30300).

(c) Notice containing the ITC designation of 1,1,1-trichloroethane to the Priority List (43 FR 16684).

(d) Notice of final rule on EPA's TSCA Good Laboratory Practice Standards (48 FR 53922).

(e) Notice of final rule on test rule development and exemption procedures.

(f) Notice of final rule concerning data reimbursement.

(2) Supports documents consisting of:

(a) 1,1,1-trichloroethane support document.

(b) Economic impact analysis of final test rule for 1,1,1-trichloroethane.

(3) Communications consisting of:

(a) Written public comments.

(b) Summaries of telephone conservations.

(c) Meeting summaries.

(d) Reports—published and unpublished factual materials, including contractors' reports.

(4) Test protocol for an inhalation teratogenicity study.

IX. Classification of Rule

Under Executive Order 12291, EPA must judge whether a regulation is "major" and, therefore, subject to the requirement of a Regulatory Impact Analysis. The regulation for this chemical substance is not major because it does not meet any of the criteria set forth in section 1(b) of the order. First, the annual costs of testing are less than $50,000 over the expected market life of TCEA. Second, because the cost of the required testing will be distributed over a large production volume, the rule will have only very minor effects on producers' costs or users' prices for this chemical substance. Finally, taking into account the nature of the market for this substance, the low level of costs involved, and the expected nature of the mechanisms for sharing the costs of the required testing, EPA concludes that there will be no significant adverse economic impact of any type as a result of this rule.

This regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Any comments from OMB to EPA, and any EPA response to those comments, are included in the public record.

X. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (15 U.S.C. 601 *et seq.*, Pub. L. 96–354, September 19, 1980), EPA certifies that this test rule will not have a significant impact on a substantial number of small businesses for the following reasons:

1. There are no small manufacturers of 1,1,1-trichloroethane.

2. Small processors will not perform testing themselves, or will not participate in the organization of the testing effort.

3. Small processors will experience only minor costs if any in securing exemption from testing requirements.

4. Small processors are unlikely to be affected by reimbursement requirements.

XI. Paperwork Reduction Act

The information collection requirements contained in this rule have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* and have been assigned OMB number 2070–0033.

XII. References

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(11) USEPA. U.S. Environmental Protection Agency. Rationale for Requiring Teratogenicity Testing in Two Species. Washington, D.C.: Office of Pesticides and Toxic Substances, USEPA. 1981.

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(17) USEPA. U.S. Environmental Protection Agency. Health Effects Test Guidelines: Teratogenicity Study. Washington D.C.: Office of Pesticides and Toxic Substances, USEPA, PB 83–257691. October, 1983.

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List of Subjects in 40 CFR Part 799

Testing, Environmental protection, Hazardous material, Chemicals.

(Sec. 4, Pub. L. 94–469, 90 Stat. 2006; 15 U.S.C. 2603)

Dated: September 14, 1984.

William D. Ruckelshaus,

Administrator.

Therefore, Chapter I of 40 CFR is amended by adding Part 799 to read as follows:

PART 799—IDENTIFICATION OF SPECIFIC CHEMICAL SUBSTANCE AND MIXTURE TESTING REQUIREMENTS

Subpart A—General Provisions

Sec.

799.1 Scope and purpose.
799.2 Applicability.
799.3 Definitions.
799.5 Submission of information.
799.10 Test standards.
799.11 Availability of test guidelines.
799.12 Test results.
799.17 Effects on non-compliance.

Subpart B—Specific Chemical Test Rules

799.4400 1,1,1-Trichloroethane.

Authority: Section 4, Section 12, and Section 26, Toxic Substances Control Act (TSCA, 90 Stat. 2006, 2033, 2047; 15 U.S.C. 2603, 2611, 2625).

Subpart A—General Provisions

§ 799.1 Scope and purpose.

(a) This part identifies the chemical substances, mixtures, and categories of substances and mixtures for which data are to be developed, specifies the persons required to test (manufacturers, including importers, and/or processors), specifies the test substance(s) in each case, prescribes the tests that are required including the test standards, and provides deadlines for the submission of reports and data to EPA.

(b) This part requires manufacturers and/or processors of chemical substances or mixtures ("chemicals") identified in Subpart B to submit letters of intent to test, exemption applications, and study plans in accordance with EPA test rule development and exemption procedures contained in Part 790 of this chapter and any modifications to such procedures contained in this part.

(c) This part requires manufacturers and/or processors of chemicals identified in Subpart B to conduct tests and submit data in accordance with the test standards contained in this part in order to develop data on the health and environmental effects and other characteristics of these chemicals. These data will be used to assess the risk of injury to human health or the environment presented by these chemicals.

§ 799.2 Applicability.

This part is applicable to each person who manufactures or intends to manufacture (including import) and/or to each person who processes or intends to process a chemical substance or mixture identified in Subpart B for testing during the period commencing with the effective date of the specific chemical test rule until the end of the reimbursement period. Each set of testing requirements in Subpart B specifies whether those requirements apply to manufacturers only, to processors only, or to both manufacturers and processors.

§ 799.3 Definitions.

The definitions in section 3 of the Toxic Substances Control Act (TSCA) and the definitions of § 790.3 of this chapter apply to this part.

§ 799.5 Submission of information.

Information (letters, study plans, reports) submitted to EPA under this part must bear the Code of Federal Regulations (CFR) section number of the subject chemical test rule (e.g. § 799.4400 for 1,1,1-trichloroethane) and must be addressed to: Document Control Office (TS–793), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Washington, D.C. 20460.

§ 799.10 Test standards.

Testing required under Subpart B must be performed using a study plan prepared according to the requirements of Parts 790 and 792 of this chapter unless modified in specific chemical test rules in Subpart B. All raw data, documentation, records, protocols, specimens and reports generated as a result of a study under Subpart B must be developed, reported, and retained in accordance with TSCA Good Laboratory Practice Standards (GLP's) in Part 792 of this chapter. These items must be made available during an inspection or submitted to EPA upon request by EPA or its authorized representative. Laboratories conducting testing for submission to the Agency in response to a test rule promulgated under section 4 of TSCA must adhere to the TSCA GLP's. Sponsors must notify the laboratory that the study is being conducted pursuant to TSCA § 4. Sponsors are also responsible for ensuring that laboratories conducting the test abide by the TSCA GLP standards. In accordance with § 792.12 of this chapter, a certification concerning adherence to the TSCA GLP's must be submitted to EPA.

§ 799.11 Availability of test guidelines.

The TSCA and FIFRA guidelines for the various study plans are available from the National Technical Information Service (NTIS). Address and telephone number: National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161 (703–487–4650).

The OECD guidelines for the various study plans are available from the following address: OECD Publication and Information Center, 1750 Pennsylvania Ave., NW., Washington, D.C. 20006 (202–724–1857).

§ 799.12 Test results.

Except as set forth in specific chemical test rules in Subpart B of this part, a positive or negative test result in any of the tests required under Subpart B is defined in the TSCA test guidelines published by NTIS.

§ 799.17 Effects of non-compliance.

Any person who fails or refuses to comply with any aspect of this part or Part 790 is in violation of section 15 of TSCA. EPA will treat violations of Good Laboratory Practice Standards as indicated in § 792.17 of this chapter.

Subpart B—Specific Chemical Test Rules

§ 799.4400 1,1,1-Trichloroethane.

(a) *Identification of chemical test substance.* 1,1,1-Trichloroethane (CAS No. 71–55–6, also known as methyl chloroform) shall be tested in accordance with this part.

(b) *Identification of test substance.* 1,1,1-Trichloroethane stabilized with less than 0.1 percent butylene oxide shall be used as the test substance in all tests.

(c) *Persons required to submit study plans, conduct tests and submit data.* All persons who manufacture or process 1,1,1-trichloroethane, other than as an impurity, from November 23, 1984, to the end of the reimbursement period shall submit letters of intent to test, exemption applications, and study plans and shall conduct tests and submit data as specified in this section, Subpart A of this part and Part 790 of this chapter (Test Rule Development and Exemption Procedures). (Information collection requirements approved by the Office of Management and Budget under control number 2070–0033.)

(d) *Health effects testing*—(1) Developmental toxicity—(i) *Required testing.* A test for developmental toxicity shall be conducted with 1,1,1-trichloroethane.

(ii) *Study plans.* For guidance in preparing study plans, it is recommended that the inhalation teratogenicity study design submitted by the Chemical Manufacturers Association (CMA) for inhalation teratology of isophorone in the rat and mouse be consulted. A TSCA Guideline for inhalation developmental toxicity is currently being prepared by the Agency and is expected to be available by Fall, 1984. If available, it should also be consulted for appropriate study design. A copy of the CMA protocol is available in the public record for this rulemaking, docket number (OPTS–42059). Testing should, however, be conducted on the rat and a non-rodent mammalian species.

(2) [Reserved].

[FR Doc. 84–26713 Filed 10–9–84; 8:45 am]

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federal register

Wednesday
October 10, 1984

Part V

Environmental Protection Agency

Dicofol; Proposed Notice of Intent To Cancel Registration of Pesticide Products Containing Dicofol; Notice of Intent To Deny Registration of Dicofol Products; Availability of Position Document 2/3

ENVIRONMENTAL PROTECTION AGENCY

[OPP-30000/37A; FRL-2689-7]

Dicofol; Proposed Notice of Intent To Cancel Registration of Pesticide Products Containing Dicofol; Notice of Intent To Deny Registration of Dicofol Products; Availability of Position Document 2/3

AGENCY: Environmental Protection Agency (EPA).

ACTION: Preliminary Notice of Determination Concluding the Special Review of Pesticide Products Containing Dicofol; Notice of Intent to Deny Applications for Registration of Products Containing Dicofol; Proposed Notice of Intent to Cancel Registration of Products Containing Dicofol; Notice of Transmittal of Proposed Notice of Intent to Cancel to Secretary of Agriculture and Scientific Advisory Panel; Notice of Availability of Position Document.

SUMMARY: This Notice describes EPA's preliminary determination regarding the risks and benefits associated with the use of pesticide products containing dicofol to control mites on cotton, citrus, and other sites. EPA has concluded that because dicofol is contaminated with DDT, DDE, and chemically related compounds, its use will result in environmental exposure to these contaminants at levels which, together with existing environmental residues of DDT, DDE, and related compounds, pose a significant threat to nontarget wildlife, especially certain endangered species. EPA has also determined that for nearly all uses of dicofol there are effective, but sometimes more costly, potential alternative pesticides. As a result, use of alternatives instead of dicofol would likely lead to somewhat higher costs to control some mite infestations. On the whole, however, the benefits of dicofol do not outweigh its risks. Accordingly, EPA proposes to prohibit use of products containing dicofol. Specifically, EPA proposes to cancel all federal registrations of products containing dicofol. For products containing dicofol that are presently distributed only in intrastate commerce and are not federally registered, EPA proposes to take the necessary steps to deny the registration of these "intrastate" products. The regulatory position described in this Notice is supported by the Position Document 2/3 (PD 2/3) which is available from the contact person listed below. Copies of this Notice and PD 2/3 have been sent to the Secretary of Agriculture and the Scientific Advisory Panel for review and comment. Comments from the public are invited.

DATE: Written comments must be received on or before November 26, 1984.

ADDRESS: Comments should be sent to and are avaiable for review at: Information Services Section, Program Management and Support Divison (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, Room 236, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

In order to facilitate the work of the Agency and of others inspecting the comments, registrants and other interested persons should submit three copies of their comments. The comments should bear the identifying notation: OPP 30000.37A. All comments are available for public inspection from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Bruce Kapner, Special Pesticide Review Divison (TS-767c), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

Office location and telephone number: Rm. 711, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-7400).

Copies of the Position Document are available from Mr. Bruce Kapner.

SUPPLEMENTARY INFORMATION:

I. Introduction

Pesticide products containing the active ingredient dicofol have been registered in the United States since 1957. Dicofol is manufactured abroad, and technical formulations of the active ingredient are registered by Rohm and Haas Company, Makhteshim Agan Inc., and Aceto Agrichemicals Corp. Agency records indicate that there are 196 federally registered pesticide products containing the active ingredient dicofol. In addition, there are another 86 products, distributed solely in intrastate commerce, which contain dicofol. These "intrastate" products are not federally registered, nor is there a full application for registration of these products pending before the Agency. Because of this status, the Agency must employ special procedures to assure that persons marketing these products comply with the Agency's final regulatory decisions. Refer to Unit IV.B of this Notice for these procedures.

Dicofol products are registered to control mites on a wide variety of food and feed commodities, as well as on turf, ornamental plants, and house plants. Mites damage plants by sucking the juices from the leaves, stems, and fruit of the plant. This tends to cause defoliation, loss of plant vigor, and lower quality and quantity of yield.

An estimated 2.0 to 2.5 million pounds of dicofol are applied annually in the United States, and the volume used appears to be increasing gradually. Mite control on cotton and citrus accounts for about two thirds of dicofol usage. The remainder is used on seed crops, stone and pome fruits, figs, vegetables, small fruits, tree nuts, mint, ornamental plants, turf grasses, greenhouse crops, house plants and sites in and around domestic dwellings, and commercial and agricultural buildings.

Pursuant to FIFRA sec. 3(g), EPA conducts a comprehensive program to review the existing data on registered pesticide active ingredients and to impose data requirements and use conditions appropriate for continued registration of products with those active ingredients. The resulting requirements for continued registration are imposed on registrants through a Guidance Document for each active ingredient.

As a part of that program, the Agency evaluated the available data on dicofol and described its conclusions in a Guidance Document issued December 30, 1983. That review revealed that dicofol is contaminated with DDT, DDE, and/or closely related compounds that can cause significant adverse effects on nontarget wildlife. Therefore, EPA found that pesticide products containing dicofol meet one of the Agency's risk criteria for intensive review of the risks and benefits to determine whether continued registration will cause unreasonable adverse effects on the environment. Specifically, the Agency determined that use of dicofol "[c]an reasonably be anticipated to result in significant local, regional, or national population reductions in nontarget organisms, or fatalities to members of endangered species." See 40 CFR 162.11(a)(3)(ii)(C). Accordingly, the Guidance Document announced that the Agency would conduct a Special Review—formerly called the Rebuttable Presumption Against Registration (RPAR) process—for all registered pesticide products containing dicofol. Notice of the initiation of the Special Review was published in the Federal Register of March 21, 1984 (49 FR 10569).

The purpose of a Special Review is to collect and consider information relevant to the risks and benefits of a pesticide in order to determine whether products containing that pesticide meet the statutory standard for registration. Accordingly, in its Notice announcing the initiation of a Special Review, EPA invited comments from the public on its

analysis of the risks and its preliminary assessment of benefits.

Based on information received in public comments, as well as on additional analysis performed since the Special Review process began, EPA has made a preliminary determination of its regulatory position with respect to the registration of products containing dicofol. The Agency's position is set out in this Notice, and the basis for EPA's actions is explained more fully in the Agency's PD 2/3. Copies of the PD 2/3 are available upon request from the contact person listed at the beginning of this Notice.

As described in more detail in Unit III, EPA has determined that dicofol, when used in accordance with widespread and generally recognized practice, appears to cause unreasonable adverse effects on the environment. DDT and related contaminants of dicofol affect reproduction in fish and birds at low concentrations and are estimated to pose a significant potential hazard to several endangered bird species, as well as other fish and bird species. Further, EPA's analysis indicates that there are potential alternative for nearly all uses of dicofol, and therefore EPA expects that prohibiting the use of dicofol would not have significant adverse economic impacts on the agricultural economy. After consideration of restrictions on the use of dicofol as an alternative to cancellation, the Agency has determined that a prohibition on the use of dicofol is necessary to prevent unreasonable adverse effects on the environment. Accordingly, EPA proposes to cancel all Federal registrations of dicofol products and to deny Federal registration for intrastate products containing dicofol.

In accordance with the statute, EPA is sending a copy of this Notice and its PD2/3 to the Secretary of Agriculture and the Scientific Advisory Panel for the statutory 30-day review. EPA is also inviting public comment on these documents within 45 days. After reviewing any comments received within the applicable time limits, EPA will determine what final regulatory position and actions are appropriate.

II. Legal Background

In order to obtain a registration for a pesticide under the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (FIFRA), an applicant for registration must demonstrate that the pesticide satisfies the statutory standard for registration. That standard requires, among other things, that the pesticide perform its intended function without causing "unreasonable adverse effects on the environment." FIFRA sec. 3(c)(5). The term "unreasonable adverse effects on the environment" is defined as "any unreasonable risk to man or the environment, taking into account the economic, social and environmental costs and benefits of the use of any pesticide.'" FIFRA sec. 2(bb). This standard requires a finding that the benefits of the use of the pesticide exceed the risks of use, when the pesticide is used in compliance with the terms and conditions of registration or in accordance with commonly recognized practice.

The burden of proving that a pesticide satisfies the standard for registration rests on the proponents of registration and continues as long as the registration remains in effect. Under section 6 of FIFRA, the Administrator may cancel the registration of a pesticide or require modification of the terms and conditions of registration whenever he determines that the pesticide appears to cause unreasonable adverse effects on the environment.

In determining whether the risks of a registered pesticide outweigh its benefits, the Agency considers possible changes to the terms and conditions of registration which can reduce risks and the impacts of such modifications on the benefits of use. If the Agency determines that such changes reduce risks to the level where the benefits outweigh the risks, it may require that such changes be made in the terms and conditions of the registration. Alternatively, the Agency may determine that no change in the terms and conditions of a registration will adequately assure that use of the pesticide will not poise unreasonable adverse effects.

In that event, the Administrator may issue a notice of his intent to cancel the registration or to hold a hearing to determine whether it should be cancelled. FIFRA sec. 6(b). In determining whether to issue such a notice, the Administrator must take into account the impact of the action on production and prices of agricultural commodities, retail food prices, and otherwise on the agricultural economy. At least 60 days before formally issuing such a notice, he must inform the Secretary of Agriculture in writing of the substance of the proposed actions and supply the Secretary with an analysis of the expected impact on the agricultural economy. At the same time, the Administrator is required to submit the proposal to the Scientific Advisory Panel (Panel) for comment as to the impact on health and the environment of the action proposed in cancellation notices. FIFRA sec. 25(d).

EPA also follows a practice of informing the public of the Agency's proposals to issue cancellation notices so that registrants and other interested persons can also comment or provide relevant information before any final Notice of Intent to Cancel is issued. Registrants and other interested persons are invited to review the data upon which the proposal is based and to submit data and information to address whether the Agency's initial determination of risk was in error. In addition to submitting evidence relating to risk, commenters may submit evidence as to whether any economic, social and environmental benefits of use of the pesticides outweigh the risks of use.

If, after reviewing the comments received, EPA decides to issue a Notice of Intent to Cancel dicofol products, any adversely affected person may request a hearing to challenge the action. In the hearing, any party opposing cancellation would have an opportunity to present data, witness testimony, and other evidence to show that the registrations of dicofol should be permitted to continue. Other interested parties could intervene to present evidence in favor of cancellation. At the end of the hearing the Agency will decide on the basis of the evidence presented whether or not to cancel or restrict the registration of dicofol products. If no hearing is requested, each registration would be cancelled by operation of law 30 days after receipt by the registrant or publication in the **Federal Register** of the final notice, whichever occurs later.

III. Summary of Risk and Benefit Determinations and Proposed Regulatory Actions

The Agency has considered information relating to the risks of continued use of dicofol as well as the benefits to the agricultural economy derived from use of the chemical. Detailed discussion of the risk and benefit information considered by the Agency is found in the PD 2/3 which relates to this proposal. That document fully sets forth the reasons for issuing a notice of intent to deny applications and for proposing to issue a notice of intent to cancel registrations of pesticide products containing dicofol. The following summarizes the information contained in the PD 2/3.

A. Summary of Risk Determinations

The principal concern about the risk posed by continued dicofol use is that nontarget wildlife, particularly endangered species, may be adversely affected by DDT and related contaminants in dicofol pesticides. In addition, although EPA's analyses of all such studies are not completed, some

studies of the oncogenic effects of dicofol and two contaminants, DDT and DDE, have produced statistically significant increases in tumors in test species. Further, the Agency notes that preliminary test data indicate that the active ingredient dicofol itself may contribute to the levels of DDE in bird species, independently of the contribution made by associated DDT-related impurities.

1. *Composition of dicofol products.* All dicofol products unavoidably contain as impurities a group of chemically similar compounds including the o,p' and p,p' isomers of DDT, the o,p' and p,p' isomers of DDE, DDD, and a chemical referred to as extra chlorine DDT, a substance that resembles DDT except that it has an additional chlorine atom in the molecule. These DDT-related substances are collectively referred to as DDTr. The total amount of DDTr in different producers' dicofol products varies, and the proportions of the different impurities comprising the DDTr portion also vary. This information is considered trade secret or confidential business information. In its analyses, EPA has assumed that DDTr impurities constitute 10 percent of technical grade dicofol, which is a reasonable approximation of the average portion of DDTr found in registered technical dicofol products.

2. *Persistence and bioaccumulation.* Because of their very stable chemical structures, DDT and DDE are extremely persistent and remain in the environment for long periods of time. For example, the half-life—the amount of time required for half of the initial quantity of chemical applied to a site to degrade or otherwise disappear from the site—of DDT in desert soils is in the order of several years. DDE also has a half-life of several years. The half-life of a chemical depends upon the particular environmental conditions under which environmental dissipation is being measured.

Both DDT and DDE are also bioaccumulative. Because these compounds are fat soluble, once ingested they tend to remain in the tissues of an organism through its lifetime. As those organisms are eaten by other species higher in the food chain, the ingested DDT and DDE tend to accumulate in the body tissues of the longer lived species toward the top of the food chain. Thus, for example, relatively low levels of DDT and DDE in aquatic invertebrates, an important food source for some fish, will result in considerably higher levels of DDT and DDE in the fish eating these invertebrates. Likewise, the birds feeding on DDT- and DDE-contaminated fish will typically have higher body burdens of those chemicals than does the food (fish) they eat. Field studies using fish have shown that the concentration of DDT in fish can be over one million times the concentration of DDT in the water from which the fish were taken. EPA expects that, like DDT and DDE, the other constituents of DDTr are persistent and bioaccumulative because of the strong chemical similarities of these chemicals to DDT and DDE.

3. *Toxicity of DDTr to birds.* Prior to the introduction of DDT into the environment, historical records and museum specimens show that eggshell thinning was not a problem in birds. A massive quantity of reliable information conclusively establishes that DDT and its metabolite DDE cause eggshell thinning and adversely affect reproduction and species survival of some birds. The cancellation of most DDT pesticide registrations in 1972 has been followed by a remission in severe eggshell thinning in many species.

Laboratory studies have demonstrated that dietary exposure of birds to DDE at low levels, often in the 0.6 ppm to 3.0 ppm range, will cause significant thinning of eggshells. Effects have been experimentally demonstrated in a wide variety of species: mallard, black duck, ring dove, American kestrel, barn owl, and screech owl.

Analysis of eggshells collected in the field from a number of bird species has revealed a significant correlation between the level of DDE in the eggs and the reduction of shell thickness; the higher the level of DDE, the thinner the shells. Some species for which such correlations have been found include bald eagle, brown pelican, white pelican, great blue heron, black-crowned night heron, peregrine falcon, black duck, American kestrel, and osprey. Significant reductions in osprey, brown pelican, and bald eagle populations have been linked to those reproductive effects. The extinction of the American peregrine falcon as a breeding species east of the Rocky Mountains has been attributed primarily to use of DDT.

Laboratory data for DDE indicate that the "no-effect" level for eggshell thinning is somewhere below 1 ppm in the diet. Laboratory research with black ducks shows that they produce significantly thinner shells when exposed to dietary concentrations of 0.6 ppm of DDE. Other data suggest that barn owls are more sensitive than black ducks. Thus, even though barn owls have not been tested at this dose level, it is reasonable to expect that they too would exhibit effects from dietary exposures less than 1 ppm. Because there appear to be at least two species sensitive to eggshell thinning at levels below 1 ppm, EPA considers it prudent to assume that those endangered avian species, which may be exposed and which cannot be tested, are at least as sensitive. This is especially true in light of factors in the wild which could render wild birds more sensitive than the laboratory results would indicate. Such factors include the longer durations of exposure in the wild and simultaneous exposure to other toxicants.

The conclusion that dietary exposures below 1 ppm will have significant adverse effects on avian reproduction is supported by a substantial body of field data. While the field monitoring studies lack controlled or precisely known exposure information, they also provide important indications of the dietary concentrations of DDE that are toxic to birds. Bald eagles in Maine during the 1960s and 1970s experienced eggshell thinning and significantly impaired reproduction. During this same time period, DDE residues in eels and fish, which comprise 90 percent of the bald eagle diet in Maine, were below 0.3 ppm. Other data suggest that eastern brown pelicans may be producing thinning eggshells from feeding on food possibly containing as little as 0.1 ppm DDE. In Australia, monitoring of peregrine falcons found an average of 0.11 ppm DDE in the prey species, and eggshells were 20.4 percent thinner than those from the years prior to use of DDT. Other information on California brown pelicans supports similar inferences.

In addition to eggshell thinning, DDE also induces behavioral disturbances that interfere with reproduction and survival. Feeding DDE to turtledoves suppressed courtship behavior and increased time to renesting. Egg disappearance in kestrels fed 3 ppm of DDE was higher than in controls, and offspring of mallards fed 0.6 ppm DDE (wet weight) retreated shorter distances from frightening noises than did young from untreated birds.

EPA has data indicating that dicofol fed to the bobwhite may result in higher levels of DDE in the birds' livers than can be attributed to the DDTr contaminants in dicofol. At three comparable test concentrations, the livers of dicofol-treated birds contained 15 percent to 51 percent of the amount of DDTr found in DDT-treated birds. Because the DDTr contamination of dicofol in this test was lower than 15 percent at all treatment levels, it is possible that some of the dicofol was

metabolized to DDE in this avian species.

Taken collectively, EPA finds that this body of information supports a conclusion that dietary exposure to DDE at levels lower than 1.0 ppm and, for some species, possibly lower than 0.5 ppm, will cause significant adverse effects on avian reproduction. Moreover, the scientific uncertainty concerning "no-effect" levels and the continuing reproductive problems in some wild populations require a prudently cautious regulatory approach to any identifiable sources of continued DDTr pollution, such as dicofol.

4. *Fish toxicity of DDTr.* Exposure of fish to DDT- or DDE-contaminated food or water can interfere with fish reproduction. Studies have shown a correlation between the reproductive failure of sea trout and high DDT residues in menhaden, a fish species that is a major source of food for sea trout. Flounder eggs in seawater containing 2 ppb DDT showed abnormal development, and 39 percent of the exposed larvae had vertebral deformities at hatching.

In another experiment, freshwater lake trout were exposed to water and diet containing 1, 5, and 25 parts per trillion (ppt) DDE and 0.1, 0.5, and 2.5 ppm DDE, respectively. Fry mortality was significantly higher than controls at all exposure levels. The lowest dose level (1 ppt DDE in water and 0.1 ppm DDE in diet) is comparable to the exposure currently received by lake trout fry in Lake Michigan, a population that is being maintained only by stocking.

5. *Environmental levels of DDTr.* Nationwide levels of DDT and related compounds have generally declined since the 1972 cancellation of pesticide registrations of DDT products. The most recent monitoring data suggest, however, that DDE residues in fish, currently about 0.4 ppm, may have stabilized or are declining slowly. A similar trend may be emerging for DDE residues in starlings, which presently average about 0.15 ppm. Likewise, although DDE residues in the wings of mallards and black ducks have declined since 1969, none of those decreases after 1976 has been statistically significant. Furthermore, the residues of DDE in ducks from the Pacific Flyway States (Colorado, Oregon, Arizona, and New Mexico) actually increased.

In addition to examining national trends, the Agency has analyzed monitoring data from four States, in which large amounts dicofol are used: California, Arizona, Texas, and Florida. More than 70 percent of all dicofol used is applied in these States. The use of dicofol is further concentrated in certain parts of these States. When data permits, EPA has also attempted to examine available residue data from localities within States where dicofol use is most concentrated.

In California, DDE residues are generally above the national average throughout the State, particularly in the San Joaquin Valley, where dicofol is heavily used on cotton and other crops. Starlings have been monitored at nine locations since the early 1970s, and the residues of DDE have consistently been two to three times higher than the national average. At monitoring sites in four California counties (including two located in the San Joaquin Valley), DDE residues in starlings have fluctuated between 1.25 and 3.50 ppm since 1972. Moreover, even though DDE residues in duck wings declined between 1976 and 1979, the decrease was not statistically significant, paralleling the national trend toward a leveling off of residues. Monitoring by the State of California has shown that residues of DDTr in fish from the San Joaquin Valley and Imperial Valley have consistently exceeded the 1 ppm level. Analysis of fish monitoring data for the San Joaquin Valley stations failed to show a significant decline since 1976; rather, levels have remained relatively constant throughout the monitoring period.

In Arizona, monitoring data show DDE residues in birds and fish to be among the highest in the nation. Starlings examined in Maricopa County, the major agricultural county in the State and one of three counties where dicofol is heavily used, have had DDE residues of 9.44 ppm in 1972, 5.00 ppm in 1976, 6.44 ppm in 1979, and 8.4 ppm in 1982. These residues were the highest observed in the country in 1972 and 1982 and the fifth and second highest in 1976 and 1979, respectively. In 1979–80, duck wings from Arizona and western New Mexico had the highest mean residue in the nation (1.22 ppm). DDE residues in fish are similarly high. In 1980, fish samples from Maricopa County showed DDE at 9.56 ppm in channel catfish, 5.78–6.86 ppm in carp, and 7.53 ppm in largemouth bass. Results of 1983 monitoring efforts show continuing high levels: 1.4–7.9 ppm of DDE in carp and 5.0 ppm of DDE in catfish.

Southern Texas, where dicofol is heavily used on citrus, also has high DDE residues. Elevated levels of DDE, ranging up to 31.5 ppm in channel catfish, have been found in freshwater fish throughout the drainage area of the Arroyo Colorado River, in Hidalgo and Cameron counties in Texas. Fish-eating birds were also examined, and laughing gulls had residues up to 34 ppm. DDE residues in great-tailed grackles (14 ppm) and red-winged blackbirds (4.1 ppm) also suggested that terrestrial food chains were significantly contaminated with DDE. Migratory shorebirds have been shown to increase their body levels of DDE significantly while wintering in this area.

DDE residues in Florida are not as elevated as in Arizona, Texas, and California, but they are still in the range estimated to cause significant adverse environmental effects. In Florida, dicofol is used primarily in the cultivation of citrus. Monitoring data indicate that fish from Lake Apopka, a freshwater lake in Florida's citrus region, have estimated whole-body mean residues of DDTr over 0.5 ppm. In addition, data also suggest that the level of DDE appears to be leveling off in one citrus-growing area of Florida for which long-term monitoring data are available.

In summary, regions where dicofol use is concentrated generally have higher levels of DDE than the rest of the country, and these residues may exceed levels known to cause adverse effects on avian and fish reproduction.

6. *Dicofol's contribution to ambient DDTr residues.* Using a variety of approaches, EPA has determined that use of dicofol is a significant contributor to the overall burden of DDT and related compounds in the environment.

One approach was to calculate the amount of DDTr added to the environment from the amount of dicofol applied. Approximately one million pounds of dicofol are applied annually in California, and assuming 10 percent contamination with DDTr, this is equivalent to 100,000 pounds or 50 tons of DDTr yearly. The annual contributions of DDTr for Arizona, Texas, and Florida are 12,600 pounds, 15,400 pounds, and 85,700 pounds, respectively.

EPA recognized that much of the DDE detected in the environment in recent years is the result of the gradual dissipation of DDT pesticides applied prior to their cancellation in 1972. To evaluate the relative contributions of pre-1972 use of DDT and past and current use of dicofol, EPA prepared a mass-balance analysis for Kings County in the San Joaquin Valley of California. Based on the assumption that dicofol use will not increase and other assumptions detailed in PD 2/3, the analysis demonstrated that, by 1984, a reasonable estimate of the environmental loading of DDTr from pre-1972 use of DDT was about 850,000 pounds in comparison to 200,000 pounds attributed to the use of dicofol. By the year 2000, EPA's analysis predicts that

total environmental loading of DDTr would be about 450,000 pounds with continued use of dicofol, versus only 220,000 pounds if the use of dicofol ceased in 1984. In short, if EPA permits the continued use of dicofol, the level of DDTr in the environment 16 years from now could be twice as high as if dicofol use were prohibited.

EPA has also used two theoretical approaches to estimate the ambient environmental concentrations of DDTr that would result solely from use of dicofol. EPA used a mathematical model to estimate the concentration of DDTr in the water of the Arroyo Colorado River in southern Texas. This model predicts that eventually residues in the river system will stabilize (reach equilibrium) at approximately 9 ppt. This concentration in water would result in fish residues of about 9 ppm, a level harmful both to the fish and to fish-eating birds. In addition, based on physical and chemical principles, EPA estimated that use of dicofol on cotton and other crops in Kings County, California would result in food chain contamination at levels that would be likely to affect avian species adversely. Specifically, EPA predicted that migrating waterfowl could feed on chironomid midge larvae contaminated with as much as 1.4 ppm DDTr. Neither model assumed any other source of DDTr; adding in background levels of DDTr would increase the amount of DDTr expected in the food chain.

7. *Distribution of sensitive species in areas with high levels of use of dicofol.* As the last element of its analysis of the environmental risks of using dicofol, EPA investigated whether species sensitive to the adverse effects of dicofol were found in areas where use of dicofol has been concentrated. This investigation revealed that one or more highly sensitive species is present in each of the major use areas for dicofol, and that several are officially designated as endangered species by the Federal Government.

Sensitive species present in California include the endangered peregrine falcon, California condor, and bald eagle. Black-crowned night herons also found in California may be experiencing reproductive problems due to DDE residues in their eggs. Both peregrine falcons and bald eagles are found in Arizona, and in southern Texas both peregrine falcons and black skimmers, a migratory shorebird, may be affected. Florida contains another endangered species whose numbers have dropped from 20,000 in 1930 to about 4,800 in 1980.

Of the species discussed above, most—peregrine falcons, California condors, bald eagles, and wood storks—are still suffering reproductive problems due to significant eggshell thinning. studies of the animal species on which peregrines and bald eagles feed show continuing high levels of DDE contamination.

8. *Additional risk concerns.* Although not the basis for EPA's decision to cancel all dicofol registrations, the Agency notes that there are data indicating that dicofol and its DDTr contaminants produce tumors in test animals.

Dicofol has produced positive results when tested by the National Cancer Institute in an oncogenicity bioassay using mice. This study was originally considered by EPA to be invalid due to reported decomposition of the test material during the test period. EPA has recently obtained information indicating that this conclusion was probably mistaken and that the test substance remained stable over the course of the study. Chemical analysis of the test materials show that it was technical dicofol. In light of this new information, the Agency is taking steps to validate the study, and the oncogenic results are being analyzed.

EPA is also reviewing studies concerning the oncogenicity of two constituents of DDTr, DDT and DDE. The data base contains several studies on DDT that are reportedly positive. In these studies, mice fed DDT, sometimes over several generations, displayed statistically significant increases in benign and malignant liver and lung tumors. The data base on DDT also contains a number of other oncogenicity studies which are reportedly negative. Some oncogenicity studies with DDE have reportedly produced positive results in both mice and hamsters. Other studies are reportedly negative.

9. *Risk conclusions.* EPA finds that DDT and DDE are highly persistent, bioaccumulative compounds which are toxic to birds and fish. Avian species have been adversely affected by dietary exposure to DDE at levels below 1.0 ppm, and possibly lower than 0.5 ppm. Fish have also been adversely affected at very low levels of exposure to DDE. Because of the chemical similarities between DDT and DDE and the other constitutents of DDTr, the Agency finds that there is a reasonable basis for assuming that these other DDTr substances have similar properties.

Further, EPA has determined that dicofol use is concentrated in areas where levels of DDE are presently high enought to impair both avian and fish reproduction and that these areas are inhabited by a number of sensitive, endangered species whose continued existence could be adversely affected by exposure to current levels of DDE. The Agency also finds that DDTr contamination of dicofol products is sufficiently high to make significant contributions to the overall levels of DDE and DDT in those areas. This contribution will result in a slowing of the decline of DDTr residues in areas of dicofol use and will allow DDTr residues to stabilize at levels which could continue to cause adverse effects in wildlife. Consequently, EPA concludes that the continued use of dicofol will adversely affect nontarget wildlife, including endangered species. This conclusion is consistent with the Biological Opinion issued by the Office of Endangered Species in the U.S. Department of the Interior that continued use of dicofol products may jeopardize the continued existence of the endangered peregrine falcon.

B. Summary of Benefit Determinations

Dicofol, unlike many potential alternatives, is a selective miticide, not a broad spectrum pesticide (insecticide/miticide). It is recommended in many IPM (integrated pest management) programs because it does not destroy pollinators and most parasites and predators. Dicofol is also efficacious against more phytophagous mite species than most other miticides. EPA has conducted an analysis to assess the benefits associated with the continued use of dicofol. The methodology and results of this analysis are described in more detail in the Agency's PD 2/3 on dicofol.

1. *Methodology.* EPA has evaluated the pesticidal properties of dicofol and, where data permitted, has compared its effectiveness to that of other pesticides registered for the control of mites on the same sites. The possible alternatives to dicofol can be evaluated on the basis of their fit into the treatment schedule, guided by labeling statements such as the preharvest interval; pre- or post-harvest restrictions; number, timing and frequency of applications allowed; reentry time; required safety equipment or restricted applicator use; and pests controlled on which sites. other important factors that determine the potential of a pesticide to be an alternative to dicofol include comparative efficacy (degree of control), compatability in mixtures with other pesticides, phytotoxicity, local resistance limitations, and efficacy at a given temperature.

When specific efficacious alternatives can be identified, an initial indication of the economic benefits of the continued registration of dicofol can be

obtained by estimating the additional cost associated with using the available alternatives. In the only instance so far identified for which there is apparently no effective alternative, EPA has analyzed the impact on yields that might result from cancellation of dicofol. In the case of most of the minor uses of dicofol, however, EPA does not presently have the biological and economic information necessary to identify specific alternatives. In these situations, EPA has drawn inferences from the data available on the quantities of dicofol and its potential alternatives that are used, has generated a qualitative assessment of the economic benefits, and has listed other potential benefits from the continued registration of these minor uses of dicofol.

2. *Cotton.* The greatest portion of the economic impacts resulting from the cancellation of all dicofol registrations would be felt by cotton producers in the San Joaquin Valley of California. Unlike other cotton-producing areas of the United States, this region frequently encounters severe, early-season mite infestations. Available information indicates that these infestations can be controlled effectively only with dicofol. The registered alternative sulfur is ineffective under climatic conditions existing early in the growing season for cotton. The other alternative, propargite, is phytotoxic to young cotton plants. Because alternatives apparently cannot control these early-season infestations effectively, the unavailability of dicofol could result in yield losses and increased control costs to San Joaquin Valley cotton producers estimated to reach $11.0 to $37.9 million annually in the long term. To minimize these impacts, EPA expects that some cotton producers would switch to growing other crops.

While these economic impacts could be significant on a regional basis, the national impacts are not estimated to be significant. Due to the excess capacity in the cotton-producing industry, EPA estimates that the lower yield resulting from the unavailability of dicofol will be largely offset in the long term by greater production in other areas. In the short term, given that cotton prices are presently declining, while cotton stocks continue to increase, the cancellation of dicofol would probably result in little or no increase in prices paid by consumers for cotton products.

Cancellation of the use of dicofol on cotton would have considerably smaller impacts in areas outside the San Joaquin Valley. In Arizona and elsewhere in California, cotton producers now using dicofol could switch to propargite at an additional cost estimated to be approximately $2.26 per acre-treatment. Use of other alternatives is also possible. The aggregate increase in treatment costs would be approximately $338,000 a year. In the southeast United States and the Mississippi Delta, dicofol users could switch to monocrotophos or other possible alternatives at no incremental costs.

3. *Citrus.* The economic impacts of cancelling the use of dicofol on citrus (primarily oranges, grapefruit, and lemons) are estimated to be between $3.5 and $4.0 million annually due to the higher cost of using alternatives. Based on current information, EPA does not expect significant impacts on quality or quantity of yield when alternatives are used. The available alternatives vary by region due to labeling limitations, differences in mite species, mite resistance, and climatic conditions. The alternatives include cyhexatin, propargite, hexakis, and ethion.

4. *Minor uses.* EPA presently has the biological and economic information needed to develop quantitative estimates of the impacts of cancelling dicofol's minor uses only for apples, pecans, and mint (spearmint and peppermint). More expensive, comparably effective alternatives are available for mite control on each of these crops. The estimated annual increase in treatment costs are: apples, $600,000 to $900,000; pecans, $260,000; and mint, $250,000. These projected increased costs are small in comparison to the total variable production costs of these crops: apples, 0.1 percent to 0.2 percent; nuts, 0.2 percent; and mint, 0.8 percent.

For the remaining minor uses of dicofol, EPA has considered available information. Because of the small acreage of these minor crops treated with dicofol each year, EPA generally concludes that the cancellation of dicofol for these uses would not cause significant impacts where there are alternatives. Cancellation, however, will probably lead to higher treatment costs for producers who previously had used dicofol.

5. *Risks of alternatives.* An issue which relates to the benefits of continued registration of dicofol is the matter of the risks associated with the alternatives. Because the alternatives to dicofol are likely to result in environmental exposures which are similar to the exposure to dicofol, the comparative toxicity of the alternatives provides a basis to consider the risks of the alternatives. Although EPA lacks some of the data that it would normally require to conduct a comprehensive risk assessment of these pesticides, the data are sufficient to permit EPA to draw certain general conclusions. None of the alternatives is more chronically toxic to wildlife, more persistent, or more bioaccumulative than dicofol and its DDTr contaminants. Further, while some of the alternatives are more acutely toxic than dicofol to humans and wildlife, none of the alternatives, except chlorobenzilate, has been the subject of a Special Review. (After completing a Special Review of chlorobenzilate, published in the **Federal Register** of February 13, 1979 (44 FR 9547), EPA determined that the imposition of certain use restrictions, including restricting the use of chlorobenzilate on citrus only to certified applicators of individuals under their direct supervision, would reduce risks to a level which was outweighed by the benefits of using chlorobenzilate.)

6. *Resistance.* Finally, EPA recognizes that for all uses of dicofol there are benefits which are not readily demonstrable or quantifiable in monetary terms but which, nonetheless, may be important. One of these benefits relates to the impact of dicofol's cancellation on pest resistance. It is well established that intensive use of a pesticide often creates selective environmental pressure that lead to pest populations, particularly those of insects and mites, resistant to that pesticide's effects. Data show that mite species in some areas and crops are resistant to some registered miticides, including dicofol. The number of selective miticides is limited, and if that number is reduced, pest resistance may appear more rapidly than it would if the use of dicofol were allowed to continue. EPA expects this phenomenon to be more significant in crops where mite infestations recur annually, e.g., much cotton and citrus acreage, than in crops where the intensity and even existence of mite infestations fluctuate widely from year to year.

7. *Benefit conclusions.* For the two major crops, cotton and citrus, one or more alternative pesticides is available and comparable in efficacy to dicofol in almost every part of the country. Thus, with the exception of cotton producers in the San Joaquin Valley of California who could experience between $11 and $38 million in lost yield annually, EPA has concluded that cancellation of dicofol registrations would not be likely to result in significant effects on yields of cotton or citrus. Somewhat higher control costs would result from cancellation of dicofol registrations as users apply more expensive alternatives. The increased costs,

however, are expected to be small in comparison to the total value of the crops.

EPA's analysis of the benefits of using dicofol on certain minor sites was limited. Because there are potential alternatives registered for many of the minor uses of dicofol and because the amount of dicofol applied to these minor sites is relatively small, EPA does not anticipate that prohibiting the use of dicofol would have significant regional or national impacts. Nevertheless, many factors affect the use of miticides, and hence EPA cannot determine whether an effective alternative exists for every use of situation. Accordingly, it is possible that the unavailability of dicofol for some minor uses may occasionally have significant impacts for some users.

C. Consideration of Modifications to Registration as Alternatives to Cancellation

EPA has considered restrictions which would attempt to reduce the risks posed by dicofol. None of the restrictions considered, however, sufficiently reduced risks of justify allowing continued registration of dicofol products.

EPA had decided not to classify dicofol products for restricted use, i.e., for use only by certified applicators, because the risks do not depend so much on how the pesticide is applied as on the amount of DDTr released into the environment. Thus, more careful use of the product would not significantly change its risks.

EPA has also rejected a proposal made by a registrant to reduce the amount of DDTr in its dicofol products to about half the current level. The Agency's exposure models predict that the DDTr contribution from us of this "cleaner" dicofol would still be environmentally significant. Accordingly, EPA has determined that the risks of using dicofol, even with the proposed lower level of contamination, would still outweigh the benefits. Other restrictions which might affect environmental loading, e.g., lower application rates or prohibition of use during the breeding seasons of sensitive avian species, were also considered inadequate for the same reasons. EPA also has decided not to propose permitting continued registration during a phase-out period. The adverse effects to wildlife during such a period are unreasonable compared to the benefits, especially since the background levels of DDT in the near term would be expected to be higher than in later years.

In sum, changes in the terms and conditions of registration of products containing dicofol cannot produce the substantial changes in risks which are necessary to avoid unreasonable adverse effects on the environment.

D. Proposed Regulatory Action

Based on the determinations summarized above and discussed in greater detail in the PD 2/3, the Agency has determined that pesticide products containing dicofol do not meet the statutory standard for registration under FIFRA and that there are no modifications of the terms and conditions of registation which could bring these products into compliance with the statute. Accordingly, EPA proposes to take the following regulatory actions necessary to eliminate environmental exposure to dicofol products.

1. *Federally registered pesticide products.* Unless comment on this Notice convinces the Agency otherwise, EPA proposes to cancel the registration of each federally registered pesticide product containing the active ingredient dicofol whether registered under FIFRA sec. 3 or sec. 24(c).

2. *"Intrastate" pesticide products.* Using the procedures described in Unit IV.B of this Notice, EPA will require producers of "intrastate" products containing dicofol to submit applications for Federal registration of their pesticide products. If a timely application is not received, EPA will treat the producer's previously submitted Notice of Intent to Apply as an application. Unless comment on this Notice convinces the Agency otherwise. EPA proposes to deny all such applications.

3. *Existing stocks.* Under the authority of FIFRA sec. 6(a)(1) and (b), EPA proposes to establish certain limitations on the sale, distribution, and use of existing stocks of dicofol products subject to any final cancellation Notice. EPA proposes to define the term "existing stocks" to mean any quantity of dicofol product in the United States on the date of the Agency's final Notice of Intent to Cancel that has been formulated, packaged, and labeled and that either is being held for shipment or release or has been shipped or released into commerce.

EPA proposes to allow the sale and distribution of those existing stocks of dicofol products for up to 1 year after publication of the Agency's final Notice of Intent to Cancel in the **Federal Register**. Further, EPA proposes to allow use of existing stocks for up to 2 years following the date of publication of the Agency's final Notice of Intent to Cancel in the **Federal Register**. In order to implement this proposed requirement, EPA may also require registrants to relabel existing stocks in their possession to indicate the time limitations on distribution, sale, and use. In addition, EPA may also require registrants to contact commercial distributors of dicofol products, to inform them of the time limitations on distribution, sale, and use, and to provide supplemental labeling reflecting the time limitations for existing stocks in the possession of the commercial distributors.

Following expiration of the time limitations on distribution, sales, or use of existing stocks, disposal of existing stocks would be in accordance with the requirements of the Resource Conservation and Recovery Act.

IV. Procedural Matters

This Notice announces the Agency's intent to prohibit use of dicofol by cancelling all Federal registrations and by denying all applications for Federal registration of intrastate products. This unit of the Notice describes the procedures for referral of this Notice to the Secretary of Agriculture and the Scientific Advisory Panel for review as required by FIFRA secs. 6(b) and 25(d). In addition, this unit describes the procedures EPA will follow to implement its regulatory decisions for intrastate pesticide products.

Finally, under sections 6(b)(1) and 3(c)(6) of FIFRA, applicants, registrants, and certain other adversely affected parties would be able to request a hearing on any cancellation and denial actions that the Agency finally initiates. Unless a hearing is properly requested with regard to a particular registration or application, the registration would be cancelled or the application denied. This unit of the Notice also explains how such persons will be able to request a hearing in the event that EPA issues a final cancellation and denial Notice (and the consequences of requesting a hearing and failing to request a hearing in accordance with those procedures).

A. Referral to the Secretary of Agriculture and the Scientific Advisory Panel

As required by FIFRA secs. 6(b) and 25(d), EPA has transmitted copies of this Notice, together with the supporting PD 2/3, to the Secretary of Agriculture and the Scientific Advisory Panel. (See Unit II.)

If either the Secretary or the Panel comments in writing on EPA's proposed action within 30 days of receipt of the proposal, EPA must issue the comments and EPA's responses with the final Notice of Intent to Cancel for publication in the **Federal Register**.

Moreover, unless the time constraints are waived or modified, the Agency may not issue the final Notice of Intent to Cancel sooner than 60 days after sending this Notice to the Secretary and the Panel. If neither the Secretary nor the Panel comments within the 30 days, however, EPA could issue its final Notice of Intent to Cancel at the end of the 30-day comment period.

B. Intrastate Products

Historically, the registration requirements imposed on intrastate products have differed from the requirements for products distributed in interstate commerce. As described below, these differences dictate that the Agency use special procedures for bringing intrastate products into conformity with the final regulatory decisions reached in this Special Review.

Prior to 1972, pesticides produced and distributed solely in intrastate commerce were not subject to registration or any other requirements of FIFRA. The 1972 amendments to FIFRA for the first time made it a violation of Federal law to sell or distribute unregistered intrastate pesticide products. EPA issued registration regulations (40 CFR Part 162) implementing the 1972 amendments which, among other things, required immediate registration of all intrastate products unless the products were currently registered by a State and the producer submitted a notice of application for Federal registration to the Agency. 40 CFR 162.17. Under this regulation, notices of application were filed for numerous dicofol products which are now being considered in this Special Review proceeding. The regulation further provided that, before taking any enforcement action against any unregistered intrastate product complying with 40 CFR 162.17, the Agency would notify the producer of the product that he was required to submit a complete application for Federal registration, and the Agency would review and rule on the application.

Accordingly, in order to bring these intrastate products into conformity with the Agency's final regulatory decision, EPA hereby notifies the producers of all potentially affected intrastate dicofol products that they are required to submit a complete application for Federal registration. The Agency has decided to require that these applications must be submitted within 60 days of the date on which this Notice is published in the **Federal Register** or the date on which the intrastate producer receives a copy of this Notice, whichever is later. If an intrastate producer fails to submit a timely application, EPA will consider his Notice of Intent to Apply as an application for Federal registration for purposes of the review described below.

In addition, for purposes of FIFRA sec. 3(c)(6), this Notice also constitutes a Notice of Intent to Deny registration of pesticide products containing dicofol. The statute provides applicants with a 30-day period in which to correct the application to make it acceptable for registration. EPA, however, has proposed a determination that there are no changes in the terms and conditions of use of dicofol products that would make dicofol products acceptable for registration. Instrastate producers may, if they choose, submit applications for registration with additional terms and conditions on use that they feel would satisfy the statutory standards for registration.

EPA will review all applications submitted. If EPA decides, based on comments received on this Notice, to issue a final notice allowing continued use of dicofol under some circumstances, EPA will notify intrastate producers of that decision and allow them at least 30 days in which to make changes that would allow EPA to approve the application. If the application has not been corrected within the period allowed so that EPA would approve it, the application may be denied. On the other hand, if, after reviewing the comments on this Notice, EPA decides that it is still necessary to cancel all registration of products containing dicofol, the Agency will issue a final Notice of Denial for all applications for Federal registration of intrastate pesticide products containing dicofol.

Under FIFRA sec. 3(c)(6), the issuance of a denial entitles an applicant, or other interested person with the concurrence of the applicant, to request an adjudicatory hearing to challenge the denial decision. The procedures for requesting a hearing and the consequences of not filing a request are discussed below in Unit IV.C.

Concurrent with publication of this Notice, EPA will send a letter, together with a copy of this Notice, to the producers of all potentially affected intrastate pesticides. This letter will announce the EPA has issued its Preliminary Notice of Determination and that the public may comment on the Agency's proposed regulatory position regarding the registerability of various uses of dicofol products. This letter will also describe the procedures that the Agency will follow in assuring that all sale and distribution of intrastate products will comply with the terms of the final decision on dicofol products. Specifically, the letter will inform intrastate producers that they are required to file applications for Federal registration of their products within 60 days of receipt of the Agency's letter or within 60 days of publication of this Notice in the **Federal Register**, whichever is later, finally, the letter will explain other rights and obligations of intrastate producers under FIFRA, the registration regulations, and the procedures described in this Notice.

C. Procedures for Requesting a Cancellation or Denial Hearing

Registrants, applicants, and other parties who would be adversely affected by any decision to cancel or deny applications for the registration of dicofol products would be entitled to request a hearing in which to contest EPA's final decision to cancel registrations and deny applications. Under FIFRA, they must submit their requests for a hearing within 30 days either of receipt of the final Notice of Intent to Cancel or Notice of Denial or of its publication in the **Federal Register**, whichever is later. In addition, a hearing request would have to contain certain information concerning the basis of the request, as EPA will explain in detail in any final Notice of Intent to Cancel or Notice of Denial. If a timely, properly formulated hearing request is submitted, the product registrations which are the subject of the request will remain in effect during the cancellation hearing. Similarly, applications with respect to which valid and timely hearing requests have been filed remain pending unless and until they are denied or granted by order of the Administrator at the conclusion of the hearing.

If a proper and timely hearing request is not submitted for a product, registration of that product would be cancelled, or in the case of intrastate products, the application would be finally denied by operation of law 30 days after the final Notice of Intent to Cancel or Notice of Denial was issued. A final cancellation or denial would have the effect of prohibiting further

sale and distribution, except as specified in the existing stocks provisions of the Notice.

It should be noted that registrants and applicants are not required to request a hearing at this time in order to be allowed to continue to sell and distribute their products.

Dated: September 28, 1984.

John A. Moore,

Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc. 84-26714 Filed 10-9-84; 8:45 am]

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H.R. 5297/Pub. L. 98-443

Civil Aeronautics Board Sunset Act of 1984. (Oct. 4, 1984; 98 Stat. 1703) Price $1.00

S. 2732/Pub. L. 98-444

To amend the Wild and Scenic Rivers Act to permit the control of the lamprey eel in the Pere Marquette River and to designate a portion of the Au Sable River, Michigan, as a component of the National Wild and Scenic Rivers System. (Oct. 4, 1984; 98 Stat. 1714) Price $1.00

H.R. 5147/Pub. L. 98-445

Eastern Pacific Tuna Licensing Act of 1984. (Oct. 4, 1984; 98 Stat. 1715) Price $1.00

H.J. Res. 554/Pub. L. 98-446

To designate the week of November 11, 1984, through November 17, 1984, as "Women In Agriculture Week". (Oct. 4, 1984; 98 Stat. 1720) Price $1.00

H.J. Res. 605/Pub. L. 98-447

Regarding the implementation of the policy of the United States Government in opposition to the practice of torture by any foreign government. (Oct. 4, 1984; 98 Stat. 1721) Price $1.00

H.J. Res. 606/Pub. L. 98-448

To designate the week of October 14, 1984, through October 21, 1984, as "National Housing Week". (Oct. 4, 1984; 98 Stat. 1724) Price $1.00

S. 2614/Pub. L. 98-449

Indian Financing Act Amendments of 1984. (Oct. 4, 1984; 98 Stat. 1725) Price $1.00

S. 32/Pub. L. 98-450

Record Rental Amendment of 1984. (Oct. 4, 1984; 98 Stat. 1727) Price $1.00

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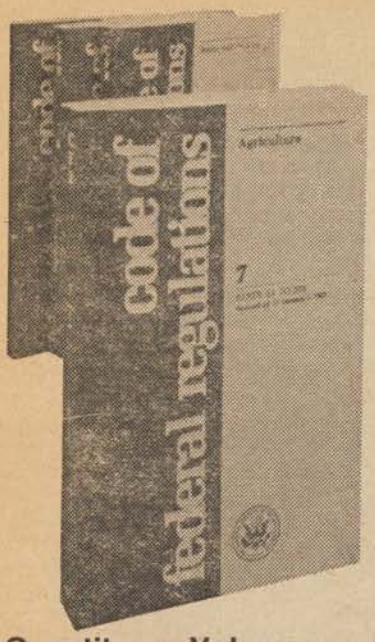
To allow variable interest rates for Indian funds held in trust by the United States. (Oct. 4, 1984; 98 Stat. 1729) Price $1.00

S. 1770/Pub. L. 98-452

To extend the lease terms of Federal oil and gas lease numbered U-39711. (Oct. 4, 1984; 98 Stat. 1730) Price $1.00

H.J. Res. 656/Pub. L. 98-453

Making further continuing appropriations for fiscal year 1985. (Oct. 5, 1984; 98 Stat. 1731) Price $1.00



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