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federal register

Wednesday
May 15, 1985

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Food and Drug Administration

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Presidential Documents

Title 3—

The President

Proclamation 5336 of May 7, 1985

Vietnam Veterans Recognition Day, 1985

By the President of the United States of America

A Proclamation

As President and Commander in Chief, I have been pleased to witness a new and abiding recognition of those brave Americans who answered their country's call and served in the defense of freedom in the Republic of South Vietnam. That recognition, figured in the Memorial the Federal government accepted last November as a permanent sign of our determination to keep faith with those who served in that conflict, is both the result and the cause of a new unity among our people. Ten years after American personnel left Vietnam, we honor and remember the deeds of a group of veterans who served as selflessly and fought as courageously as any in our history.

Together we have come through a decade of disillusionment and doubt and reached a new consensus born of conviction—that, however long the wisdom and merits of U.S. policy in the Vietnam era may be debated, no one can withhold from those who wore our country's uniform in Southeast Asia the homage that is their due. Their cause was our cause, and it is the cause that animates all of our experience as a Nation. Americans have never believed that freedom was the sole prerogative of a few, a grant of governmental power, or a title of wealth or nobility. We have always believed that freedom was the birthright of all peoples, and our Vietnam-era veterans pledged their lives—and almost 60,000 lost them—in pursuit of that ideal, not for themselves, but for a suffering people half a world away.

On this day, we recall these sacrifices and say again to our Vietnam veterans: Your cause is our cause. We have not forgotten you. We will not forget you. To those who were killed in Vietnam we say: Your names are inscribed not only on the walls of black granite on the Mall in our Nation's Capital, but in the hearts of your fellow Americans. To those still listed as missing in action in Southeast Asia: We have raised the fullest possible accounting of your fate to one of highest national priority. To those who returned and resumed their daily lives in our Nation's cities, towns, and farms: We will continue to meet our commitment to compensation and health care programs for the more than 300,000 service-disabled Vietnam veterans and to programs to aid in Vietnam veterans' readjustment.

To all of our Vietnam-era veterans, we rededicate ourselves on this day to offer our continuing praise and thanks for your courage and patriotism. We pledge that our Nation will never forget the men and women who gave so much of themselves on behalf of the highest of human ideals.

The Congress, by Senate Joint Resolution 128, has designated May 7, 1985, as "Vietnam Veterans Recognition Day" and authorized and requested the President to issue a proclamation commemorating this important observance.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim May 7, 1985, as Vietnam Veterans Recognition Day. I urge all citizens, community leaders, interested organizations, and government officials to observe this day with programs, ceremonies, and activities that commemorate the service and sacrifices of the more than 3 million brave men and women who served in Vietnam.

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

Ronald Reagan

[FR Doc. 85-11951
Filed 5-14-85; 11:21 am]
Billing code 3195-01-M

Presidential Documents

Proclamation 5338 of May 10, 1985

National Asthma and Allergy Awareness Week, 1985

By the President of the United States of America

A Proclamation

Asthma and allergic diseases are among the Nation's most common and costly health problems. More than 35 million Americans suffer from these diseases—about one out of every six persons. The American public pays approximately $4 billion per year in medical bills directly related to the treatment and diagnosis of asthma and allergic diseases, and another $2 billion per year in indirect social costs. Absenteeism in the schools and in the work place resulting from these diseases has an enormous effect on the Nation.

Although modern medical treatments of asthma and allergic disorders have reduced the danger of death considerably, thousands of individuals still die each year from asthma—a disease that affects children more often than adults.

In order to improve the quality of life for those who suffer from asthma and allergic diseases, research scientists supported by the National Institutes of Health (NIH) are acquiring vital knowledge of these disorders. These scientists are optimistic that information gained through their research will provide means to develop new techniques for diagnosing, treating, and possibly preventing these debilitating diseases.

In addition, the NIH works closely with the Asthma and Allergy Foundation of America, as well as with other volunteer and professional health groups, to bring to the attention of health care professionals and the public current research results that can be translated into improved health care.

To focus public and professional attention on the seriousness of asthma and allergic diseases, the Congress, by Senate Joint Resolution 83, has designated the week of May 5, 1985, through May 11, 1985, as "National Asthma and Allergy Awareness Week" and authorized and requested the President to issue a proclamation in observance of that week.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the week beginning May 5, 1985, through May 11, 1985, as National Asthma and Allergy Awareness Week. I call upon all government agencies, health organizations, communications media, and the people of the United States to observe this week with appropriate ceremonies and activities.

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

Ronald Reagan

[FR Doc. 85-11953
Filed 5-14-85; 11:23 am]
Billing code 3195-01-M

Presidential Documents

Proclamation 5337 of May 10, 1985

National Correctional Officers Week, 1985

By the President of the United States of America

A Proclamation

Correctional officers occupy a vital role in our Nation's criminal justice systems. They are called upon to ensure the custody, safety, and well-being of the over 680,000 inmates in prisons and jails. Without these officers performing demanding and often dangerous assignments, it would be impossible to carry out the primary law enforcement mission of protecting the law-abiding citizens of this country.

In a time of rapidly growing inmate populations, the demands upon correctional officers are many. As the backbone of our correctional systems, they work hard to maintain the high professional standards necessary to ensure the safe and orderly running of our Nation's prisons and jails. The dedication exhibited by these officers in the daily performance of their duties deserves our greatest respect and appreciation.

In recognition of the contributions of correctional officers to our Nation, the Congress, by Senate Joint Resolution 64, has designated the week beginning May 5, 1985, as "National Correctional Officers Week" and authorized and requested the President to issue an appropriate proclamation in commemoration of the observance.

NOW THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the week beginning May 5, 1985, as National Correctional Officers Week. I call upon officials of State and local governments and the people of the United States to observe this week with appropriate ceremonies and activities.

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

Ronald Reagan

[FR Doc. 85-11952
Filed 5-14-85; 11:22 am]
Billing code 3195-01-M

Rules and Regulations

Federal Register
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Wednesday, May 15, 1985

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 226

Child Care Food Program; Documentation and Verification of Eligibility

Correction

In FR Doc. 85-11032 beginning on page 19305 in the issue of Wednesday, May 8, 1985, make the following corrections:

1. On page 19310, in the first column in the thirty-fifth line "requirements" should read "requirement"; in the thirty-sixth line, remove the word "not".

2. On page 19312, in the first column, in § 226.23(h), in the ninth and tenth lines, remove, "paragraph (k) of this section;" and replace it with "§ 226.6(k);".

3. On page 19313, in the first column, in § 226.23(ii)(3), in the seventh and eighth lines, remove "paragraph (a) of this section." and replace it with "§ 226.14(a).".

BILLING CODE 1505-01-M

7 CFR Part 250

Donation of Food for Use in the United States, Its Territories and Possessions and Areas Under Its Jurisdiction

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: This rule amends the Food Distribution Program Regulations (7 CFR Part 250) to require a 100 percent yield factor for all substitutable donated foods which have been made available to processors for conversion into different end products pursuant to agreements with distributing, subdistributing or recipient agencies.

DATE: This rule is effective June 14, 1985.

FOR FURTHER INFORMATION CONTACT: Beverly A. King, Chief, Program Administration Branch, Food Distribution Division, Food and Nutrition Service, U.S. Department of Agriculture, Alexandria, Virginia 22302.

SUPPLEMENTARY INFORMATION: This rule contains no new information collection or recordkeeping requirements.

Classification

This action has been reviewed under Executive Order 12291 and has not been classified major because it does not meet any of the three criteria identified under the Executive Order. This action will not have an annual effect on the economy of $100 million or more nor will it have a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions. This action will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States based enterprises to compete with foreign based enterprises in domestic or export markets.

This rule has been reviewed with regard to the Regulatory Flexibility Act (5 U.S.C. § 601-612). Robert E. Leard, Administrator of the Food and Nutrition Service, has certified that this action will not have a significant economic impact on a substantial number of small entities.

Background

Section 250.15 of the current regulations sets forth the terms and conditions under which distributing agencies, subdistributing agencies, or recipient agencies may enter into contracts for processing of donated foods. Among other things, processors are required to provide as part of the processing contract a description of each end product to be processed and the quantity of each donated food and any other ingredient which is needed to yield a specific number of each end product. The current regulations do not, however, set forth a specific yield requirement.

On September 17, 1984, (49 FR 36390), the Department published a proposed rule which would require a 100 percent yield factor for all substitutable donated foods. The comment period expired on November 16, 1984.

Analysis of Comments

A total of 44 comments was received. Of the 44 comments, 25 comments were received from private industry sources, 13 from State and local agencies and 6 from units within the Food and Nutrition Service.

Twenty-seven of the commenters opposed the establishment of a 100 percent yield requirement. The majority of those commenters opposed the proposed requirement for the following reasons: (1) It would increase costs to recipient agencies; (2) it would not be attainable due to net weight losses as a result of moisture content in flour, trimming, packaging and unpackaging of products, product aging, underbaking, improper proofing and cutting, and unacceptable products; (3) it would cause processors to have to purchase small amounts of product which would not be cost effective; (4) it would require increased monitoring; and (5) there are no means to determine how much commodity is actually in the end product.

The Department recognizes that actual processing losses do occur and that in some instances increased costs resulting from the need to seek commercial replacement of commodities to make up such losses may be passed on to recipient agencies. However, it is the Department's opinion that competition within the commercial market will keep such increases at a minimum. An audit by the Department's Office of the Inspector General (OIG) of the Food and Nutrition Services' management of donated food processing activities support this opinion. In fact, the audit disclosed that for processors visited, the price for pizza purchased under the National Commodity Processing program, which currently requires a 100 percent yield on the donated foods, was the same as the price for pizza purchased under State processing contracts, with a 95 percent yield despite the 5 percent yield difference.

The OIG audit report also disclosed that the yield requirements for the same end product varied depending on distributing agency and the processor. However, in many instances the auditors were unable to determine the basis upon which the yields had been

set. Based on these audit findings, OIG recommended that the Department adopt a 100 percent yield requirement for all processing agreements. The Department agrees that this requirement is necessary to establish equitable standards to eliminate any subsidy of inefficient processors by allowing them to set a low yield requirement. A 100 percent yield requirement thus ensures that no food processor enjoys unjust enrichment as a result of participation in this program.

The Department does not believe that this requirement will give rise to any particular monitoring problems. Although a 100 percent yield is not currently required, the regulations do require that all processing contracts state the yields for each donated food. Monitoring of yields is already being performed to ensure compliance with the yields stated in the processing contracts.

Thus, this rule does not establish any specific monitoring requirements such as gross examination of the end product or lab analysis. The 100 percent yield requirement will be monitored in the same manner as other yield requirements. However, as a result of ongoing discussions with State distributing agencies, the Food and Nutrition Service has developed a review form for use by State agencies in conducting on-site reviews of processing activities. This review form is available from the Food and Nutrition Service Regional Offices. To ensure compliance with all yield requirements, the Department encourages distributing agencies to increase their monitoring of processing activities.

One commenter who favored the 100 percent yield requirement recommended that the proposed rule be revised to require that the yield factor be a "minimum" of 100 percent in order to clarify that yields in excess of 100 percent are permissible. The Department concurs in this comment and Section 250.15 has been revised to require that a "minimum" of 100 percent of substitutable donated foods be returned in the end product with no allowance for production losses.

Implementation

Processing contracts which are currently being negotiated or renewed must reflect the 100 percent yield requirement for all substitutable donated food. Processing contracts currently in force need not be amended.

List of Subjects in 7 CFR Part 250

Aged Agricultural commodities, Business and industry, Food assistance programs, Food donations, Food processing, Grant programs-social programs, Infants and children, Price support programs, Reporting requirements, School breakfast and lunch programs, Surplus agricultural commodities.

PART 250—[AMENDED]

Accordingly, § 250.15 is amended by revising paragraph (d)(4)(ii) to read as follows:

§ 250.15 State processing of donated foods.

* * * * *

(d) * * *

(4) * * *

(ii) A Description of each end product, the quantity of each donated food and any other ingredient which is needed to yield a specific number of units of each end product (except that the contracting agency may permit the processor to specify the total quantity of any flavorings or seasonings which may be used without identifying the ingredients which are, or may be, components of flavorings or seasonings), and the yield factor for each donated food. The yield factor is the percentage of the donated food which must be returned in the end product to be distributed to eligible recipient agencies. The yield factor for substitutable donated foods must be at least 100 percent.

* * * * *

(Catalog of Federal Domestic Assistance No. 10.550.)

(Sec. 416, Pub. L. 81.439, amended)

Dated: May 7, 1985.

Robert E. Leard,

Administrator.

[FR Doc. 85-11743 Filed 5-14-85; 8:45 am]

BILLING CODE 3410-30-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 84-NM-139-AD; Amdt. 39-5065]

Airworthiness Directives; McDonnell Douglas Model DC-10 and KC-10A Series Airplanes, Fuselage Numbers 1 Through 370

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adds a new airworthiness directive (AD) which requires replacement of the aluminum rivet in the speedbrake module gate assembly with a corrosion-resistant steel rivet. This action is prompted by reports of failures of the aluminum rivet in the speedbrake module assembly. This amendment is necessary to prevent failure of the aluminum rivet, which could allow the spoiler handle to latch in the full speedbrake position during an aborted landing or "touch and go" landing situation. With the spoilers in this position and the flaps at 22° or greater, the airplane cannot attain a pitch angle which will permit flight.

DATES: Effective June 24, 1985.

Compliance schedule as prescribed in the body of the AD, unless already accomplished.

ADDRESSES: The applicable service information may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director, Publications and Training, C1-750 (54-60). This information also may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at 4344 Donald Douglas Drive, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. Michael E. O'Neil, Aerospace Engineer, Airframe Branch, ANM-121L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California 90808; telephone (213) 548-2826.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include a new airworthiness directive (AD) to require replacement of an existing aluminum rivet in the speedbrake module assembly of certain McDonnell Douglas Model DC-10's with a corrosion-resistant steel rivet was published in the **Federal Register** on February 11, 1985 (50 FR 5627). The comment period for the proposal closed on April 1, 1985.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the three comments received. All three commenters suggested that the compliance time of the proposed rule should be extended to allow operators adequate time to schedule their airplanes to be modified. The FAA has determined that this can be accomplished without compromising safety, and accordingly, paragraph A. of the final rule has been revised to reflect a two year compliance time.

Approximately 177 U.S. registered airplanes will be affected by this AD. It will require approximately 8 manhours per aircraft to accomplish this

modification. The average labor cost is estimated at $40 per manhour. The cost of the new steel rivet is approximately $16 each. Based on these figures, the total economic impact of this AD on U.S. operators is approximately $59,525.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic effect on a substantial number of small entities, because few, if any, Model DC-10 or KC-10A airplanes are operated by small entities. A final evaluation has been prepared for this regulation and has been placed in the docket. A copy of it may be obtained by contacting the person identified under the caption **"FOR FURTHER INFORMATION CONTACT."**

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and public interest require the adoption of the following rule with the change discussed above.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended by adding the following new airworthiness directive:

McDonnell Douglas: Applies to McDonnell Douglas Model DC-10 and KC-10A series airplanes, fuselage numbers 1 through 370, certificated in all categories. Compliance required as indicated, unless previously accomplished.

To prevent the speedbrake lever from latching into either the ⅝ or full speedbrake detent position during lever retraction after landing, accomplish the following:

A. Within two years after the effective date of this AD, replace the existing MS20470AD6 rivet in the speedbrake module assembly with a 4932183-3F034 corrosion-resistant steel rivet in accordance with the instructions in Chapter 27-62-01, Item 6, of the DC-10 Component Maintenance Manual, dated August 1, 1982, or later revisions.

B. Alternate means of compliance which provide an acceptable level of safety may be used when approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

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

All persons affected by this directive who have not already received these documents from the manufacturer may obtain copies upon request to McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director, Publications and Training, C1-750 (54-60). These documents also may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California.

This Amendment becomes effective June 24, 1985.

(Secs. 313(a), 601 and 603 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421 and 1423); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89)

Issued in Seattle, Washington, on May 8, 1985.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 85-11646 Filed 5-14-85; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 84-NM-132-AD; Amdt. 39-5066]

Airworthiness Directives; Aerospatiale (Sud Nord) Nord 262A Series Airplanes Equipped With MARTIN Type Engine Fire Extinguishing System

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final Rule.

SUMMARY: This amendment adds a new airworthiness directive (AD) applicable to Aerospatiale Model Nord 262A series airplanes which requires replacement of the non-return valve in the MARTIN type engine fire extinguishing system. This action is necessary to prevent jamming of the non-return valve, which could result in partial or total failure of the engine fire extinguisher system.

DATES: Effective June 24, 1985.

ADDRESSES: The service bulletin specified in this AD may be obtained from Aerospatiale, Service Commercial N262, Boite Postale 159, 36003 Chareauroux, France, or may be examined at the Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Michael P. West, Foreign Aircraft Certification Branch; telephone (206) 431-2909. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: The Direction General de l'Aviation Civile (DGAC), which is the Civil Airworthiness Authority of France, has declared Aerospatiale N262 Fregate Service Bulletin No. 26-12 dated November 5, 1984, as mandatory. This service bulletin prescribes procedures for replacement of MARTIN type 12-09-21950 or ABG SEMCA ref. 821950 non-return valves in the MARTIN type fire extinguishing system.

A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive which requires the action described above was published in the **Federal Register** on January 16, 1985 (50 FR 4227). The comment period closed March 18, 1985, and interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received.

It is estimated that 16 U.S. registered airplanes will be affected by this AD, that it will take approximately 3 manhours per airplane to accomplish the modification, and that the average labor cost will be $40 per manhour. Replacement parts are estimated at $225 per airplane. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $5,520.

For the reasons discussed above, the FAA had determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic effect on a substantial number of small entities because few, if any, Aerospatiale Nord 262A series airplanes are operated by small entities. A final evaluation has been prepared for this regulation and has been placed in the docket.

Therefore, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

PART 39—[AMENDED]

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended by adding the following new airworthiness directive:

Aerospatiale (SUD Nord): Applies to Nord 262A series airplanes, certificated in all categories and equipped with MARTIN type engine fire extinguishing system. Compliance required within 300 hours time in service or 6 months, whichever occurs first, after the effective date of this AD. To prevent failure of the MARTIN type engine fire extinguishing system, accomplish the following, unless previously accomplished:

A. Replace non-return valves, MARTIN type 12-09-21950 or ABG SEMCA Ref. 821950, in accordance with Aerospatiale N262 Fregate Service Bulletin No. 26-12, dated November 5, 1984.

B. Alternate means of compliance which provide an acceptable level of safety may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

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

Effective Date: June 24, 1985.

(Secs. 313(a), 314(a), 601 through 610, and 1102 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421 through 1430, and 1502); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89)

Issued in Seattle, Washington, on May 8, 1985.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 85-11647 Filed 5-14-85; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 84-ANE-30; Amdt. 39-5062]

Airworthiness Directives; Garrett Turbine Engine Company, TFE731-2-1C and -2-2B Turbine Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Revocation of Airworthiness Directive (AD).

SUMMARY: Amendment 39-1852 (39 FR 17848) AD 74-11-04 requires modification of engines incorporating certain power section part numbers. The AD continues to raise questions in regard to compliance yet all affected engines have been modified in accordance with all provisions of the AD. Therefore, AD74-11-04 is being revoked since it is no longer necessary.

DATE: Effective June 28, 1985.

FOR FURTHER INFORMATION CONTACT: Mr. Bill Moring, Aerospace Engineer, ANM-174W, Western Aircraft Certification Office, FAA, Northwest Mountain Region, Post Office Box 92007, Worldway Postal Center, Los Angeles, California, telephone (213) 536-6382.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to revoke an AD to eliminate confusion and uncertainty still existing concerning compliance with its requirements was published in the **Federal Register** on February 26, 1985 (50 FR 7793). The proposal was prompted by a request by the engine manufacturer.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No objections were received. One comment supporting the action was received. Accordingly, the proposal is adopted without change.

Conclusion

The FAA has determined that this regulation involves no aircraft, will cost nothing, and no small entities are affected. Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal; and (4) will not have a significant economic impact on any small entities under criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Engines, Air transportation, Aircraft, Aviation safety.

Adoption of Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended by revoking Amendment 39-1852 (39 FR AD 74-11-04) applying to Garrett Turbine Engine Company Model TFE731-2-1C and -2-2B engines. This revocation becomes effective June 28, 1985.

(Secs. 313(a), 601, and 603, Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421, and 1423); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); 14 CFR 11.89)

Issued in Burlington, Massachusetts, on May 2, 1985.

Robert E. Whittington,

Director, New England Region.

[FR Doc. 85-11648 Filed 5-14-85; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 80-NE-17]

Establish a Control Zone at Quonset State Airport, North Kingstown, RI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes a new control zone at Quonset State Airport, North Kingstown, Rhode Island. The control zone will provide controlled airspace protection for aircraft operating at the airport.

EFFECTIVE DATE: 0901 G.m.t., July 2, 1985.

FOR FURTHER INFORMATION CONTACT: Stanley E. Matthews, Manager, Operations, Procedures and Airspace Branch, ANE-530, Federal Aviation Administration, Air Traffic Division, 12 New England Executive Park, Burlington, Massachusetts 01803. Telephone (617) 273-7139.

SUPPLEMENTARY INFORMATION:

History

On Thursday, May 22, 1980, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to designate a new Control Zone at Quonset State Airport, North Kingstown, Rhode Island (49 FR 34290).

Interested parties were invited to participate in this Rulemaking Proceeding by submitting written comments on the proposal to the FAA. One comment was received. The Aircraft Owners and Pilots Association had no objection with the proposal. Except for editorial changes, this amendment is the same as that proposed in the Notice. Section 71.171 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6A dated January 2, 1985.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations establishes a new Control Zone at Quonset State Airport, North Kingstown, Rhode Island in order to provide for the control of air traffic. The Zone will control a portion of airspace approximately 5 miles in radius around the airport and an additional 15.5 miles south of the VORTAC excluding that airspace within the Providence, Rhode Island Control Zone.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally

current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffice procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Control zones, Aviation safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, 71.171 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended as follows:

North Kingstown, Rhode Island [New]

[Amended]

"With a 5 mile radius of the center, Lat. 41°35'45" N, Long. 71°24'35" W., of the Quonset State Airport, North Kingstown, Rhode Island; within 2 miles each side of the Providence, Rhode Island VORTAC 171°T(185°M), extending from the 5 mile radius zone to 15.5 miles south of the VORTAC excluding that airspace within the Providence, Rhode Island Control Zone.

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); (49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983)); and 14 CFR 11.69)

Issued in Burlington, Massachusetts, on May 3, 1985.

Robert E. Whittington,

Director, New England Region.

[FR Doc. 85-11649 Filed 5-14-85; 8:45 am]

BILLING CODE 4910-13-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34-22025; File No. S7-13-84]

Exemption of Securities Underlying Certain Options From Registration

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Commission adopts amendments to Rule 12a-6 ("Rule") under the Securities Exchange Act of 1934 ("Act"). The Rule currently exempts listed stocks underlying certain exchange traded options from the registration provisions of section 12(a) of the Act. The amendments would extend the exemption to stocks that are not listed or registered on a national securities exchange if quotation information for such stocks is disseminated through the National Association of Securities Dealers Automated Quotations System ("NASDAQ").

EFFECTIVE DATE: May 15, 1985.

FOR FURTHER INFORMATION CONTACT: Sharon Lawson, (202) 272-2825, Branch of Options Regulation, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION:

I. Background

In 1973, Rule 12a-6 [1] was promulgated under the Securities Exchange Act of 1934 ("Act") in connection with the commencement of listed options trading on the Chicago Board Options Exchange, Inc. ("CBOE").[2] The rule exempts from the registration requirements of section 12(a) of the Act [3] stocks underlying options if certain conditions are met.[4] In the Adopting Release, the Commission stated that the purpose of the rule was to relieve any exchange which lists options of the need to register the underlying stocks pursuant to section 12(a) of the Act or to apply for UTP in the underlying stock where the exchange has provided for comparable disclosure regarding the listed options and their underlying stocks and does not seek to establish trading markets in the underlying stocks.[5]

As adopted, subsection (b)(3) of the Rule, which requires as a condition of the exemption that the underlying stock be listed or registered on some other national securities exchange at the time the option is issued, effectively excludes over-the-counter ("OTC") stocks from the exemption. Accordingly, because securities traded exclusively in the OTC market are not registered under section 12(a) and are not entitled to an exemption under Rule 12a-6 when they underlie options, the Rule effectively prohibits exchange trading of options on all OTC stocks.[6]

In 1977, the Commission proposed to delete subsection (b)(3) from the Rule in response to rule proposals submitted by the CBOE and the Pacific Stock Exchange, Inc. ("PSE") [7] to trade options on OTC stocks. If adopted, the proposed amendment would have removed the statutory bar to exchange traded options on OTC stocks. The proposed amendment, however, was never adopted due to the commencement of the options moratorium [8] and the subsequent withdrawal of the exchange proposals.[9]

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[1] 17 CFR 240.12a-6 (1984).

[2] Securities Exchange Act Release No. 10123 (April 20, 1973), 38 FR 11448 ("Adopting Release").

[3] 15 U.S.C. 781(a) (1982).

[4] Section 12(a) of the Act requires registration of all securities in which transactions will be effected on a national securities exchange. Because trading an option on a security, or an index of securities, could be deemed to constitute or involve, in some circumstances, transactions in such securities, an exchange would have to register the underlying security pursuant to section 12(a) if Rule 12a-6 did not provide an exemption. As an alternative, the exchanges could apply for unlisted trading privileges ("UTP") in the underlying security pursuant to section 12(f)(1)(C) of the Act. The Commission has indicated, however, that granting UTP applications in such circumstances may not be appropriate because the exchange does not intend to make a market in the prospective underlying security and the UTP application would be filed simply as a technical predicate to permit the exchange to trade options. *See* Securities Exchange Act Release No. 13247 (February 7, 1977), 42 FR 9030.

[5] *See* Adopting Release, *supra* note 2. The Rule provides an exemption from the registration requirements of section 12(a) for stocks underlying options where (1) the related option is itself registered and listed on a national securities exchange; (2) the exchange which lists the option limits its activity in the underlying stock to exercise transactions; and (3) the underlying stock is listed and registered on a national securities exchange, other than the one seeking to list the option, at the time the option is issued.

[6] At the time Rule 12a-6 was promulgated last sale information was not available on any OTC stock. Accordingly, the exclusion of OTC stocks from the Rule was due, in part, to the manipulative and surveillance concerns presented by trading options on stocks that lacked last sale and quotation information. *See* Adopting Release, *supra* note 2, 38 FR at 11448 n. 1.

[7] *See* Securities Exchange Act Release No. 13247 (February 7, 1977), 42 FR 9030 ("1977 Proposal"). The Commission received seven comment letters on its proposal to delete subsection (b)(3) from the Rules. These comments focused primarily on the questions raised by the exchange trading of options on OTC stocks, rather than the specific proposed amendments to the Rule. The CBOE and PSE proposals to trade options on OTC stocks were noticed in Securities Exchange Act Release Nos. 12703 (August 12, 1976), 41 FR 35684 and 12539 (June 11, 1976), 41 FR 24787, respectively. Subsequently, the American and Midwest Stock Exchanges, submitted similar proposals to the Commission. *See* Securities Exchange Act Release Nos. 13095 (December 22, 1976), 42 FR 2145 and 13406 (March 25, 1977) 42 FR 19200, respectively.

[8] *See* Securities Exchange Act Release No. 13760 (July 18, 1977), 42 FR 38035. In that release the Commission announced that it did not expect to approve any self-regulatory organization rule proposals that would initiate new programs for the trading of standardized options.

[9] At the request of the Commission, the exchanges withdrew their proposals to trade options on OTC stocks. *See* Securities Exchange Act Release No. 15026 (August 2, 1978), 43 FR 35772. In addition to announcing adoption of amendments to Rule 12a-6 today, the Commission is hereby withdrawing the 1977 Proposal.

Today proposals are pending before the Commission from the five options exchanges and the Boston Stock Exchange, Inc. ("BSE") to list and trade options on securities that are not listed or registered on a national securities exchange under section 12(a) but are designated as national market system securities meeting Tier I criteria as set forth in Rule 11Aa2-1 under the Act ("NMS Securities").[10] Because revision of Rule 12a-6 would be necessary to permit OTC options trading under these proposals, the Commission, in 1984, again proposed amendments to the Rule.[11] The amendments would extend the Rule's exemption to stocks that are not listed or registered on a national securities exchange if quotation information for such stocks is disseminated through the NASDAQ System.

In a separate release issued today, the Commission announces that it will approve the exchange proposals if certain modifications are made to the proposals.[12] The proposed amendments are broader than necessary to accommodate the proposals currently before the Commission to permit exchange trading of options on NMS Securities in that they would eliminate obstacles in the Commission's rules to trading options on any NASDAQ stocks, not just NMS Tier I stocks. In this regard, the Commission solicited comments on whether the exemption should be limited to NMS Securities or to NASDAQ stocks that are subject to last sale reporting. The Commission also solicited comment on whether subsection (b)(3) should be deleted or whether Rule 12a-6 should be rescinded in its entirety.

In addition, the Commission published for comment an alternative amendment to Rule 12a-6 that would extend the exemption to certain OTC stocks included in indexes on which options are traded. The amendment, if approved, would have exempted from registration under section 12(a) of the Act OTC stocks that comprise part of a stock index which underlies an option, so long as no one or more of the OTC stocks in the index constitutes more than 50 percent of the total weighting of the index.[13]

The Commission received three comments on the proposed amendments which are discussed below.[14]

II. Discussion

The Commission discusses in detail in the companion release issued today [15] the reasons why it finds, in concept, it is consistent with the Act to allow exchange trading of options on certain OTC stocks. To effectuate this determination, the Commission has amended subsection (b)(3) of the Rule consistent with its proposal so that stocks underlying exchange traded options that are quoted on NASDAQ, as well as listed on another national securities exchange, will be exempt from the registration provisions of section 12(a).[16]

Each of the commentators endorsed amending the rule so that NASDAQ stocks underlying exchange traded options would be exempt from the registration requirements of section 12(a). They disagreed with the Commission, however, over the manner in which the rule should be amended. All three commentators found it preferable to delete subsection (b)(3) rather than extend its language to include stocks quoted on NASDAQ. In this regard, Amex argued that amending the Rule to exempt all NASDAQ stocks underlying exchange-traded options would be overbroad because such an amendment would render stocks other than Tier I stocks options eligible. It felt this could lead to confusion concerning the status of these stocks.

The Commission recognizes Amex's concerns that the amendment of (b)(3), rather than its elimination, may lead to confusion because there would be no statutory bar to trading options on NASDAQ stocks lacking last sale reporting. We note, however, that deleting subsection (b)(3) as Amex suggests, also would eliminate the statutory bar to trading options on all NASDAQ stocks, not just Tier I stocks, including those lacking last sale reporting. In this regard, the Commission continues to believe that at the very least stocks underlying exchange traded options should be quoted on NASDAQ or listed on a national securities exchange to receive an exemption under section 12(a). In addition, the Commission believes that amending the rule broadly so that it exempts all stocks quoted on NASDAQ underlying exchange traded options, is preferable to limiting the exemption to NMS Tier I Securities.

First, although the amendments remove the statutory obstacle to exchange trading of options on all NASDAQ stocks, Commission approval of these amendments does not itself authorize any exchange to trade options on either any NASDAQ stock irrespective of whether the stock meets Tier 1, Tier 2 or National List standards. Actual exchange trading of options on these stocks only could commence after Commission approval of exchange proposals to trade options on these stocks.[17] The Commission believes that it will be able to ensure that adequate information is available on NASDAQ stocks that underlie options through its authority to review proposed rule changes by the exchanges.[18]

Second, in order for any NASDAQ stock to underlie an exchange traded option, it also would have to satisfy the existing exchange rules establishing eligibility standards for listed options.[19] Because most, if not all, non-Tier I NMS securities would fail to meet these standards, there appears to be little possibility that options on such stocks, especially OTC stocks lacking last sale reporting, could be exchange-traded despite the removal of the statutory bar to such trading.

Third, the exchanges should consider making certain changes to the options

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[10] 17 CFR 240.11Ac2-1 (1984). The Commission issued a release soliciting comments on the exchange proposals in Securities Exchange Act Release No. 20853 (April 12, 1984), 49 FR 15291.

[11] *See* Securities Exchange Act Release No. 20854 (April 12, 1984), 49 FR 15222 ("Proposing Release"). As noted in the Proposing Release, the primary significance of designating an OTC stock as an NMS security is that transactions in these OTC securities are subject to last sale reporting and quotations for such stocks must be firm as to price and size.

[12] *See* Securities Exchange Act Release No. 22026, May 8, 1985.

[13] In the Proposing Release, the Commission recognized that adoption of this amendment would be unnecessary if subsection (b)(3) of the Rule was amended to include all stocks quoted on NASDAQ because this would exempt any NASDAQ stocks that comprise an index option, as well as NASDAQ stocks underlying individual stock options.

[14] Letter from Richard O. Scribner, Executive Vice President, American Stock Exchange, Inc. ("Amex") to George A. Fitzsimmons, Secretary, SEC, dated July 17, 1984, at 18; letter from James E. Buck, Secretary, New York Stock Exchange, Inc. ("NYSE") to George A. Fitzsimmons, Secretary, SEC, dated June 5, 1984; and letter from Marc L. Berman, Executive Vice President and General Counsel, Options Clearing Corporation ("OCC") to George A. Fitzsimmons, Secretary, SEC, dated July 31, 1984.

[15] *See* note 12, *supra*.

[16] To qualify for an exemption options on NASDAQ stocks also would have to meet the other requirements set forth in the Rule. *See* note 5, *supra*.

[17] As noted above, the exchanges have only proposed to trade options on Tier I NMS stocks. The adoption of amendments to Rule 12a-6 will not in itself authorize any exchange trading of options on these stocks. Rather, such trading only could commence if the Commisaion finds separately that the specific exchange proposals are consistent with the requirements of the Act and independently approves them. *See* note 12, *supra*, and accompanying text.

[18] *See* section 19(b) of the Act.

[19] The current eligibility standards require, in general, a minimum of 7,000,000 publicly held shares, 6,000 shareholders, trading volume of at least 2,400,000 shares for the 12 months preceding listing, and a minimum per share price of $10 for the three months preceding listing. *See, e.g.*, CBOE Rule 5.3.

disclosure document ("ODD") [20] to clarify the types of OTC stocks that underlie exchange traded options.

In sum, the Commission believes that it is preferable, both procedurally and from a competitive point of view, to subject all applications to trade options on OTC stocks or stock indexes to the review standards contained in section 19(b) of the Act, rather than to continue to subject exchanges trading (but not OTC trading) of such options to any sort of absolute prohibition. The amendments adopted today will provide the Commission with the flexibility to respond to changes and developments in the exchange and OTC markets. At the same time, the Commission will be able to ensure that all OTC stocks underlying exchange traded options are traded in an appropriate environment.[21] In addition, the Commission believes that it is important to retain subsection (b)(3) because its requirement that a stock underlying an option be either quoted on NASDAQ or registered on a national securities exchange to be granted an exemption under section 12(a) will ensure that there is a certain minimum level of information available for the stocks underlying exchange traded options.

Because the Commission is adopting amendments to subsection (b)(3) of Rule 12a–6 that would exempt from registration all stocks underlying exchange traded options that are quoted on NASDAQ, including those that comprise an index, it will be unnecessary to adopt the alternative amendments that the Commission proposed for index options.[22] The Commission believes that any interpretive questions arising under section 12(a) concerning index options where the underlying index is comprised entirely or in part of NASDAQ stocks are circumvented by the amendments being adopted today.[23]

[20] Pursuant to Rule 19b–1 under the Act, 17 CFR 240.19b–1(d) (1984), all customers of broker-dealers who invest in options products must be furnished an ODD relating to the options class in which the customer is trading.

[21] Although the statutory obstacle to exchange traded options on any OTC stocks, including stocks lacking last sale reporting, would be removed by the amendments being adopted today, the Commission does not hereby intend to indicate that options on all OTC stocks are appropriate and should be permitted.

[22] *See* note 13, *supra*.

[23] Both the OCC and the NYSE commented on the Commission's proposed alternative amendment for index options. Both contended that such an amendment would be unnecessary, even if the Commission did not adopt the broader amendment to subsection (b)(3). They argued that exchange-trading of a cash-settled index option does not involve actual trading in the stocks included in the index since transactions in the option, including settlement of exercise notices, never involve actual delivery of any of these stocks. Because the Commission is not adopting amendments to Rule 12a–6 specifically directed toward OTC index options, it is not necessary to address this issue at this time.

[24] 15 U.S.C. 78w(a)(2) (1982).

[25] 15 U.S.C. 553(d) (1982).

For the reasons stated above, the Commission adopts amendments to Rule 12a–6 as set forth below.

III. Regulatory Flexibility Act Considerations

The Chairman of the Commission certified in connection with the Proposing Release that the amendments to Rule 12a–6, if adopted, would not have a significant economic impact on a substantial number of small entities. None of the comments addressed this certification.

IV. Effects on Competition and Other Findings

Section 23(a)(2) of the Act [24] requires the Commission, in adopting rules under the Act, to consider the anti-competitive effect of such rules, if any, and to balance any impact against the regulatory benefits gained in terms of furthering the purposes of the Act. The Commission has considered the amendment to Rule 12a–6 in light of the standards cited in section 23(a)(2) and believes that adoption of the amendment will not impose any burden on competition not necessary or appropriate in furtherance of the Act. This finding is made for the reasons set forth above and in the companion release issued today. As stated herein, the amendment is designed to exempt from the registration requirements of section 12(a) of the Act certain OTC stocks underlying exchange traded options. Insofar as the rule contains limitations, they are designed to promote the purposes of the Act by ensuring that adequate information will be available on exchange traded options and their underlying stocks.

The Commission finds, in accordance with the Administrative Procedure Act,[25] that the amendment to Rule 12a–6 that is being adopted today relieves statutory registration and other requirements and is exemptive in nature. Accordingly, the Commission has determined to make the foregoing action effective immediately upon publication in the **Federal Register.**

List of Subjects in 17 CFR Part 240

Reporting and recordkeeping requirements, Securities.

V. Statutory Basis

The amendment to Rule 12a–6 is adopted under the Act, 15 U.S.C. 78a *et seq.*, and in particular, sections 2, 3(a)(12), 6, 11A, 12 and 23(a)(1) of the Act.

VI.

On the basis of the above discussion, the Commission amends Part 240 of Title 17, Chapter II of the *Code of Federal Regulations* by revising paragraph (b)(3) of § 240.12a–6 as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for Part 240 continues to read as follows:

Authority: Sec. 23, 48 Stat. 901, as amended; 15 U.S.C. 78w, unless otherwise noted. §§ 240.12b–1 to 240.12b–36 also issued under secs. 3, 12, 13, 15, 48 Stat. 892, as amended, 894, 895, as amended; 15 U.S.C.78c, 78*l*, 78m, 78*o*. §§ 240.14c–1 to 240.14c–101 also issued under sec. 14, 48 Stat. 895; 15 U.S.C. 78n. §§ 240.15b10–1 to 240.15b10–9 also issued under secs. 15, 17, 48 Stat. 895, 879, sec. 203, 49 Stat. 704, secs. 4, 8, 49 Stat. 1379, sec. 5, 52 Stat. 1076, sec. 6, 78 Stat. 570; 15 U.S.C. 78*o*, 78q, 12 U.S.C. 241 nt., unless otherwise noted.

2. Paragraph (b)(3) of § 240.12a–6 is revised as follows:

§ 240.12a–6 Exemption of securities underlying certain options from Section 12(a)

* * * * *

(b) * * *

(3) Such underlying security is (i) duly listed and registered on another national securities exchange at the time the option is issued; or (ii) duly quoted on the National Association of Securities Dealers Automated Quotation System ("NASDAQ") at the time the option is issued.

By the Commission.

John Wheeler,

Secretary.

May 8, 1985.

[FR Doc. 85–11768 Filed 5–14–85; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 452

[Docket No. 85N–0172]

Antibiotic Drugs; Erythromycin Topical Solution

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the antibiotic drug regulations to provide for the inclusion of accepted standards for a new method of administering erythromycin topical solution. The manufacturer has supplied sufficient data and information to establish its safety and efficacy.

DATES: Effective May 15, 1985; comments, notice of participation, and request for hearing by June 14, 1985; data, information, and analyses to justify a hearing by July 15, 1985.

ADDRESS: Written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, Room 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 method of administering erythromycin topical solution (dispensed on a pledget). The agency has concluded that the data supplied by the manufacturer concerning this antibiotic drug are adequate to establish its safety and efficacy when used as directed in the labeling and that the regulations should be amended in Part 452 (21 CFR Part 452) to provide for the inclusion of accepted standards for the product.

The agency has determined pursuant to 21 CFR 25.24(c)(6) (April 26, 1985; 50 FR 16636) 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 in 21 CFR Part 452

Antibiotics, Macrolide.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, Part 452 is amended as follows:

PART 452—MACROLIDE ANTIBIOTIC DRUGS

1. The authority citation for Part 452 is revised to read as follows:

Authority: Sec. 507, 59 Stat. 463 as amended (21 U.S.C. 357); 21 CFR 5.10.

2. In § 452.510b by redesignating paragraph (a) (2) and (3) as (a) (3) and (4), respectively, by adding new paragraph (a)(2), and by revising the introductory text of paragraph (b) to read as follows:

§ 452.510b Erythromycin topical solution.

(a) * * *

(1) * * *

(2) *Packaging.* In addition to the requirements of § 432.1 of this chapter, if it is dispensed on individually packaged pledgets, each immediate pledget contains 0.8 milliliter of erythromycin topical solution. The erythromycin topical solution used on the pledget contains 20 milligrams of erythromycin per milliliter.

* * * * *

(b) *Tests and methods of assay.* If the erythromycin topical solution is dispensed on a pledget, express the contents of a representative number of pledgets into a suitable container to obtain a volume of sample adequate to perform each assay described in paragraph (b)(1) and (2) of this section.

* * * * *

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 May 15, 1985. However, interested persons may, on or before June 14, 1985, 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 Docket 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 June 14, 1985, a written notice of participation and request for hearing, and (2) on or before July 15, 1985, 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 judgment 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 Docket 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. This regulation shall be effective May 15, 1985.

Dated: May 1, 1985.

Daniel L. Michels,

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

[FR Doc. 85–11654 Filed 5–14–85; 8:45 am]

BILLING CODE 4160–01–M

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21 CFR Part 558

New Animal Drugs For Use in Animal Feeds; Tylosin Phosphate

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to remove that portion of the regulations reflecting approval of a new animal drug application (NADA) held by Protein Blenders, Inc., providing for use of Mixer-Mate "Plus" T–1600 (tylosin phosphate) premix intended for use in swine feed for increased rate of weight gain and improved feed efficiency. In a notice published elsewhere in this issue of the **Federal Register**, approval of the NADA covering use of said premix is being withdrawn.

EFFECTIVE DATE: May 27, 1985.

FOR FURTHER INFORMATION CONTACT: David N. Scarr, Center for Veterinary Medicine (HFV–214), Food and Drug

Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1846.

SUPPLEMENTARY INFORMATION: In a notice published elsewhere in this issue of the **Federal Register** approval of that portion of Protein Blenders' NADA 96–273 covering use of Mixer-Mate "Plus" T–1600 premix is being withdrawn. This document removes that portion of the regulations that reflects approval of this portion of NADA 96–273 for said premix. Other products presently approved under NADA 96–273 are not affected by this order.

List of Subjects in 21 CFR Part 558

Animal feeds, Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for Part 558 is revised to read as follows:

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

2. In § 558.625 by revising paragraph (b)(19) to read as follows:

§ 558.625 Tylosin.

* * * * *

(b) * * *

(19) To 033999: 10 grams per pound, paragraph (f)(1)(i) through (vi) of this section.

* * * * *

Effective date. May 27, 1985.

Dated: May 6, 1985.

Gerald B. Guest,

Acting Director, Center for Veterinary Medicine.

[FR Doc. 85–11652 Filed 5–14–85; 8:45 am]

BILLING CODE 4160–01–M

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 2619

Valuation of Plan Benefits in Non-Multiemployer Plans; Amendment Adopting Additional PBGC Rates

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This amendment to the regulation on Valuation of Plan Benefits in Non-Multiemployer Plans contains the interest rates and factors for the period beginning June 1, 1985. The interest rates and factors are to be used to value benefits provided under terminating non-multiemployer pension plans covered by Title IV of the Employee Retirement Income Security Act of 1974.

The valuation of plan benefits is necessary because, under section 4041 of the Act, the Pension Benefit Guaranty Corporation ("PBGC") and the plan administrator must determine whether a terminating pension plan has sufficient assets to pay all benefits under the plan that are guaranteed by the PBGC under the Title IV plan termination insurance program.

The interest rates and factors set forth in Appendix B to Part 2619 are adjusted periodically to reflect changes in financial and annuity markets. This amendment adopts the rates and factors applicable to plans that terminate on or after June 1, 1985, and will enable the PBGC and plan administrators to value the benefits provided under those plans. These rates and factors will remain in effect until Appendix B of the regulation is again amended.

EFFECTIVE DATE: June 1, 1985.

FOR FURTHER INFORMATION CONTACT: Renae R. Hubbard, Special Counsel, Corporate Policy and Regulations Department, Code 611, Pension Benefit Guaranty Corporation, 2020 K Street NW., Washington, D.C. 20006, 202–254–6476, (202–254–8010 for TTY and TDD). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: On January 28, 1981, the PBGC published a final regulation on Valuation of Plan Benefits in Non-Multiemployer Plans (46 FR 9492). That regulation, codified at 29 CFR Part 2619 (1984), sets forth the methods for valuing plan benefits of terminating non-multiemployer plans covered under Title IV of the Employee Retirement Income Security Act of 1974, 29 U.S.C. 1001 *et seq.* (1976), *as amended.* The regulation contains formulas for valuing different types of benefits. Appendix B to the regulation sets forth the interest rates and factors that are to be used in the formulas. Because these rates and factors are intended to reflect current conditions in the financial and annuity markets, it is necessary to update the rates and factors periodically.

As published in the 1984 edition of 29 CFR, Appendix B of Part 2619 contains interest rates and factors for valuing benefits in plans that terminated during various periods from September 2, 1974 through July 1, 1984. With the exception of the months of September and January, the PBGC has published in the ensuing months new rates and factors for plans terminating during the months of August, 1984 through May, 1985 (49 FR 28551, 49 FR 32573, 49 FR 40161, 49 FR 45129, 49 FR 48691, 50 FR 6342, 50 FR 10498, and 50 FR 14700).

At this time, changes in the financial and annuity markets require a decrease in the rates used for valuing benefits. Accordingly, this amendment adds to Appendix B a new set of interest rates and factors for valuing benefits in plans that terminate on or after June 1, 1985, which set reflects a decrease of ¼ percent in the interest rate to 9¾ percent.

Generally, the interest rates and factors will be in effect for at least one month. However, any published rates and factors will remain in effect until such time as PBGC publishes another amendment concerning them. Any change in the rates normally will be published in the **Federal Register** by the 15th of the month preceding the effective date of the new rates or as close to that date as circumstances permit.

The PBGC had determined that notice and public comment on this amendment are impracticable and contrary to the public interest. This determination is based on the need to determine and issue new interest rates and factors promptly so that the rates can reflect, as accurately as possible, current market conditions. The PBGC has found that the public interest is best served by issuing the rates and factors on a prospective basis so that plans may be able to calculate the value of plan benefits before submitting a notice of intent to terminate. Also, plans will be able to predict employer liability more accurately prior to plan termination.

Because of the need to provide immediate guidance for the valuation of benefits of plans that will terminate on or after June 1, 1985, and because no adjustment by ongoing plans is required by this amendment, the PBGC finds that good cause exists for making the rates set forth in this amendment effective less than 30 days after publication.

The PBGC has determined that this is not a "major rule" under the criteria set forth in Executive Order 12291, February 17, 1981, because it will not result in an annual effect on the economy of $100 million or more, a major increase in costs for consumers or individual industries, or significant adverse effects on competition, employment, investment, productivity, or innovation.

List of Subjects in 29 CFR Part 2619

Employee benefit plans, Pension insurance, Pensions.

PART 2619—[AMENDED]

In consideration of the foregoing, Part 2619 of Chapter XXVI, Title 29, Code of Federal Regulations, is hereby amended as follows:

1. The authority citation for Part 2619 continues to read as follows:

Authority: Secs. 4002(b)(3), 4041(b), 4044, 4062(b)(1)(A), Pub. L. 93-406, 88 Stat. 1004, 1020, 1025, 1029, as amended by secs. 403(1), 403(d), 402(a)(7), Pub. L. 96-364, 94 Stat. 1302, 1301, 1299 (29 U.S.C. 1302, 1341, 1344, 1362).

2. In Appendix B to Part 2619, Rate Set 56 is revised and Rate Set 57 is added to read as follows. The introductory text is shown for the convenience of the reader and remains unchanged.

Appendix B—Interest Rates and Quantities Used to Value Immediate and Deferred Annuities

In the table that follows, the immediate annuity rate is used to value immediate annuities, to compute the quantity "G" for deferred annuities and to value both portions of a refund annuity. An interest rate of 5% shall be used to value death benefits other than the decreasing term insurance portion of a refund annuity. For deferred annuities, k_1, k_2, k_3, n_1, and n_2 are defined in § 2619.45.

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities				
	on or after	and before		k_1	k_2	k_3	n_1	n_2
*	*	*	*	*	*	*		
56	5-1-85	6-1-85	10.00	1.0925	1.0800	1.0400	7	8
57	6-1-85		9.75	1.0900	1.0775	1.0400	7	8

David M. Walker,

Acting Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 85-11663 Filed 5-14-85; 8:45 am]

BILLING CODE 7708-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 914

Approval of Permanent Program Amendments From the State of Indiana Under the Surface Mining Control and Reclamation Act of 1977

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

ACTION: Final rule.

SUMMARY: OSM is announcing the approval of certain amendments to the Indiana regulatory program (hereinafter referred to as the Indiana program) under the provisions of the Surface Mining Control and Reclamation Act of 1977 (SMCRA).

On December 7, 1984, Indiana submitted an amendment to its program which consisted of: Modifications to the Indiana regulations pertaining to topsoil, backfilling and grading, confidentiality protection of information, annual certification of dams and embankments, and inability to comply; various editorial changes; and various cross-reference corrections to reflect new numbering.

After providing opportunity for public comment and conducting a thorough review of the program amendments, the Director of OSM has determined that the amendments meet the requirements of SMCRA and the Federal regulations, with the exception of certain provisions discussed below. Accordingly, the Director is approving those amendments which are consistent and has notified Indiana, pursuant to 30 CFR 732.17, of the additional amendments that are required. The Federal rules at 30 CFR Part 914 which codify decisions concerning the Indiana program are being amended to implement these actions.

This final rule is being made effective immediately in order to expedite the State program amendment process and encourage State to conform their programs to the Federal standards without undue delay; consistency of the State and Federal standards is required by SMCRA.

EFFECTIVE DATE: May 15, 1985.

FOR FURTHER INFORMATION CONTACT: Mr. Richard D. McNabb, Director, Indianapolis Field Office, Office of Surface Mining Reclamation and Enforcement, Federal Building and U.S. Courthouse, Room 522, 46 East Ohio Street, Indianapolis, Indiana 46204. Telephone: (317) 269-2600.

SUPPLEMENTARY INFORMATION:

1. Background

Information regarding the general background on the Indiana State Program, including the Secretary's Findings, the disposition of comments and a detailed explanation of the conditions of approval of the Indiana program can be found in the July 26, 1982 **Federal Register** (47 FR 32071-32108).

On December 7, 1984, the Director, Indiana Department of Natural Resources (IDNR), submitted to OSM pursuant to 30 CFR 732.17, a proposed State program amendment for approval. The proposed amendment modifies Indiana regulations on topsoil, backfilling and grading, confidentiality protection of information, annual certification of dams and embankments, and inability to comply; and makes various editorial and cross-reference changes.

OSM published a notice in the **Federal Register** on January 3, 1985, announcing receipt of the amendments, and procedures for the public comment period and for requesting a public hearing on the adequacy of the amendment (50 FR 281). The public comment period ended February 4, 1985. Since no one requested a public hearing, the hearing scheduled for January 28, 1985, was not held.

II. Director's Findings

A. General findings

The Director finds, in accordance with SMCRA and 30 CFR 732.17 that the amendments submitted by Indiana on December 7, 1984, meet the requirements of SMCRA and the Federal regulations with certain exceptions discussed below. Only those provisions of particular interest or concern are discussed in the specific findings which follow. Discussion of only those provisions for which specific findings are made does not imply any deficiency in any provision not discussed. The provisions not specifically discussed are found to be no less stringent than SMCRA and no less effective than the Federal rules. All of the amended provisions are cited at the end of this notice in the amendatory language for section 914.15. Indiana has also made non-substantive changes which the Director finds consistent with Federal requirements.

B. Specific Findings

1. Indiana proposed at 310 IAC 12-2-11 to delete language (concerning areas unsuitable for mining) which provided that the Director, IDNR, need not make available to certain parties, specific information concerning the National Register of Historic Places if it was determined that disclosure of the information would create a risk of harm or destruction of the properties.

The Federal rules at 30 CFR 764.23(a) contain language that is similar to the language proposed for deletion from the

Indiana rules. Therefore, deletion of this rule could render Indiana rules less effective than the Federal rules. However, the Director, IDNR, explained in the December 7, 1984 amendment submission that "repeal of the confidentiality protection was required of us by a legislative committee which was investigating all agency rules after the adoption of the new public records law in Indiana." The IDNR Director explained that the Indiana law at IC 5-14-3-4 requires Indiana to revise its rules on lands unsuitable and citizens's request for an inspection to delete the confidentiality provisions, but that the law at IC 5-14-3-4(a)(3) provides that "records required to be kept confidential by Federal Law" are exempt from IC 5-14-3-4.

The IDNR Director concludes, therefore, that "although we are required to revise our rule on lands unsuitable and the rule on the citizen's request for an inspection, that information will continue to be handled as confidential, as specified in [OSM's] rule."

The Director, OSM, accepts this explanation and finds that deletion of the pertinent confidentiality provisions will not render the Indiana rule less effective than the Federal rule, since Indiana will implement Federal requirements in these instances by applying IC 5-14-3-4(a)(3).

2. Indiana has added language to 310 IAC 12-3-46 and 12-3-80 (for surface and underground mines, respectively) concerning a demonstration of the suitability of topsoil substitutes or supplements. The demonstration is to be based on an analysis of the thickness of soil horizons, pH, buffer pH, phosphorous, potassium, percent coarse fragments and texture and areal extent of the different kinds of soils. The coarse fragments test may be waived by the regulatory authority's representative if he or she determines the alternate material is a silt-blown alluvial soil for which this test would be unnecessary. The director, IDNR, may require certain other tests as necessary.

The Indiana provisions are similar to the provisions at 30 CFR 780.18(b)(4) and 784.13(b)(4) (for surface and underground mines), except that the Federal rules do not contain the waiver for the coarse fragments test. However, since waiver of this test would be on a case-by-case basis and determined by someone who can recognize silt-blown alluvial soils and can decide whether coarse fragments are present, the Director, OSM finds this rule to be no less effective than the Federal rule, since the coarse fragments test will be used when coarse fragments are present.

3. Indiana has deleted from 310 IAC 12-3-96 the exception to steep slope requirements that was provided for operations "where a person obtains a permit under the provision of 310 IAC 12-3-95." This was deleted because 310 IAC 12-3-95 no longer exists in the Indiana rules. The Director, OSM, finds that the deletion does not render the provision less effective than 30 CFR 785.15.

4. Indiana has deleted from 310 IAC 12-3-98(a)(7) the provision for confidentiality protection for trade secrets or proprietary commercial information contained in prime farmland permit applications.

The Federal requirements for permit applications for prime farmlands at 30 CFR 785.17 do not contain this confidentiality provision. The Director finds therefore that deletion of the provision does not render the State provision less effective than the Federal provision.

5. Indiana has added new sections 310 IAC 12-5-12.5 and 12-5-78.1 for surface and underground mining to establish requirements for: Topsoil removal and timing of removal, substitutes and supplements, storage and redistribution; and, subsoil segregation, storage and redistribution.

These added provisions are substantially similar to Federal provisions in 30 CFR 816.22 and 817.22 with the following exception. The Indiana rules 310 IAC 12-5-12.1(a)(3) and 310 IAC 12-5-78.1(a)(3) list more exceptions to the requirement to remove topsoil than the Federal rule list. The Federal rules provide that topsoil need not be removed for minor disturbances which occur at the site of small structures "such as power poles, signs, or fence lines" or which will not destroy existing vegetation and will not cause erosion. The Indiana rules expand the list of disturbances which are exempt to include "electrical substations, transformers and switchboxes, explosive magazines, temporary buildings on skids, topsoil stockpiles, permanent impoundments, culvert installations, cable routes, cable storage areas, powerline cable suspension towers or 'horses', pumps, pump hoses and pipelines."

The Director has determined that, although most of the disturbances listed in the Indiana rules will fall within the Federal limits for "minor disturbances," most "permanent impoundments" would not be considered minor disturbances. Although topsoil removed from the site of a permanent impoundment would be replaced elsewhere and not all used at the permanent impoundment site, this topsoil must be removed and salvaged. Therefore, the Director is requiring that Indiana remove this term from the list of areas from which topsoil need not be removed. Otherwise, the Director finds the Indiana provisions no less effective than the Federal rules.

6. Indiana has added language to 310 IAC 12-5-24 and 12-5-90 (for surface and underground mining) to require that all dams and embankments that meet or exceed the size or other criteria of 30 CFR 77.216(a) be certified by a qualified registered professional engineer annually after construction, as having been maintained to comply with the requirements of the section. The Director finds this provision to be no less effective than the requirements at 30 CFR 816.49(a)(10) and 817.49(a)(10) for annual inspections of impoundments.

7. Indiana has added 310 IAC 12-5-54.1 to establish timing and distance requirements for backfilling and grading. The rule establishes timing requirements and limitations on number of open pits for backfilling and grading on various types of mining operations. The rule establishes discretionary power with the regulatory authority to extend time periods or grant variances to the requirements. The Director finds these provisions no less effective than the Federal requirements for contemporaneous reclamation at 30 CFR 816.100 and 817.100. However, Judge Flannery has remanded the Federal rules because they do not give sufficient guidance to the States (In re: *Permanent Surface Mining Regulation Litigation II*, D.D.C., 1984). Therefore, when OSM publishes new regulations for contemporaneous reclamation, Indiana's rules will be reviewed again for consistency.

8. Indiana has added 310 IAC 12-5-55.1 and 12-5-119.1 to establish general backfilling and grading requirements for surface and underground mines. Paragraph (a) requires backfilling and grading to achieve approximate original contour, to eliminate highwalls, spoil piles and depressions, to achieve slopes of 3:1 (h:v) or less with a static safety factor of 1.3, to minimize erosion and water pollution and to support the approved post-mining land use. Paragraphs (b), (c) and (d) establish requirements for spoil handling and placement. Paragraph (e) addresses disposal of coal processing waste and underground development waste. Paragraph (f) addresses covering or treatment of exposed coal seams, acid or toxic-forming materials, and combustible materials. Paragraph (g) establishes requirements for cut-and-fill terraces. Paragraph (h) allows for small depressions under certain

circumstances. Paragraph (i) allows for permanent impoundments when authorized by the regulatory authority. Paragraph (j) requires preparation of final-graded surfaces in a manner that minimizes erosion and provides a surface for topsoil placement that minimizes slippage. Paragraph (k) provides for variances from approximate original contour under certain circumstances and with approval of the regulatory authority. Paragraph (l) establishes discretionary authority with the regulatory authority to modify requirements of the rule in accordance with 310 IAC 12–5–150.1(e), for remining of areas with pre-existing highwalls. Rule 310 IAC 12–5–150.1(e) covers requirements for highwall reclamation in remined areas and is discussed further on in this notice. The Indiana provisions are similar to Federal requirements found in 30 CFR 816.102 and 817.102. The Federal rule for underground mining contains an additional provision at 30 CFR 817.102(1) to allow a variance from approximate original contour for settled and revegetated fills following underground mining. The absence of this provision from the Indiana rule does not render it less effective than the Federal rule, since the effect is to not allow this variance. Therefore, the Director finds the Indiana rules no less effective than the Federal rules.

9. Indiana has added sections 310 IAC 12–5–56.1 and 12–5–121.1 to establish requirements for stabilization of surface areas to effectively control erosion and air pollution attendant to erosion. Paragraph (b) of these Indiana rules establishes requirements for filling, regrading and reseeding or otherwise stabilizing certain rills and gullies which form in regraded, topsoiled areas. The Federal rules at 30 CFR 816.95(b) and 817.95(b) require that such rills and gullies be filled, regraded, or otherwise stabilized, topsoil shall be replaced and the areas shall be reseeded or replanted. Since the Federal rules require that such rills and gullies have topsoil replaced, and that they be reseeded or replanted, and the Indiana rules do not necessarily require this for all such instances of rill and gully formation, the Director finds the State rule less effective than the Federal rule. Therefore, the Director requires that Indiana amend these rules to be no less effective than the Federal rules.

10. Indiana has added 310 IAC 12–5–57.1 on backfilling and grading for thick overburden areas, to establish requirements for grading and for disposal of excess spoil in areas where the thickness of the overburden is large relative to the thickness of the coal deposit. The Indiana rule is similar to Federal rule 30 CFR 816.105. Therefore, the Director finds the rule no less effective than the Federal rule.

11. The State has added 310 IAC 12–5–150.1 to establish requirements for backfilling and grading on steep slopes. The rule establishes restrictions on materials that may be placed on the downslope. It restricts disturbance on land above the highwall and on placement of woody material in the backfilled area. The rule requires backfilling and grading to comply with 310 IAC 12–5–55.1 and 12–5–119.1, except where mining operations affect previously mined areas not returned to those standards, and the volume of reasonably available spoil is demonstrated in writing to be insufficient to completely fill the highwall. In such cases, the highwall shall be eliminated to the maximum extent technically practical in accordance with criteria listed in the rule for stability, spoil handling, grading and public health and safety.

The Indiana rule is substantially similar to the requirements in 30 CFR 816.106, 816.107, 817.106 and 817.107. Therefore, the Director finds the Indiana rule no less effective than the Federal rules.

12. Indiana has deleted language in 310 IAC 12–6–2 that required confidentiality of the identity of any person supplying information relating to a possible violation or imminent danger or harm. As noted in number 1 of this "Specific Findings" section, the Director, IDNR has explained that repeal of confidentiality protection was required following adoption of a new public records law in Indiana. The Director, IDNR assured OSM that under this new records law, confidential information will continue to be handled according to Federal confidentiality requirements by applying IC 5–14–3–4(a)(3). The Director finds, therefore, that the Indiana rule for citizen's request for inspections continues to be no less effective than 30 CFR 842.12.

13. Indiana has added Section 310 IAC 12–6–9.1 to provide that no cessation order or notice of violation issued under 310 IAC 12–6–5 or 12–6–6 may be vacated because of inability to comply, that inability to comply may not be considered in determining patterns of violations, and that inability to comply may be considered only in mitigation of civil penalty amounts and duration of permit suspension. The State rule is substantially similar to the Federal counterpart 30 CFR 843.18, and therefore, the Director finds it no less effective than the Federal regulations.

14. Indiana is repealing numerous sections which are replaced by new sections discussed above. The sections which are repealed are: 310 IAC 12–5–11, 12–5–12, 12–5–13, 13–5–14, and 12–5–15 on topsoil; 12–5–54, 12–5–55, 12–5–56 and 12–5–57 on backfilling and grading; 12–5–77, 12–5–78, 12–5–79, 12–5–80 and 12–5–81 on topsoil (underground mining); 12–5–118, 12–5–119, 12–5–120 and 12–5–121 on backfilling and grading (underground mines); and 12–5–150, 12–5–151, 12–5–152, 12–5–153 and 12–5–154 on steep slope mining.

The Director finds that repeal of these sections does not render the Indiana program less effective than the Federal program, since replacement sections are approved herein.

15. Indiana has made numerous other changes to its regulations which are not substantive and which are either of an editorial nature or which change cross-references to reflect new numbering of certain regulations. The Director finds these changes acceptable.

III. Public Comments

Comments were received from the Indiana Coal Council, Inc. and the Old Ben Coal Company. Both commenters were supportive of the proposed amendents.

The Indiana Coal Council, Inc. representative stated that the rules "achieve the intent of the Surface Mining Control and Reclamation Act of 1977 while accommodating local interests." The commenter stated in regard to the deletions of confidentiality rules that IC 5–14–3 required these confidentiality provisions to be deleted and that the Department has announced that it will continue to maintain information concerning sites of historic cultural value as confidential under IC 5–14–3–4(a)(6), which protects research information. The commenter attached letters from the IDNR to support the commenter's statement. The commenter stated that the IDNR will also "continue to maintain prime farmland grandfather documentation confidential to the extent such documents would constitute 'trade secrets' under Indiana law IC 24–2–3–2." The commenter further stated that "to the best of our knowledge" no one has requested disclosure of the identity of persons providing information on possible violations, and that the divergence between Indiana and Federal requirements is thus one of form rather than substance.

The Director, OSM has approved the deletion of confidentiality provisions with the understanding that the Federal provisions for confidentiality will apply in all instances where there are no State

confidentiality provisions and Federal provisions exist. This is in accordance with the IDNR Director's explanation which accompanied the December 7, 1984 Indiana program amedment package.

This same commenter stated that the proposed topsoil and backfilling and grading rules have been revised as a result of an agreement between IDNR and the Indiana Coal Council to dispose of a rulemaking petition filed by the Coal Council. The commenter stated that OSM commented on the rules during State rulemaking and that the rules should be approved since OSM comments have been incorporated. The commenter further stated that the amendment that adds a requirement for annual certification of certain dams and embankments was proposed in settlement of a judicial review lawsuit entitled *National Audubon Society et al. v. Watt*, U.S.D.C.S.D.I. IP-82-1904-C. The commenter said that in settlement of the lawsuit, the parties have tentatively agreed that the annual certification requirement be added. The commenter said that the Indiana Coal Council supports approval of the amendment.

These amendments have been approved by the Director as being consistent with and no less effective than the Federal requirements, with certain exceptions discussed above.

The Old Ben Coal Company representative supported modifications to the topsoil and backfilling and grading requirements and in particular those at 310 IAC 12-3-46 and 80, 12-5-121 and 78.1, 12-5-44(b) and 12-5-55.1 and 119.1 The commenter said the changes provide needed flexibility and effective protection from adverse environmental effects.

The Director agrees and has approved the Indiana amendments, with certain exceptions discussed above.

IV. Director's Decision

The Director, based on the above findings, is approving the Indiana regulatory amendments as submitted on December 7, 1984, under the provisions of 30 CFR 732.17. As indicated in the findings above, there are certain provisions that are inconsistent with the Federal regulations. The Director has notified Indiana, pursuant to 30 CFR 732.17, that certain program amendments are required. The State must reply within 60 days after notification by submitting either the text of the proposed amendments or a description of the amendments to be proposed and a timetable for enactment which is consistent with established administrative procedures in the State. The Federal rules at 30 CFR Part 914 are being amended to implement this decision.

V. Procedural Matters

1. Compliance with the National Environmental Policy Act

The Secretary has determined that, pursuant to Section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. Executive Order 12291 and the Regulatory Flexibility Act

On August 28, 1981, the Office of Management and Budget (OMB) granted OSM an exemption from Sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

3. Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 914

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

Accordingly, 30 CFR Part 914 is amended as set forth herein.

Dated: May 9, 1985.

Jed D. Christensen,

Director, Office of Surface Mining.

PART 914—INDIANA

30 CFR Part 914 is amended as follows:

1. The authority citation for Part 914 continues to read as follows:

Authority: Pub. L. 95-87, Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*).

2. 30 CFR 914.15 is amended by adding a new paragraph (g) as follows:

§ 914.15 Approval of regulatory program amendments.

* * * * *

(g) The following amendments submitted December 7, 1984, are approved effective May 15, 1985: revisions amending Indiana regulations at 310 IAC 12-2-11, 12-3-46, 12-3-80, 12-3-96, 12-3-97, 12-3-98, 12-5-3, 12-5-6, 12-5-18, 12-5-19, 12-5-20, 12-5-21, 12-5-23, 12-5-24, 12-5-44, 12-5-69, 12-5-73, 12-5-84, 12-5-85, 12-5-86, 12-5-87, 12-5-89, 12-5-90, 12-5-108, 12-5-137, 12-5-147, and 12-6-2; revisions adding sections 310 IAC 12-5-12.1, 12-5-54.1, 12-5-55.1, 12-5-56.1, 12-5-57.1, 12-5-78.1, 12-5-119.1, 12-5-121.1, 12-5-150.1, and 12-6-9.1; and revisions to repeal sections 310 IAC 12-5-11, 12-5-12, 12-5-13, 12-5-14, 12-5-15, 12-5-54, 12-5-55, 12-5-56, 12-5-57, 12-5-77, 12-5-78, 12-5-79, 12-5-80, 12-5-81, 12-5-118, 12-5-119, 12-5-120, 12-5-121, 12-5-150, 12-5-151, 12-5-152, 12-5-153, and 12-5-154; with the exception of those provisions identified in §914.16(d) which require further amendments.

3. 30 CFR 914.16 is amended by adding a new paragraph (d) to read as follows:

§914.16 Required program amendments.

* * * * *

(d) By July 15, 1985 Indiana shall submit for OSM approval: an amendment to 310 IAC 12-5-56.1(b) and 310 IAC 12-5-121.1(b) to render the rules no less effective than 30 CFR 816.95(b) and 817.95(b), respectively; and an amendment to 310 IAC 12-5-12.1(a)(3) and 310 IAC 12-5-78.1(a)(3) to remove the term "permanent impoundments" from the listing of sites for which topsoil need not be removed.

[FR Doc. 85-11700 Filed 5-14-85; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF DEFENSE

Department of the Army

32 CFR Part 544

National Marksmanship Matches and Excellence-in-Competition (EIC) Matches

AGENCY: Department of the Army, DOD.

ACTION: Final rule.

SUMMARY: This regulation adding rules and regulations for National Marksmanship Matches and Excellence-in-Competition (EIC) matches has been adopted as final. It gives responsibilities for the National Matches, eligibility criteria and categories for the competitors, and the program for the National Trophy Matches. It also describes the awards for the National

Matches. This regulation has been added to change the staff organization of the National Matches, show new eligibility requirements and programs for the National Trophy Matches, and introduce new awards.

EFFECTIVE DATE: June 14, 1985.

ADDRESS: Director of Civilian Marksmanship, Attention: Lieutenant Colonel William Creech, 20 Massachusetts Avenue, NW, Room 1205, Pulaski Building, Washington, D.C. 20314–0100.

FOR FURTHER INFORMATION CONTACT: LTC William Creech at (202) 272–0810 at the above address.

SUPPLEMENTARY INFORMATION: This regulation promotes the maintenance of National defense through the promotion of nationally held rifle and pistol matches. No comments have been received since publication of the interim final rule on April 8, 1985 (50 FR 13771).

Executive Order 12291

The Secretary of the Army has determined that this document is not a major rule and does not require a regulatory impact analysis under Executive Order 12291 because the rule is administrative and has no economic effect on the public.

Regulatory Flexibility Act

The Secretary of the Army has determined that this rule does not have a significant economic effect on a substantial number of small entities and does not require a flexibility analysis under the Regulatory Flexibility Act (U.S.C. 601 et seq.). It is an administrative and procedural rule.

Paperwork Reduction Act

This rule does not contain information collection requirements which would require approach by the Office of Management and Budget under 44 U.S.C. 350 et seq.

List of Subjects in 32 CFR Part 544

Armed forces, National defense, Awards, Nonprofit organizations.

Accordingly, the amendments to Part 544 published at 50 FR 13771, are adopted as final without change.

John O. Roach II,

Department of the Army Liaison Officer With the Federal Register.

[FR Doc. 85–11612 Filed 5–14–85; 8:45 am]

BILLING CODE 3710-08-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 32

[OA-FRL-2834-7]

Debarment and Suspension Under EPA Assistance Programs; Technical Amendment

AGENCY: Environmental Protection Agency.

ACTION: Final rule, technical amendment.

SUMMARY: This document revises the authority citation and §§ 32.207 and 32.302 of EPA's debarment and suspension regulation for assistance programs, 40 CFR Part 32. This action is necessary to:

1. Include the School Asbestos Abatement Program in the list of authorities authorizing this regulation;
2. Substitute an avenue of internal administrative review of debarment and suspension determinations to replace the Board of Assistance Appeals which will be abolished upon completion of its existing caseload;
3. Permit the notice of the decision to review a case to be delivered by the use of ordinary mail; and
4. Clarify section 32.207 by eliminating unnecessary verbiage and restructuring its content.

EFFECTIVE DATE: This amendment is effective May 15, 1985.

FOR FURTHER INFORMATION CONTACT: Robert F. Meunier, Grants Administration Division (PM–216), Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460, (202) 475–8028.

List of Subjects in 40 CFR Part 32

Administrative practice and procedure, Grant programs—environmental protection.

PART 32—[AMENDED]

40 CFR Part 32 is amended as follows:

1. The authority citation for Part 32 is revised to read as follows:

Authority: 7 U.S.C. 136 et seq.; 15 U.S.C. 2601 et seq.; 20 U.S.C. 4011 et seq.; 33 U.S.C. 1251 et seq.; 42 U.S.C. 300f et seq., 4901 et seq., 6901 et seq., 7401 et seq., 9601 et seq.

2. Section 32.207 is revised to read as follows:

§ 32.207 Reviews.

(a) The determination under § 32.206 shall be final. However, any party to a debarment action may request the Director, Office of Administration (OA Director), to review the findings of the hearing officer or panel by filing a request with the OA Director within 30 calendar days of the determination. The request must be in writing and set forth the specific reasons why relief should be granted.

(b) A review under this section shall be at the discretion of the OA Director. If review is granted, it shall be based solely upon the hearing record. The OA Director may set aside a determination only if it is found to be arbitrary, capricious, an abuse of discretion or based upon a clear error of law.

(c) Notice of the OA Director's decision to review the determination and the OA Director's subsequent determination shall be in writing and mailed to all parties. If a review is granted, the Director, Grants Administration Division, may stay the effective date of a debarment order pending the OA Director's determination. If a debarment is stayed, the stay shall be automatically lifted if the OA Director affirms the determination.

(d) A determination under § 32.206 or a review under this section shall not be subject to a dispute, appeal or a bid protest under Part 30 or Part 33 of this subchapter.

3. The heading and paragraph (f) of § 32.302 are revised to read as follows:

§ 32.302 Notice, hearing, determination and review.

* * * * *

(f) The suspension determination shall be final. However, any party to the suspension action may request the Director, Office of Administration (OA Director), to review the findings of the hearing officer or panel in accordance with the procedures in § 32.207. If a review is requested, the Director, Grants Administration Divsion, may stay the effective date of the suspension pending the OA Director's determination. If a suspension is stayed, the stay shall be automatically lifted if the OA Director affirms the determination.

* * * * *

Dated: April 29, 1985.

Howard M. Messner,

Assistant Administrator for Administration and Resources Management.

[FR Doc. 85–11597 Filed 5–14–85; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 180

[PP 3F2946/R765; PH-FRL 2833-4]

Pesticide Tolerance for Diclofop-Methyl

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes a tolerance for the combined residues of the herbicide diclofop-methyl and its metabolites in or on the raw agricultural commodity lentils. This regulation to establish a maximum permissible level for residues of the herbicide in or on lentils was requested in a petition submitted by American Hoechst Corp.

EFFECTIVE DATE: Effective on May 15, 1985.

ADDRESS: Written objections, identified by the document control number [PP 3F2946/R765], may be submitted to: Hearing Clerk (A-110), Environmental Protection Agency, Rm. 3708, 401 M St., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT:

By mail: Richard Mountfort, Product Manager (PM) 23, Registration Division (TS-767C), Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

Office location and telephone number: Rm. 237, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703-557-1830).

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the **Federal Register** of September 29, 1983 (48 FR 44634), which announced that American Hoechst Corp., Agricultural Division, Rte 202-206, North Somerville, NJ 08876, had filed pesticide petition 3F2946 to EPA proposing to amend 40 CFR 180.385 by establishing a tolerance for the combined residues of the herbicide diclofop-methyl (methyl 2-[4-(2,4-dichlorophenoxy)phenoxy] propanoate) and its metabolites 2-[4-(2,4-dichlorophenoxy)phenoxy] propanoic acid and 2-[4-(2,4 dichloro-5-hydroxyphenoxy)phenoxy] propanoic acid, each expressed as diclofop-methyl, in or on the commodities dry bean seed, dry pea seed, flax seed and straw, and lentil seed at 0.1 part per million (ppm). American Hoechst Corp. subsequently amended the petition by withdrawing the proposed tolerances for all the commodities except lentil seed at 0.1 ppm.

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

The data submitted in the petition and other relevant material have been evaluated. The toxicology data considered in support of the tolerance include a rat oral median lethal dose (LD_{50}) with an LD_{50} of 557 to 580 milligrams per kilogram (mg/kg); a dominant lethal mutagenicity study, negative at 100 mg/kg/day (highest level fed); a micronucleus mutagenicity study, negative at 100 mg/kg/day (highest level tested); an Ames test, negative at 5.0 mg/plate (highest level tested); a mutagenicity study with *Schizosaccharomyces pombe*, negative; a gene conversion study in *Saccharomyces cerevisiae*, negative; an unscheduled DNA synthesis study, negative; a rat teratology study with a teratogenetic no-observed-effect level (NOEL) of 100 ppm (highest dose tested) (equivalent to 5.0 mg/kg of body weight (bw); a rabbit teratology study with a teratogenetic NOEL of 3 mg/kg/day (highest dose tested) and a NOEL for fetoxicity of 0.3 mg/kg/day; a 3-generation rat reproduction study with NOEL of 300 ppm (15.0 mg/kg of bw); a 2-year rat feeding/oncogenenicity study with a NOEL of 20 ppm (1.0 mg/kg of bw) (highest level tested); a 2-year mouse feeding/oncogenenicity study with a systemic NOEL of 2 ppm (0.3 mg/kg of bw) and a significant increase in liver neoplasms in males and females at the highest dose tested, 20 ppm (2.5 mg/kg/day); and a 15-month dog feeding study with a NOEL of 8 ppm (0.2 mg/kg of bw).

The Agency has evaluated dietary exposure to diclofop-methyl residues for the commodities proposed. Assuming that 100 percent of the crop is treated with residues at the tolerance level (0.1 ppm), using a multi-stage model the "worst case" dietary oncogenic risk is calculated to be one incidence in a million. Actual risk will be less, since residues are non-detectable at level of sensitivity (0.1 ppm). There is no expectation of secondary residues in meat, milk, poultry, and eggs. Benefits associated with the use of diclofop-methyl in this minor crop are estimated to be an average $1 million annual savings to growers. No alternative herbicides are available for postemergent wild oat control in this crop.

Based on the NOEL of 2 ppm in the chronic mouse-feeding study and a 100-fold safety factor, the acceptable daily intake (ADI) has been set at 0.003 mg/kg/day with a maximum permissible intake (MPI) of 0.18 mg/day for a 60-kg person. This tolerance and previously established tolerances result in a theoretical maximum residue contribution of 0.01706 mg/day in a 1.5-kg diet and use 9.47 percent of the ADI.

The pesticide is considered useful for the purpose for which the tolerance is sought. The metabolism of the pesticide is adequately understood and an adequate analytical method, gas chromatography using electron capture detector, is available for enforcement purposes. There are no regulatory actions pending against the continued registration of the pesticide. Based on the information cited above, the Agency has determined that the establishment of the tolerance will protect the public health and is established as set forth below.

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

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

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

List of Subjects in 40 CFR Part 180

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

Dated: May 2, 1985.

Steven Schatzow,

Director, Office of Pesticide Programs.

PART 180—[AMENDED]

Therefore, 40 CFR Part 180 is amended as follows:

1. The authority citation for Part 180 is revised to read as set forth below and the authority citations following all the sections in Part 180 are removed.

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

2. Section 180.385 is amended by adding the commodity lentils and editorially redesignating the commodity

"soybean seed" to "soybeans" to read as follows:

§ 180.385 Diclofop-methyl; tolerances for residues.

* * * * *

Commodities	Parts per million
* * * * *	
Lentils	0.1
* * * * *	
Soybeans	0.1
* * * * *	

[FR Doc. 85-11258 Filed 5-14-85; 8:45 am]
BILLING CODE 6560-50-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6604

[CA-16947]

California Modifications of Executive Order No. 6206 of July 16, 1933

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order modifies an Executive order to allow the State of California to select 20 acres of public land which was withdrawn for use of Los Angeles Department of Water and Power for protection of the city's water supply system. This action will open the land to proposed disposal under State Indemnity Selection to the State of California.

EFFECTIVE DATE: May 15, 1985.

FOR FURTHER INFORMATION CONTACT: Dianna Storey, BLM, California State Office, Room E-2841, Federal Office Building, 2800 Cottage Way, Sacramento, California 95825, 916-484-4431.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2751; 43 U.S.C. 1714) it is ordered as follows:

1. The Executive Order No. 6206 of July 16, 1933, is hereby modified as stated in paragraph 2 of this order, as to the following described land:

Mount Diablo Meridian

T. 18 S., R. 37 E.,
Sec. 6 fractional SW¼SE¼.

The area described contains 20 acres in Inyo County.

2. Effective immediately, subject to valid existing rights, the land will be opened to application under the School Grant Act of 1853 for State Indemnity Selection by the State of California. The land remains closed to all other forms of appropriation under the public land laws, including the nonmetalliferous mining laws, but remains open to the metalliferous mining laws and mineral leasing laws.

May 7, 1985.

Robert N. Broadbent,
Assistant Secretary of the Interior.

[FR Doc. 85-11666 Filed 5-14-85; 8:45 am]
BILLING CODE 4310-84-M

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for Dicerandra immaculata (Lakela's Mint)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines endangered status for *Dicerandra immaculata* (Lakela's mint), a small shrub restricted to a few sites in Indian River and St. Lucie Counties, Florida. Residential and commercial development is a threat to the continued existence of this plant. This final rule provides the protection of the Endangered Species Act of 1973, as amended, to *Dicerandra immaculata*.

DATE: The effective date for this rule is June 14, 1985.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours, at the Endangered Species Field Station, U.S. Fish and Wildlife Service, 2747 Art Museum Drive, Jacksonville, Florida 32207.

FOR FURTHER INFORMATION CONTACT: Mr. David J. Wesley, Endangered Species Field Supervisor, at the above address (904/791-2580 or FTS 946-2580).

SUPPLEMENTARY INFORMATION:

Background

Dicerandra immaculata (Lakela's mint) is a low-growing dome-shaped shrub of the mint family (Lamiaceae). The plants reach 38 centimeters (15 inches) in height, and bear erect flowers in small cymes at the tips of the stems. The spotless, lavender-rose to purplish (rarely white) corolla (petals) of the flower separates *Dicerandra immaculata* from other species of this genus occurring in the southeastern Unites States. *Dicerandra immaculata* was described by Lakela (1963) based on material collected in southern Indian River County, Florida, in 1962. The species is restricted to coastal sand pine scrub vegetation in Indian River and St. Lucie Counties, Florida. Florida sand scrub habitats are found on relict dunes along former shorelines. The soils consist of highly drained, sterile sands.

In *Dicerandra immaculata* habitat, sand pine (*Pinus clausa*) forms an overstory, while oaks (*Quercus geminata, Q. virginiana,* and *Q. myrtifolia*) form an understory. Other small trees or shrubs found in this plant community include scrub hickory (*Carya floridana*), cabbage palm (*Sabal palmetto*), saw palmetto (*Serenoa repens*), hog plum (*Ximenia americana*), and tough bumelia (*Bumelia tenax*). Epiphytes (*Tillandsia fasciculata* and *T. recurvata*) are present. *Dicerandra immaculata* is one of the rarest plants known from the sand scrub community type. Rare animals found in *Dicerandra immaculata* habitat include the Florida scrub jay (*Aphelocoma c. coerulescens*) and the scrub lizard (*Sceloporus woodi*). The Florida scrub jay is considered a threatened species by the State of Florida; the scrub lizard is considered rare by the Florida Committee on Rare and Endangered Plants and Animals. Only 9 remaining sites of *Dicerandra immaculata* are known. The occur in an area 0.8 kilometer (0.5 mile) wide by 4.8 kilometers (3 miles) long in Indian River and St. Lucie Counties, Florida, between the cities of Vero Beach and Fort Pierce. The plants occur in the vicinity of 4 small sandhills with an elevation over 14 meters (45 feet), representing ancient coastal dunes. *Dicerandra immaculata* occurs on soil series of the Astatula, Paola, and St. Lucie sands. All known colonies occur on private property. The continued existence of this species is threatened by sand mining, commercial and residential development, and a fungal disease affecting the seeds.

Section 12 of the Endangered Species Act of 1973 directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened, or extinct. The Secretary of the Smithsonian presented this report (House Document No. 94-51) to Congress on January 9, 1975. On July 1, 1975, the Service published a notice of review in the **Federal Register** (40 FR 27823) of its acceptance of the report of the Smithsonian Institution as a petition within the context of Section 4(c)(2) of the Act (petition acceptance is now governed by Section 4(b)(3) of the Act, as amended). On June 16, 1976, the Service published a proposed rule in the **Federal Register** (42 FR 24523) to determine approximately 1,700 vascular plant species to be endangered species

pursuant to Section 4 of the Act. *Dicerandra immaculata* was included in the Smithsonian report, the July 1, 1975, notice of review, and the June 16, 1976 proposal.

The 1978 Endangered Species Act Amendments required that all proposals over 2 years old be withdrawn, except that a 1-year grace period was given to proposals already over 2 years old. On December 10, 1979, the Service published a notice of withdrawal of that portion of the June 16, 1976, proposal that had not been made final, along with four other proposals that had expired (44 FR 70796); this withdrawal included *Dicerandra immaculata*. On December 15, 1980, the Service published a revised notice of review in the **Federal Register** (45 FR 82480); *Dicerandra immaculata* was placed in category 1 of this notice, meaning that the Service had substantial information supporting a proposed determination of endangered or threatened status.

Section 4(b)(3)(B) of the Endangered Species Act, as amended in 1982, requires the Secretary to make findings on certain pending petitions within 12 months of their receipt. Section 2(b)(1) of the 1982 Amendments to the Act, further requires that all petitions pending on October 13, 1982, be treated as having been newly submitted on that date. This was the case for *Dicerandra immaculata* because of the acceptance of the 1975 Smithsonian report as a petition. On October 13, 1983, the Service found that the petitioned listing of *Dicerandra immaculata* was warranted, and that, although other pending proposals had precluded proposal of *Dicerandra immaculata*, expeditious progress was being made to add the species to the list. This finding was published in the **Federal Register** on January 20, 1984 (49 FR 2485). Such a finding requires the petition to be recycled, pursuant to Section 4(b)(3)(c)(i). In the **Federal Register** of July 23, 1984 (49 FR 29632), the Service published a proposal to list *Dicerandra immaculata* as an endangered species. Publication of the proposal constituted the finding, required by October 13, 1984, that the petitioned action was warranted.

Summary of Comments and Recommendations

In the July 23, 1984, proposed rule (49 FR 29632) and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. Newspaper notices were published in the Fort Pierce, Florida *News Tribune* on August 9, 1984; and in the Vero Beach, Florida *Press-Journal* on August 27, 1984. These newspaper notices invited general public comments. Fifteen comments were received, and are discussed below.

The proposal was supported by the Threatened Plants Unit of the International Union for Conservation of Nature and Natural Resources, the Florida Game and Fresh Water Fish Commission, Florida's Treasure Coast Regional Planning Council, and the Florida Native Plant Society, as well as two local chapters of this organization. The Florida Department of Agriculture and Consumer Services indicated that *Dicerandra immaculata* would be recommended for State listing as endangered in the 1985 legislative session. The Indian River County Chief of Environmental Planning supported the concept of listing *Dicerandra immaculata* but stated that the County had no mechanisms to preserve the plant. One individual expressed interest in cultivating *Dicerandra immaculata*. Two other persons expressed interest in the conservation of this species.

Three individuals commented on the continuing decline of *Dicerandra immaculata* due to commercial and residential development. One of these commenters suggested that road widening could adversely affect some of the remaining *Dicerandra immaculata* populations. The Service will consider this potential threat in reviewing future Federal activities in the area. The Federal Department of Transportation was notified of the proposed listing of *Dicerandra immaculata* as an endangered species, but no comments were received.

One landowner suggested transplanting as many plants as possible. The Service thinks that protection and maintenance of existing sites of *Dicerandra immaculata* would be the preferred means of conserving the plant. Failing this, transplantation and cultivation may be alternatives allowing for preservation of this species.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that *Dicerandra immaculata* should be classified as an endangered species. Procedures found at Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations promulgated to implement the listing provisions of the Act (to be codified at 50 CFR Part 424; see 49 FR 38900, October 1, 1984) were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in Section 4(a)(1). These factors and their application to *Dicerandra immaculata* Lakela (Lakela's mint) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range. Dicerandra immaculata* is known only from a 0.8 kilometer (0.5 mile) by 4.8 kilometers (3 miles) area in Indian River and St. Lucie Counties, Florida, between the cities of Vero Beach and Fort Pierce. Since the time this species was proposed for listing, one of the 10 colonies then known has been destroyed by commercial development. Two sites have been partially destroyed by clearing for construction of houses. Two other colonies are threatened by sand mining. This commercial and residential development has occurred in the last 2 years; such activities are expected to continue in the near future, affecting most or all of the remaining colonies of *Dicerandra immaculata* (Austin *et al.*, 1980; Kral, 1983).

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Not applicable.

C. *Disease or predation. Dicerandra immaculata* is subject to mildew attack, which destroys the viability of the seeds before they are dispersed (Robinson, 1981).

D. *The inadequacy of existing regulatory mechanisms.* No existing Federal, State, or local laws or regulations protect *Dicerandra immaculata* or its habitat. The State of Florida will consider placing *Dicerandra immaculata* on the State endangered plant list in 1985, pursuant to the Preservation of Native Flora of Florida Act (Section 581.185, Florida Statutes). This designation, however, would not protect the habitat of *Dicerandra immaculata*.

E. *Other natural or manmade factors affecting its continued existence.* Peninsular Florida has one of the highest human population growth rates in the United States. The current heavy development pressures on the limited uplands can be expected to intensify in the area in which *Dicerandra immaculata* occurs.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to make this rule final. Based on this evaluation, the preferred action is to list *Dicerandra immaculata* as endangered. The few

remaining colonies of this species are continuing to decline and the plant is in danger of extinction throughout its range. Critical habitat is not being designated for *Dicerandra immaculata*; the reason for this decision is discussed in the following section.

Critical habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time a species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for this species at this time. This species is found only on small areas of privately-owned lands, where no Federal involvements are known at present. Publication of critical habitat descriptions and maps in the **Federal Register** could attract attention to the limited area where *Dicerandra immaculata* occurs, subjecting the remaining sites to vandalism. The resultant attention could also encourage increased trespassing and frustrate property owners. Should future Federal activities take place in the area in which *Dicerandra immaculata* occurs, the Service feels that such activities will be brought to the Service's attention without the designation of critical habitat.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act inlcude recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against taking are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402 and are now under revision (see proposal at 48 FR 29990; June 29, 1983). Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or result in the destruction or adverse modification of its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. No Federal involvements affecting *Dicerandra immaculata* are known at this time.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 set forth a series of general trade prohibitions and exceptions that apply to all endangered plant species. With respect to *Dicerandra immaculata*, all trade prohibitions of Section 9(a)(2) of the Act, implemented by 50 CFR 17.61, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, or sell or offer for sale this species in interstate or foreign commerce. Certain exceptions can apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered species under certain circumstances. It is anticipated that few trade permits would ever be sought or issued since *Dicerandra immaculata* is not common in cultivation or in the wild.

Section 9(a)(2)(B) of the Act, as amended in 1982, prohibits the removal and reduction to possession of endangered plant species from areas under Federal jurisdiction. Since *Dicerandra immaculata* is not presently known to occur in any area under Federal jurisdiction, this prohibition will not apply. Requests for copies of the regulations on plant and inquiries regarding them may be addressed to the Federal Wildlife Permit Office, U.S. Fish and Wildlife Service, Washington, D.C. 20240 (703/235–1903).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to Section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

Literature Cited

Austin, D.F., C.E. Nauman, and B.E. Tatje. 1980. Endangered and threatened plant survey in southern Florida and the National Key Deer and Great White Heron National Wildlife Refuges, Monroe County, Florida. Report submitted to U.S. Fish and Wildlife Service, Atlanta, Georgia.

Kral, R. 1983. A report on some rare, threatened, or endangered forest-related vascular plant of the South. Vol. II: Aquifoliaceae through Asteraceae. U.S.D.A. Forest Service Publication R8-TP2.

Lakela, O. 1963. *Dicerandra immaculata* Lakela, sp. nov. (Labiatae). Sida 1(3):184–185.

Robinson, A.F., Jr. 1981. *Dicerandra immaculata*. Status review prepared for U.S. Fish and Wildlife Service files. Jacksonville Endangered Species Field Station, Jacksonville, Florida.

Author

The primary author of this final rule is Dr. Michael M. Bentzien, Endangered Species Field Station, U.S. Fish and Wildlife Service, 2747 Art Museum Drive, Jacksonville, Florida 32207 (904/791–2580 or FTS 946–2580).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Regulation Promulgation

PART 17—[AMENDED]

Accordingly, Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, is amended as set forth below:

1. The authority citation for Part 17 reads as follows:

Authority: Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*).

2. Amend § 17.12(h) for plants by adding the following, in alphabetical order under Lamiaceae, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
Lamiaceae—Mint family:						
*	*	*	*	*	*	*
Dicerandra immaculata	Lakela's mint	U.S.A. (FL)	E	177	NA	NA
*	*	*	*	*	*	*

Dated: April 18, 1985.

J. Craig Potter,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 85-11660 Filed 5-14-85; 8:45 am]

BILLING CODE 4310-55-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 652

[Docket No. 31220-245]

Atlantic Surf Clam and Ocean Quahog Fisheries

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

ACTION: Notice of surf clam fishery time adjustment and closure.

SUMMARY: NOAA issues this notice to reduce the allowable fishing time for surf clams from six hours per week to six hours every other week for vessels harvesting surf clams in the Mid-Atlantic Area of the fishery conservation zone. In addition, the fishery will close for a two-week period from 8:00 a.m. on June 23, 1985, through 2:00 p.m. on July 4, 1985, in the Mid-Atlantic Area. The action is required to prevent significant overharvest of surf clam allocations and avoid a prolonged closure of the fishery. The intended effect is to reduce the rate of harvest from the fishery.

EFFECTIVE DATE: May 12, 1985.

FOR FURTHER INFORMATION CONTACT: Monique Rutledge, 617-281-3600, ext. 351.

SUPPLEMENTARY INFORMATION: Regulations implementing the Fishery Management Plan for the Atlantic Surf Clam and Ocean Quahog Fisheries contain at 50 CFR 652.22(a)(3) (i) and (d) provisions to reduce the allowable fishing time for surf clams and close the fishery if the Regional Director, upon review of available information and public comment, including current and expected levels of fishing effort, determines during any quarter that the quarterly quota for surf clams will be exceeded.

Logbooks submitted by fishermen and processors show that as of April 25, 1985, surf clam harvest during the first two quarters of 1985 reached 1,000,000 bushels. Thus, 76 percent of the 1,325,000 bushel quota for the first two quarters of 1985 has already been harvested. Examination of the weekly catch rates indicates a significant increase in surf clam harvest during the second quarter as compared to the first quarter.

The Regional Director has determined that without both a reduction in fishing time and two-week closure, the second quarterly quota will be exceeded and early closure of the fishery will be necessary. Therefore, the Secretary of Commerce reduces fishing time to six hours every other week effective May 12, 1985, and closes the fishery beginning at 8:00 a.m. on June 20, 1985, through 2:00 p.m. on July 4, 1985, to reduce the possibility that harvests will exceed the annual quota.

The reduced fishing schedule divides the surf clam fleet in half alphabetically, divides the calendar month into "odd" and "even" weeks and assigns one-half of the fleet to odd weeks and the other half to even weeks. The first letter of a surf clam vessel's name will determine which week the vessel will conduct its six-hour fishing activity. Vessels with names beginning with letters A–M will fish during "odd" weeks. Vessels with names beginning with letters N–Z will fish during "even" weeks. All vessels will fish on their presently scheduled fishing days, between the hours of 8:00 a.m. and 2:00 p.m.

Therefore, the following schedule is in effect:

REDUCED FISHING SCHEDULE

Week	Vessel		
	Odd	Even	Fishing period (8 am-2 pm)
May 12-16	(A-M)		6 hrs.
May 19-23		(N-Z)	Do.
May 26-30	(A-M)		Do.
June 2-6		(N-Z)	Do.
June 9-13	(A-M)		Do.
June 16-20		(N-Z)	Do.
June 23-27, fishery closed			
June 30-July 4, fishery closed.			
July 7-11	(A-M)		Do.
July 14-18		(N-Z)	Do.

Alternating weeks to continue as above until further notice.

If the assigned week interferes with fishing strategy, vessels should have switched their odd or even fishing week by contacting the Regional Director before 4:00 p.m. on May 10, 1985, pursuant to the surf clam permit holder letter dated May 1, 1985. Vessels will have an additional opportunity to change their fishing week during the two-week closure and should contact the Regional Director between 9:00 a.m. on June 24 and 4:00 p.m. on July 3 to switch their assigned odd-even week.

When the fishery reopens on July 7, 1985, the reduced fishing schedule will continue until the Regional Director determines that the rate of harvest in the surf clam fishery has been reduced sufficiently to avoid a prolonged closure and prevent the annual quota from being exceeded. Further notice of additional adjustments in the fishing time will be forthcoming after the Regional Director reviews the level of harvest under the revised fishing schedule.

Other Matters

This action is taken under the authority of 50 CFR Part 652 and is taken in compliance with Executive Order 12291.

(16 U.S.C. 1801 *et seq.*)

List of Subjects in 50 CFR Part 652

Fisheries, Reporting and recordkeeping requirements.

Dated: May 10, 1985.

Carmen J. Blondin,

Deputy Assistant Administrator For Fisheries Resource Management, National Marine Fisheries Service.

[FR Doc. 85-11761 Filed 5-10-85; 4:36 pm]

BILLING CODE 3510-22-M

50 CFR Part 655

[Docket No. 40211-4050]

Atlantic Mackerel, Squid, and Butterfish Fisheries

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

ACTION: Final initial annual specifications.

SUMMARY: NOAA issues this notice to provide final initial annual specifications to the Fishery Management Plan for Atlantic Mackerel, Squid, and Butterfish Fisheries for the 1985-1986 fishing year. Regulations governing these fisheries require publication of final initial annual specifications for the current fishing year. This action is intended to notify users of the final initial specifications and to promote orderly development of the fisheries.

EFFECTIVE DATE: May 10, 1985.

ADDRESS: Copies of the regulatory flexibility analysis are available from John C. Bryson, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 South New Street, Dover, Delaware 19901.

FOR FURTHER INFORMATION CONTACT: Salvatore A. Testaverde, 617-281-3600, ext. 273.

SUPPLEMENTARY INFORMATION: Final regulations to implement Amendment 1 to the Fishery Management Plan for Atlantic Mackerel, Squid, and Butterfish Fisheries (FMP) were published January 4, 1984 (49 FR 402). Interim

specifications for the 1985–1986 fishing year, and request for comments, were published March 27, 1985 effective on March 22, 1985 (50 FR 12032). Comments were received by NOAA through April 26, 1985. Prior to the interim rule, NOAA issued a notice of postponent (50 FR 6953, February 19, 1985) to inform the public that the specifications would be postponed.

The initial annual specifications for Atlantic mackerel were issued as an interim rule and made effective on March 12, 1985 (50 FR 10499, March 15, 1985), and requested public comment; no comments were received on these specifications. Therefore, the final Atlantic mackerel specifications were filed on May 9, 1985, with the effective date of March 12, 1985, unchanged.

Comment Received

Comments, all directed at the squid specifications, were submitted by the Governments of Italy (GOI) and Spain (GOS), the Japan Deep Sea Trawlers Association (JDSTA), the Association of Spanish Fishermen (ANAVAR), the National Fisheries Institute (NFI), Stonavar, a joint venture company with Spain, Sea Harvest, Inc., the U.S. participant in International Seafood Trading Company (ISTC) with Italy, and a shoreside squid processor.

The Japan Deep Sea Trawlers Association commented on the scientific basis for lowering the *Loligo* and *Illex* allowable biological catches (ABCs). The Government of Spain and ANAVAR commented that the *Loligo* and *Illex* total allowable level of foreign fishing (TALFFS) were insufficient. ANAVAR, in addition, stated that it required advance notice of TALFF in order to plan fishing operations, and, that they anticipated a TALFF allocation in consideration of their having signed purchase commitments for U.S. produced products. The representative for Stonavar commented that NOAA erred in not publishing the TALFF and Joint Venture Processing (JVP) specifications as recommended by the Mid-Atlantic Fishery Management Council (MAFMC) and the New England Fishery Management Council (NEFMC), that the specifications were not published on a timely basis, that analysis of the catcher processor component of Domestic Annual Processing (DAP) was faulty; and, that the *Loligo* Initial Optimum Yield (IOY) was not "in the best interest of the nation". The Government of Italy and ISTC commented that the specifications were very restrictive and that the use of the term "maximum TALFF" and the uncertainty of the linkage between joint venture proposals and TALFF signaled a change in policy in the management of the squid fisheries.

The National Fisheries Institute submitted new calculations in support of their projections for use of *Loligo* squid by U.S. operators of catcher processor vessels. The domestic processor resubmitted a prior presentation to support a request for *Loligo* to use in an expanded processing facility.

Specifications

The following table lists the final initial annual specifications in metric tons (mt) of the Maximum Optimum Yield (Max OY) Allowable Biological Catch (ABC), Initial Optimum Yield (IOY), Domestic Annual Harvest (DAH), Domestic Annual Processing (DAP), Joint Venture Processing (JVP), Reserve (if any), and Total Allowable Level of Foreign Fishing (TALFF) for squid, (*Loligo*) and *Illex)* and butterfish. These annual specifications are amounts that the Regional Director, Northeast Region, has determined to be the appropriate levels of harvest for the start of the 1985–1986 fishing year. These levels are subject to modification based on performance as the fishing year progresses.

Modifications In Response To Public Comment

The specifications given below reflect consideration of comments received on the interim specifications.

Initial Optimum Yields (IOYs)

The *Loligo* IOY has been modified upward in the net amount of 2,500 mt because of changes in DAP, DAH and TALFF.

Total Allowable Level of Foreign Fishing—TALFF

Modifications have been made to the *Loligo* TALFF specification to reflect more clearly the agency's intention to make TALFF available to foreign nations that have conferred commensurate benefits upon the U.S. fishing industry.

Previously, the potential availability for *Loligo* TALFF was noted only in a footnote and text reference. A 5,000 mt amount is added to the 700 mt by-catch TALFF amount for a total *Loligo* TALFF of 5,700 mt which may be allocated. The modifications were made both to clarify the agency's intent to make TALFF available in instances where benefits would accrue to the U.S. fisheries and to recognize evidence of actual commitments to participate in such arrangements submitted as part of comments on the specifications.

In making this modification, the agency has not foregone the expectation that commitments made in consideration of TALFF recommendations in the 1984–1985 fishing year would be fulfilled in addition to any commitments made to obtain recommendations for TALFF allocations in the 1985–1986 fishing year. Although availability of TALFF has been made more explicit, the concept of transfer of benefits in turn for TALFF recommendations remains embodied in the process and will govern the agency's recommendations relative to allocations of TALFF amounts now referenced in the table. Where actual performance of existing commitments is not forthcoming, or where additional commitments fail to materialize, the agency will not be inclined to provide favorable recommendations for allocations of TALFF.

The specification for *Illex* TALFF has not been modified. The agency's intention remains to make TALFF available where there is firm evidence of commitment to engage in arrangements which will be beneficial to the U.S. industry. Lacking such indications of commitments as have been received with regard to *Loligo* arrangements during the comment period, NOAA has decided not to modify the *Illex* TALFF specification in the same manner as it modified the *Loligo* TALFF specification. The agency may recognize, however, timely filed, competitive proposals which lack closure only for failure to resolve commercial details. On clearance and after transmittal of evidence of commitment, similar modifications could be made to the *Illex* TALFF as have been made to *Loligo*.

The modification to the *Loligo* TALFF specification and the clarification of the agency's position should alleviate in part concerns received in comments which are addressed later.

FINAL INITIAL SPECIFICATIONS FOR FISHING YEAR—APR. 1, 1985—MAR. 31, 1986

[In metric tons (mt)]

Specifications	Squid		Butterfish
	Loligo	Illex	
Max OY[1]	44,000	30,000	[2] 16,000
ABC	33,000	25,000	[2] 16,000
IOY	28,200	[3] 16,700	11,700
DAH	22,500	16,000	11,000
DAP	20,500	11,500	11,000
JVP	[4] 2,000	[4] 4,500	
Reserve	0	0	
TALFF	5,700	[5] 700	700

[1] These are maximum OYs (as stated in the FMP).
[2] Up to the figure given.
[3] An additional amount may be added to IOY, up to 2,500 mt of *Illex*, based in major part, upon the purchase of U.S. processed *Illex*, 1 mt of processed *Illex* to 1 mt of *Illex* TALFF (see text, section on TALFF).
[4] Additional amounts may be added to JVP by increasing IOY up to 1,700 mt (for a total of 3,700 mt) for *Loligo* and up to 4,000 mt (for a total of 8,500 mt) for *Illex*, depending upon performance.

Note.—These adjustments will comply with the procedures of 50 CFR 655.22.

Specification Setting Procedure

Comment: The representative of Stonavar commented that the agency failed to publish specifications on a timely basis "on or *before*" March 15th.

Response: Section 655.22 describes a number of dates as *"on or about"* by which various steps are intended to be accomplished in the setting of specifications. The dates are approximate to give sufficient flexibility to receive, analyze, and air in public forums all information which is pertinent to the prosecution of the fishery over the ensuing fishing year. On March 27, 1985 interim specifications were published for squids, effective March 22, 1985, (50 FR 12032).

This year a number of circumstances made the process more complex and cause some delay in publications. Determination was made based on scientific assessments that the ABCs for *Loligo* and *Illex* squids should be lowered. The Council lowered the *Loligo* ABC by 11,000 mt and the *Illex* ABC by 5,000 mt, thereby reducing sharply the amount of resource available for allocation and casting doubt on the flexibility to raise the ABCs later to the maximum OYs of 44,000 mt (*Loligo*) and 30,000 mt (*Illex*) and 30,000 mt (*Illex*), which the FMP theoretically allows.

Proposals were submitted that projected substantial increases in domestic use of *Loligo* squid, including consideration of a plant expansion and investments in a number of domestic catcher-processor vessels. The catcher processor vessel proposals came in Mid-February and were discussed in Council meetings in early March. Joint venture paticipants previously engaged in the fishery submitted proposals for the 1985–1986 fishing year, a number of them without collateral requests for TALFF allocations. All of these factors required substantial consultation among NOAA, both the Mid-Atlantic and New England Fisheries Management Councils (Councils) and the public, prior to setting specifications. Consideration of information submitted in February on new catcher processor vessels late in the decision making process required additional time for reference back through the Councils' network to assess the impact of these proposals on prior Council recommendations.

The agency kept the public informed of the status of deliberations through public notices. On February 19, 1985, notice was published of postponement of publication of the specifications (50 FR 6953). Concurrent with the appearance of the March 27, 1985, interim notice, public meetings were held by the Councils, at which members of the public participated in discussions of new developments and their impact on the prior recommendations of these Councils. The delay that occurred was justified by the circumstances. In fact, had NOAA by-passed the claims of the domestic catcher-processors to comply with formal deadlines, it would have violated its substantive obligations under the Magnuson Act and the FMP to favor domestic proposals and to support domestic growth in the utilization of the squid resources by excluding from consideration the needs of domestic processing vessels scheduled to come on line during the 1985–1986 fishing year. NOAA believes that it has met its obligations under the FMP and the regulations.

Squid—Allowable Biological Catch

Comment: The JDSTA commented that the reduction in catch limits for *Loligo* and *Illex* (ABCs) are without proper biological justification because of uncertainties in assessment techniques.

Response: Despite some shortcomings in the assessment methods for *Illex*, NOAA is of the opinion that they provided an adequate basis for action in the context of this year's fishing activity. After consultation with the MAFMC Scientific and Statistical Committee and the Northeast Fisheries Center, NOAA, the Councils proposed to take a conservative management strategy to respond to a sharp decline in survey abundance which was reflected in the best data available on the resource condition. The conservative strategy also appears prudent in light of the Canadian experience with its *Illex* fishery which developed very rapidly to over 150,000 tons per year, but collapsed equally repidly.

JDSTA states that actual catches of *Loligo* in recent years have not been high enough to achieve MSY under terms of the assessment used as reference in management of the fishery. It appears that JDSTA has interpreted the proposed reduction of MAX OY from 44,000 mt to 33,000 mt as intent to reduce the proportion of the population available for harvest below the 41% indicated as needed to produce MSY according to the 1977 assessment. Actually, the reduction from 44,000 mt to 33,000 mt primarily reflects refinement n the estimate of average annual recruitment. The proportion of the population that will be caught is actually higher than 41%. Several options of annual recruitment were given in the 1984 assessment. NMFS and the Councils chose a conservative option as the biological basis of the FMP.

Comment: The NFI criticized an increase in the initially proposed *Loligo* ABC of 27,000 mt upwards to 33,000 mt during the review of annual specifications. NFI characterized this action which occurred during the March 1985 Council meeting as a foreign "give away allocation".

Response: This action complained of was actually undertaken to respond to requests for consideration by domestic catcher processors who made their initial appearance after specifications, including specifications for TALFF had been recommended.

At the NEFMC Foreign Fishing Committee meeting, February 4, 1985, representatives of domestic catcher processing vessels presented information that had not been considered for the DAP specifications for squid recommended by the Councils. NMFS published a notice of postponment (50 FR 6953, February 19, 1985) informing the public that the premilinary initial annual specifications were postponed to allow the Councils and NOAA adequate time to review this new information and formulate specifications that accurately reflected current and projected harvesting and processing during the 1985–1986 fishing year. The domestic catcher processing vessel owners made another presentation at the February 14, 1985 meeting of the MAFMC's Squid, Mackerel and Butterfish Committee. The catcher processor vessel owners also submitted to questioning at that time.

In response, the Council and NOAA decided to investigate whether the original range of ABCs' were rigidly based on the best scientific data or whether they were more like approximations and therefore could be raised. The Northeast Fisheries Center advised the Northeast Regional Director that the assessments which had been relied upon in reducing the ABCs were not "firm" as to harvest levels. Based on this advice, the Council selected the upper ends of both squid ABC ranges as the ABCs for the upcoming fishing year. The situation did not come to a trade-off between needs of foreign and domestic user groups, as implied by NFI, but allowed accommodation of all. Under these circumstances, it would have been questionable to eliminate previously approved proposals.

Initial Optimum Yields (IOYs)

Comments: Commenters associated with Spanish and Italian interests objected to the IOY's in concept stating

that they were too restrictive, and that they signalled a change in policy.

Response: Part of the Commenters' objections may be alleviated by a change which has been made to place in the *Loligo* TALFF column, an amount previously alluded to only in footnotes and in the text of the notice of interim optimum yields. A second change has been made to subtract from the *Loligo* DAP an amount which had been given credit twice in the original calculations of this specification. The result is a net addition to the *Loligo* IOY of 2,500 mt. The basis for the changes are explained in appropriate sections below.

A review of the record of the specification setting process for this year reveals that the "restrictiveness" of the figures is not by Council or government design but was caused by two elements: first, a drastic reduction in the allowable resource, the Allowable Biological Catches (ABC's), based on scientific advice, and, secondly, the presence of multiple competitors for the resources including domestic users having claims are favored under the law. In their final analyses, neither the Councils nor NOAA saw fit to exclude any user group from the fishery since each offered some measure of benefit to the domestic industry. Allocations of TALFF would be tied to performance of promises of benefit to the United States. Joint ventures would benefit domestic harvesters. New and expanding domestic ventures which projected substantial use of available resource, although given great weight, could not produce a record sufficient to justify exclusion of other participants from the fishery in the 1985–1986 fishing year.

Although the specification for *Loligo* set aside a substantial portion of the resource at the outset of the fishing year for various participants' uses, some flexibility does remain in the use of the unallocated amount between IOY and ABC, from the potential for withdrawal from TALFF of unallocated amounts for failure of performance by those who have promised benefits to the U.S. in exchange for allocations of TALFF, and from failure of performance in other categories which could also result in redistribution among users. These are the operational realities of a year in which the circumstances described here have occurred.

In response to other comments raised in connection with comments on "restrictiveness", NOAA concedes that the references in the text accompanying the interim optimum yields to "maximum" amounts, e.g. for TALFF, etc., could have been misleading to the extent that commenters might conclude that amounts specified were the maximums or totals for that category for the fishing year. What was meant was that the amount specified was all that was designated for that category for the beginning of the fishing year. The squid specifications are subject to change during the fishing year (§ 655.22(f)). It was not meant to give the impression that new terms had been developed for the FMP. Also, ISTC was in error when it concluded that a recent agency report on joint ventures was the driving force for the setting of specifications. The deliberations of the Councils, presentations by the various user groups, and staff analyses were the basis on which the specifications were set, not the draft policy paper. Finally, the principles of the Fish and Chips policy still pertain, but the context in which they operate narrowed considerably in this fishing year since the amount of resource available for harvest has been reduced and the number of vessels competing for it has increased.

Domestic Annual Harvest (DAH)

The domestic annual processing component of the *Loligo* DAH has been revised downward from the amount published in the interim optimum yields from 25,000 mt to 22,500 mt, to remove an amount which had been credited twice to the joint venture sector of the fishery. Review of prior analysis for the specifications indicated that 15,000 mt had been used as the estimate for the potential use by the domestic processing sector. This figure, however, which represented total U.S. harvest of *Loligo* for the best performance year, 1983, included joint venture harvests for that year in addition to domestic processing which amounted to 12,500 mt. In setting the specifications for 1985–1986, NOAA, after giving credit for 15,000 mt to domestic processing went on to allocate 2,000 mt for initial JVP and an additional 1,700 mt for cap JVP, in effect giving unjustified credit to joint venture potential in the amount of 2,500 mt. Since the joint venture amounts in the 1985–1986 specifications have been carefully considered and analyzed, there is no need to keep the surplus amount in the specifications in support of that category, and the amount has been deducted from the DAP specification, lowering the DAH to 22,500 mt.

Other comments directed at the *Loligo* DAP specification were not persuasive that DAP be revised further.

Comment: The representative of Stonavar stated that the DAP was inflated because domestic catcher processor vessel owners overstated their projected capacities in order to manipulate the setting of the annual specifications and capture monopoly profits. The government, they said, supported the vessel owners' anticompetitive actions by failing to subject their proposals to rigorous analysis.

Response: Capture of monopoly profits in the squid fishery through manipulation of the specifications is highly unlikely since the specifications may be revised throughout the fishing year based on fulfillment of projected performance, as stipulated at § 655.22(f). Given the variability of experience in this fishery, it is doubtful that this market could be monopolized. Use of such a tactic would have a downside also, since failure to meet inflated performance schedules could result in redistribution of allocation during the fishing year and in closer scrutiny of such assertions in subsequent years. Also, the owners and representatives of these vessels exposed themselves to lengthy questioning at three open Council sessions, an action not likely to be taken by persons relying on unsound information. In any event, after review of the catcher processor vessel proposals, the agency attributed far less of the DAH to their projected use than the 16,000 mt cited by Stonavar. Consideration of the staggered entry on line of the various vessels, their lack of historical performance, and the mutual fulfillment of demand for the vessels and for expanded plant facilities in the same allocation, the agency concluded that an amount far less than 16,000 mt would fulfill the needs of this part of the industry. In fact, Stonavar's calculation of projected utilization supports rather than compels revision of the agency's analysis.

Comment: The National Fisheries Institute submitted additional calculations in support of projections for domestic catch processor vessels and one squid processor resubmitted a prior presentation in support of need for *Loligo* to operate an expanded processing facility.

Response: Both comments underscored physical capacity of vessels and plant facilities, but, understandably since new ventures are involved, were lacking in substantial detail on history and marketing potential, which are critical elements for assessment of their demand for resource. The agency concludes that the needs of these users have been adequately addressed in the specifications and that a case has not been made for total elimination of joint ventures and TALFF arrangements through which benefits will accrue to other domestic sectors. Thus, with the

exception of the removal of a surplus amount from the DAP specification, neither DAP nor other specifications have been revised in response to these comments.

Total Allowable Level of Foreign Fishing—TALFF

Comment: The representative of Stonavar commented that the *Loligo* IOY was not in the best interest of the nation for failing to include more than a by-catch level of TALFF.

Response: The agency revised the *Loligo* TALFF specification based in part on submittal of evidence of purchase commitments by Stonavar and ANAVAR in their comments on the interim optimum yields. This action should alleviate some of the concerns expressed by Stonavar in its comments, but it should not be seen as an acceptance of Stonavar's interpretation of the interim optimum yields as a sign of the agency's intention to eliminate TALFF. Since the inception of Amendment 1 to the FMP, the agency has based its decisions on the specification and allocation of TALFFs on their potential for benefit to the U.S. Prior to Amendment 1, transfers were made to benefits for allocations but the connection between benefits conferred and the level of allocations was not clearly defined. Under Amendment 1, the same components are designated for trade, but the transaction is more tightly drawn to comport with the plan's goals of fostering development of the U.S. commercial fishery. Under Amendment 1, TALFF may not be specified at a level which will interfere with attainment of the U.S. development goal.

Comment: In its comments, the Government of Italy requested TALFF allocations for *Loligo* and *Illex* in conjunction with their planned joint venture operation and expressed willingness to purchase U.S. processed product. ISTC's comments echoed those of the Government of Italy.

Response: NOAA has placed into the annual specifications only those amounts attributable to arrangements which have been received and recommended by the Councils. Taking such recommendations, NOAA suggests that the requesters seek Council review on the terms described in their comments. Because there is not sufficient basis for including amounts attributable to these requests into these specifications, Council recommendations would reference unallocated amounts, or in the event of failure of projected performance by other users, by redistribution of amounts from other specification.

Both commenters also made statements indicating that they expected linkage between joint venture proposals and TALFF recommendations because this had been the case in prior fishing years. Linkage of these factors, however, depends very much on the circumstances prevailing at the time the proposal is introduced. In an intensely competitive year such as this one, with allocable resource reduced, and substantial domestic requests on record, the linkage was not automatic. A number of joint ventures were submitted without requests for TALFF.

Butterfish

No comments were received on the butterfish specifications. The specifications remain unchanged.

Classification

This action is authorized by 50 CFR Part 655, and complies with Executive Order 12291. The Council prepared a final regulatory flexibility analysis which describes the effects this rule will have on small entities. You may obtain a copy of this analysis from the Council at the **ADDRESS** listed above.

(16 U.S.C. 1801 *et seq.*)

Dated: May 9, 1985.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

[FR Doc. 85-11680 Filed 5-10-85; 12:16 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 50, No. 94
Wednesday, May 15, 1985

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

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 6

Section 22 Dairy Import Quotas; Assessment of Fees for Administering Import Licenses

AGENCY: Foreign Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule amends the regulations (7 CFR 6.20–6.32) governing the importation under license of certain dairy products which are subject to quotas proclaimed under the authority of section 22 of the Agricultural Adjustment Act of 1933, as amended, to provide for the assessment of a fee to reimburse the Department of Agriculture for the costs of administering the licensing system.

DATE: In order to assure consideration, comments on this proposed rule must be received by June 14, 1985.

ADDRESS: Mail comments to: Head, Import Licensing Group, Dairy, Livestock and Poultry Division, Room 6616 South Building, Department of Agriculture, Washington, D.C. 20250. Copies of all written comments received will be available for examination by interested persons in Room 6622 of the South Building, Department of Agriculture (14th and Independence Avenue SW.), Washington, D.C. during regular business hours (8:30–5:00 weekdays).

FOR FURTHER INFORMATION CONTACT: Phillip J. Christie, Head, Import Licensing Group, Dairy, Livestock and Poultry Division, Room 6616 South Building, Department of Agriculture, Washington, D.C. 20250, (202) 447–5270.

SUPPLEMENTARY INFORMATION: Regulations promulgated by the Department of Agriculture and codified at 7 CFR 6.20–32 provide for the issuance of licenses to importers of certain dairy articles which are subject to quotas proclaimed by the President pursuant to Section 22 of the Agricultural Adjustment Act of 1933, as amended (7 U.S.C. 624). Those dairy articles may only be entered into the United States by or for the account of a person or firm to whom such licenses have been issued and only in accordance with the terms and conditions of such licenses and the regulations.

The licenses are issued on a calendar year basis and each license authorizes the license holder to import a specified quantity and type of dairy article from a specified country. The use of licenses by the license holder to import dairy articles is monitored by the Department of Agriculture and the U.S. Customs Service.

Section 501, Pub. L. 82–137, 65 Stat. 290, as amended (31 U.S.C. 9701), commonly referred to as the Independent Offices Appropriations Act (the "IOAA"), provides that it is the sense of Congress that each service or thing of value provided by an agency of the U.S. Government is to be self-sustaining to the extent possible. Section 501 of the IOAA authorizes agencies to prescribe regulations establishing a charge for a service or thing of value provided by the agency. Circular A–25 (September 23, 1959), as amended, issued by the Bureau of the Budget, the predecessor to the Office of Management and Budget, provides that executive agencies should recover the cost of services or benefits provided to persons by the agency.

The dairy import licensing system administered by the Department of Agriculture confers special benefits to the license holder above and beyond those which accrue to the public at large. It has been determined that the public interest would be served by the establishment of a fair and equitable fee to be charged license holders to reimburse the Department of Agriculture for the costs of staff services rendered in processing applications for licenses, computer equipment and operation necessary to insure that quota cheese is entered only in accordance with a dairy import license held by the importer, supervisory hours devoted to management of the licensing system, and other miscellaneous costs involved in administration of the dairy import licensing system.

Therefore, the proposed rule implements section 501 of the IOAA and Circular A–25 by providing for the assessment of fees on licenses issued to licensees to import dairy articles in order to cover the cost to the Department of Agriculture of the administration of the dairy import licensing system. Under the proposed rule, the Licensing Authority shall determine the amount of the fee to be charged per license each year based upon the cost of adminstering the dairy import licensing system for the prior calendar year.

The Department considered alternative methods for imposing the fee on the license holder. It was determined that a fee charged on the basis of the amount of the cheese quota approved for each licensee would not closely reflect the costs incurred by the Department on behalf of a particular licensee since the costs of processing one license with a large quota amount could be less expensive that the cost of processing several licenses for another licensee with an equivalent quota amount.

Accordingly, it was determined that a fee charged for each license issued, without regard to the quota amount involved, would be fair and equitable since such charge will ensure that the fee charged each licensee will closely reflect the cost incurred by the Department on behalf of that licensee. The total fees charged each licensee will depend upon the number of licenses issued to the licensee.

We have made a preliminry estimate of th cost of administering the dairy import licensing system during 1984 and hypotheticall calculated the approximate fee per license which would have been assessed during 1985 if this proposed rule had been in effect for the 1985 calendar year. The cost of administering the licensing system during 1984 was determined by adding the cost of the staff and supervisory hours devoted directly to administering the licensing system during 1984, approximately $151,000 (this figure includes the total personnel costs for the Import Licensing Group of the Foreign Agricultural Service, approximately $126,000, and a proportionate share of the supervisory costs devoted directly to administering the dairy import licensing system, approximately $25,000); the cost of the computer on-line entry system, used to monitor the use of licenses during 1984, approximately $29,000; and other miscellaneour costs including travel, postage, and an in-house

computer system, approximately $24,000 in 1984. The approximate total cost of administration thus derived ($204,000) was then divided by the average number of import licenses issued for the three years immediately preceding 1985 (approximately 3,500 for the years 1982, 1983, and 1984) to obtain the fee for each license for the 1985 calendar year. Based upon the above cost estimates, the fee for a 1985 license, determined in accordance with the proposed rule, would have been approximately $58.25 per license.

The final 1986 fee will depend upon the calculation of the cost of administering the dairy import licensing system for 1985 and may vary from the hyprothetical 1985 fee calculated above.

The fee for each license will be announced by the Licensing Authority no later than July 31 of the year preceding the year for which the fee is to be charged and will be set out in a notice filed with the Federal Register detailing the basis of the fee.

This proposed rule has been reviewed under USDA procedures required by Executive Order 12291 and Departmental Regulation 1512-1 and has been classified as "not major" since the proposed rule, if made final, will not have any of the significant effects specified in those documents.

Furthermore, to the extent, if any, that the provisions of the Regulatory Flexibility Act (5 U.S.C. 601) apply to this notice, the Administrator, Foreign Agricultural Service (FAS), hereby certifies that this notice will not have a significant economic impact on a substantial number of small entities. The collection of a small fee based upon the number of licenses issued to each importer does not affect the ability of importers to import a quota item, since the fee is too small to have a significant economic impact. The public is invited to comment on the impact of this proposed rule on small entities, and the Administrator, FAS, will review this determination in light of those comments.

An evaluation of the impact of this rule on the environment was made and, based on this evaluation, it has been determined that this action is not a major federal action and will have no foreseeable adverse effects on the quality of the human environment. Consequently, no environmental impact statement is necessary for this proposed rule.

List of Subjects in 7 CFR Part 6

Section 22, Import quotas, Dairy products.

PART 6—[AMENDED]

Accordingly, 7 CFR Part 6, Subpart-Section 22 Import Quotas, is amended as follows:

1. The authority citation for 7 CFR Part 6, Subpart—Section 22 Import Quotas, is revised to read as follows:

Authority: Section 3, Pub. L. 897, 80th Cong. 2nd sess., 62 Stat. 1248, as amended (7 U.S.C. 624); Secs. 701, 703, Pub. L. 96-39, 93 Stat. 268, 272; Part 3 of the Appendix to the Tariff Schedules of the United States (19 U.S.C. 1202); Sec. 501, Pub. L. 82-137, 65 Stat. 290, as amended (31 U.S.C. 9701), unless otherwise noted.

2. 7 CFR Part 6, Subpart-Section 22 Import Quotas, is amended by adding a new § 6.33 to read as follows:

§ 6.33 License Fee

(a) A fee will be charged for each license issued to a person by the Licensing Authority to reimburse the Department for the costs of administering the licensing system under this regulation.

(b) The fee for each license will be determined by dividing the cost of administering the licensing system (determined in accordance with paragraph (c)) by the average number of licenses issued per year for the three years immediately preceding the year for which the fee is to be assessed. The fee will be announced by the Licensing Authority no later than July 31 of the year preceding the year for which the fee is to be assessed and will be set out in a notice filed with the **Federal Register.**

(c) The Licensing Authority shall determine the costs (both incurred and estimated) of administering the licensing system for the calendar year preceding the year for which the fee is to be charged using the following criteria:

(1) The cost of staff and supervisory hours devoted directly to administering the licensing system;

(2) The cost of any computer on-line entry system used to administer the licensing system; and

(3) Other miscellaneous costs directly related to administering the licensing system.

(d) The fee for each license is due upon the date of issuance of the license and must be paid by the licensee no later than May 15 of the year for which the license is issued or such date as may be specified in the announcement issued by the Licensing Authority in accordance with paragraph (b). The fee for any license issued after April 15 of any year must be paid by the licensee no later than 30 days from the date of issuance of the license. Fee payments shall be made by check or money order payable to the Treasurer of the United States.

(e) If the fee for a license is not paid by the licensee by the final payment date, (1) the authority of the licensee to import any article under such license held by the licensee will be automatically suspended by the Licensing Authority until the fee has been paid or arrangements satisfactory to the Licensing Authority have been made for the payment of such fee, and (2) the licensee's eligibility to import cheese will be subject to revocation and suspension in accordance with § 6.29(b)(3).

Signed at Washington, D.C. on May 7, 1985.

John R. Block,

Secretary of Agriculture.

[FR Doc. 85-11699 Filed 5-14-85; 8:45 am]

BILLING CODE 3410-10-M

FEDERAL RESERVE SYSTEM

12 CFR Part 226

[Reg. Z; Docket No. R-0545]

Truth in Lending; Variable Rate Disclosure Under Regulation Z

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule.

SUMMARY: The Board is publishing for comment a proposed amendment to Regulation Z (Truth in Lending) that would require creditors to provide more information to consumers about the variable rate feature of adjustable rate mortgages than is currently required under Regulation Z. It would require creditors to make available to consumers descriptive material about adjustable rate mortgages, and to provide a more detailed description of the variable rate feature, along with an example, at the time other Truth in Lending disclosures are given. The proposal would also eliminate a provision of Regulation Z that currently permits creditors to substitute the disclosure required by other federal regulations for the variable rate disclosure required by Regulation Z. These revisions are intended to address concerns regarding the adequacy of information given to consumers entering into adjustable rate mortgage and regarding the burden to creditors of duplicative federal regulations.

DATE: Comments must be received on or before July 12, 1985.

ADDRESS: Comments should be mailed to William W. Wiles, Secretary, Board of Governors of the Federal Reserve

System, Washington, D.C. 20551, or delivered to the C Street entrance, 20th and C Streets, NW., Washington, D.C. between 8:45 a.m. and 5:15 p.m. Comments should include reference to Doc. No. R–0545. Comments may be inspected in Room B–1122 between 8:45 a.m. and 5:15 p.m.

FOR FURTHER INFORMATION CONTACT: Regarding the proposed regulatory amendments, Susan Werthan or Steven Zeisel, Senior Attorneys, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 at (202) 452–3867; regarding the regulatory flexibility analysis, Glenn Canner, Director, Micro-Consumer Projects, Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 at (202) 452–2910; or Joy W. O'Connel, TDD at (202) 452–3244.

SUPPLEMENTARY INFORMATION:

(1) Background

The introduction of variable rate lending has been one of the most significant developments in the credit industry since the enactment of the Truth in Lending Act in 1968. Traditionally, lenders and consumers agreed on a specific interest rate which then remained fixed for the entire term of the transaction. In recent years, in order to shift part of the risk of interest rate fluctuations to the consumer, lenders have increasingly turned from fixed to variable rates, particularly in the mortgage industry, where adjustable rate mortgages (ARMs) now account for a significant portion of all mortgages outstanding. A recent survey conducted by the National Association of Realtors indicates, for example, that in October 1984 over one-third of all first mortgage orginations were ARMs.

The Truth in Lending Act itself has never called for disclosure of a variable rate feature, but Regulation Z has since 1977 required creditors in all closed-end credit transactions to provide certain minimal information about the feature. This information, reflected in § 226.18(f) of the regulation, includes the circumstances under which the rate may increase (for example, when an index rises), limitations on the increase (periodic and overall interest rate caps), and the effect of an increase (for example, whether it would result in an increase in either the number or the amount of payments). Section 226.18(f) also requires creditors to provide a very brief example of the payment terms that could result from an increase. The example need not be extensive, and need not be based on that particular loan; it requires only that the creditor give some indication in dollars and cents terms of the possible payment effect of a rising rate. When the revised Regulation Z was adopted in 1981 to implement the Truth in Lending Simplification and Reform Act of 1980, the variable rate disclosed was retained, even though it is one of the few disclosures in the regulation not mandated by the act. In retaining the disclosure, however, the Board determined that the information required should be kept brief, in order to carry out the purpose of Truth in Lending simplification to provide concise, clear credit information to consumers.

Three other federal agencies also require disclosure of a variable rate feature for institutions under their jurisdiction. In contrast to Regulation Z, all three call for more extensive, detailed information. These disclosure requirements are imposed as part of these agencies' authority to prescribe substantive limits on the types of ARMs that lenders may offer. The Federal Home Loan Bank requires variable rate disclosures for federally chartered savings and loan associations and also for certain other lenders that wish to market their loans to federally chartered savings and loans (12 CFR 545.33). The Office of the Comptroller of the Currency mandates variable rate disclosures for national banks and other lenders that seek to market their loans to national banks (12 CFR Part 29). Under the "Alternative Mortgage Transaction Parity Act of 1982" (12 U.S.C. 3802), state chartered institutions and other mortgage lenders may take advantage of federal authorization of ARMs by following rules of the Bank Board or the Comptroller of the Currency. Most recently, the Department of Housing and Urban Development (HUD) issued its own variable rate disclosure regulations for lenders wishing to participate in the Federal Housing Administration (FHA) insurance program administered by the Department (24 CFR Parts 203 and 234).

The regulations of the three agencies call not only for more extensive information, but for that information to be provided at different points in the loan process than is required by Regulation Z. For example, the disclosures of the Comptroller must be provided at the time the consumer first receives written information about the credit transaction, and all three agencies require lenders to provide information each time the rate changes during the loan term. This is in contrast to Regulation Z, which generally requires that ARM disclosures be provided within three business days after the consumer's written application and requires no subsequent disclosure when the rate changes in accord with the variable rate clause originally disclosed to the consumer.

Regulation Z recognizes the existence of these other disclosure requirements and attempts to alleviate the burden of duplicative disclosures by means of footnote 43 to the regulation. Under this footnote lenders making variable rate disclosures in accordance with one of the three agencies' regulations need not make the variable rate disclosures required by Regulation Z.

Recently, the Board has become concerned that the current regulatory structure, with Regulation Z mandating brief variable rate information and several other regulations calling for more extensive disclosure, may not be fully responding to the needs of either consumers of the mortgage industry. ARMs have become more prevalent and the variety of ARM products must more extensive. This, combined with the potential of ARMs for significant unexpected payment changes, raises questions about the ability of consumers to understand and make informed decisions about ARMs before entering into those transactions. At the same time, the variety of regulatory requirements has proven burdensome to the mortgage industry, particularly when mortgage lenders must satisfy more than one regulation in order to take full advantage of the secondary market. Under certain circumstances, lenders who wish to originate mortgages for possible sale to either a federal savings and loan association or a national bank may have to make disclosures under both agencies' rules.

In the last year, a Congressional subcommittee and the Federal Financial Institutions Examination Council (FFIEC) have addressed the question of the adequacy of current disclosure requirements for ARMs and have made recommendations to the Board. Subcommittee members suggested that the Board amend Regulation Z to require a "worst case" example illustrating the effects of rate increases on payments. They also urged the agencies to work toward uniform disclosure of variable rate features that could be used by all lenders. (In a separate letter, the members of Congress also asked the Board and the Federal Home Loan Bank Board to produce a consumer education pamphlet on ARMs, which was published in February.)

The FFIEC, consisting of representatives from the Board,

Comptroller of the Currency, Federal Home Loan Bank Board, Federal Deposit Insurance Corporation and National Credit Union Administration, was asked by the Board to consider the questions of uniformity among the agencies and the basis for a "worst case" example of rate increases. Based on the work of a FFIEC task force, which included a representative from HUD, the FFIEC made two major recommendations to the Board. One, consumers should be given information about ARMs before they submit a loan application or pay any fee for the loan. Two, the disclosures should include an explanation of the nature of ARMs and examples reflecting the creditor's ARM program in a rising interest rate environment. In the FFIEC's view, all examples should be based on an assumed 2% increase in each of the first three years of the mortgage.

(2) Proposed amendment

Based on recommendations from the FFIEC and its own analysis, the Board proposes to amend Regulation Z to provide more information to consumers about ARMs and to encourage uniformity of disclosure requirements among the agencies. The amendments would apply only only to transactions secured by the consumer's principal dwelling. This would include all purchase money mortgages, in which the consumer is obtaining a mortgage loan for the purpose of purchasing a home, as well as all transactions in which the consumer is using the home as security for a loan. (Home equity lines, in which an open-end line of credit is secured by the consumer's home, would not be subject to the requirement, which applies only to closed-end mortgages, although the Board is specifically soliciting comment on this aspect of the proposal.) All other consumer credit transactions that contain a variable rate feature would continue to be subject to the current variable rate disclosure requirements in Regulation Z.

The first amendment would add a new paragraph (j) to § 226.17, requiring creditors to make available to consumers information explaining ARMs. The *Consumer Handbook on Adjustable Rate Mortgages*, developed by the Board and the Federal Home Loan Bank Board, may be used by creditors to fulfill the requirement if they choose. The Board is aware that other organizations such as the Mortgage Bankers Association and the Federal National Mortgage Association have also developed education brochures on ARMs. This material may also satisfy the proposed requirement.

Because the material on ARMs would be available at all times, consumers would have an opportunity to review the information in an unpressured manner before entering into the application process. The information should illustrate, in general terms, the actual financial impact of ARM features, as well as explain important features such as negative amortization and rate and payment caps. This information would serve to alert the consumer to important questions to ask lenders once the shopping process begins.

The second proposed amendment would revise the variable rate disclosure currently required by § 226.18(f) of Regulation Z. Currently, creditors in any variable rate transaction, including mortgages, must provide consumers with abbreviated information regarding the variable rate feature. The information must be provided along with the other Truth in Lending disclosures, that is, for most ARMs within three business days after the creditor's receipt of the consumer's written application.

The content of the variable rate disclosures under the proposed amendment would be significantly expanded from the current regulation. As outlined in the proposed revision to Appendix H–4, detailed, specific information about all major aspects of the variable rate feature would be required to be presented in a clear, concise format. As with the other model forms in Appendix H, however, creditors may delete and disclosures that do not apply to their ARM plans.

The amendment would require creditors to precisely identify the index to which the rate is tied, or provide a brief description of the formula used in calculating the interest rate if no index is used, along with margin or spread over the index. The requirement that the initial rate be stated is intended to alert the consumer to a discount, as well as the term to which that low initial rate would apply. For example, if a creditor discounted a consumer's rate for six months, the disclosure might read, "Your rate is based on the 6-month Treasury Bill rate plus 2%, but your initial rate will be discounted to 9% for six months." The frequency of rate and payment adjustments would be disclosed, along with rate and payment caps. If there are no payment or rate caps, the disclosure would indicate that there are no limits on potential increases in payment or rate. Moreover, if no overall rate caps exist, creditors would be required to make a conspicuous statement to that effect next to the example of payment increases. If the presence of rate or payment caps would result in interest carryover or negative amortization, the disclosure would need to reflect those features with statements substantially similar to those given in the example. Any limits on negative amortization, typically a maximum percentage over the original loan balance, would also be disclosed.

The most significant change in the variable rate disclosure would be the type of example required. Currently, the regulation requires only a very brief example, which need not be transaction-specific. For example, even if a particular loan were for $85,000, the creditor could state, "In $50,000 loan, an increase of 1% at the end of the first year would result in a payment of $800 a month." In contrast, the proposal would require the creditor to show the effects of an increase on the particular loan. Not only must the example be based on that specific loan amount, but the example must reflect the effects of rate or payment caps or other features that would affect the payment schedule. Thus, if the loan calls for payment caps which would result in negative amortization, both the lower earlier payments resulting from the caps and the presumably higher later payments resulting from the increased loan balance must be incorporated into the example.

The proposed example also differs from the current regulation in that it would specify the assumptions about interest rate increases on which the example must be based. Currently, the creditor may select any reasonably representative rate increase assumption in designing its example. Given this flexibility, many creditors have chosen to assume a 1% increase at the end of the first year. In contrast, the proposal would require that the example be based on an assumed increase of 2% in the index rate in each of the first three years during which a rate increase in permitted, with no increases after that point. The effects of the rate increase must then be shown for the full term of the transaction, not merely at a single point in time, as is now permitted by § 226.18(f).

To highlight the potential effect of a variable rate feature, the amendment calls for the increased-rate example to be shown alongside the payments that would result if there were no change in rates for the term of the loan. This payment schedule would be the same as the amounts disclosed under § 226.18(g); a proposed amendment to that paragraph would allow creditors to use the "no change" example as the payment schedule disclosure.

While the example called for by the proposal is not necessarily the "worst" increase that could occur in individual transactions, the Board believes that specifying a 2% rising-rate scenario has advantages. First, the proposal reflects the recommendation of the FFIEC as to the proper basis for a "worst case" example, and adopting its recommendation may help to foster uniform disclosures among the agencies. Second, an example showing 2% increases for three years would parallel examples that consumers would have gotten earlier if the received the *Consumer Handbook*. Third, specifying a particular basis for the example resolves the question of the proper basis where there are no limits on rate increases and thus no worst case example is possible.

The proposal also includes an amendment to footnote 38 to § 226.17(a). This amendment would require creditors to give all variable rate disclosures as part of the other segregated Truth in Lending disclosures, by removing the phrase "the variable rate example under § 226.18(f)(4)." In the Board's view, subjecting the variable rate disclosures to the same format requirements as other disclosures would help to call consumers' attention to the information provided by § 226.18(f).

(3) Comment Requested

The Board solicits comment on all aspects of the proposal, and particularly welcomes comment on the following questions:

1. Should footnote 43 to Regulation Z be retained? If the footnote were retained, creditors could continue to utilize the disclosures of other agencies in place of the proposed variable rate disclosure under § 226.18(f). This would alleviate the burden of adjusting to new disclosure requirements for those creditors already using the other agencies' disclosures, and those creditors far outnumber creditors using Regulation Z variable rate disclosures. However, continued availability of footnote 43 would also serve to maintain the *status quo* of duplicative federal regulations, possibly to the detriment of both consumers and creditors. In the Board's view, uniformity of variable rate disclosures would better serve both consumers and creditors than the current overlapping of federal regulations in this area. While the Board recognizes that other agencies may continue to impose their own disclosure requirements even without footnote 43, the Board believes that the elimination of the footnote could encourage further movement toward uniformity of disclosures.

2. Should the timing of the disclosures be revised; specifically, should disclosures be required earlier than three days after application? Disclosure of the information before application would provide consumers with information earlier in the credit shopping process and perhaps facilitate comparison among credit sources before the consumer is in any way committed to a particular loan. On the other hand, the information needed for accurate disclosures is less likely to be available at earlier stages in the application process. For example, a consumer may not qualify for the loan terms or ARM plan originally sought, or may alter the loan amount significantly. Furthermore, the Board questions whether the degree of creditor burden involved in providing disclosures before application is justified by the potential benefit to consumers. Would consumers' ability to comparison shop be significantly enhanced if they received disclosures just before application as opposed to three days later?

3. While the Board believes that the proposed example based on assumed 2% increases has advantages, would other examples be preferable?

• Should the example be based on the actual worst case as opposed to a specified rate increase, as proposed? The Board recognizes that the proposed example cannot be characterized as a "worst case" example in all cases. A true worst case would require the creditor to reflect in the example the most extreme rate increases possible over the life of the mortgage. To illustrate, if a 30-year mortgage included a rate cap of 1% per annual adjustment, but no lifetime cap, the example would have to reflect the payments resulting from a 1% increase occurring in each of the 30 years of the transaction. If a loan had neither lifetime nor per adjustment caps, an alternative would have to be devised if the true "worst case" approach were adopted. For instance, the Board might specify the basis for the example, or require no example but require a prominent statement that the loan contains no limits on possible rate increases.

• Should the Board require, in addition to an example of rate increases, an example showing the effect of rate decreases? Because, by their very nature, ARMs have the potential for periods of payments that are lower than the initial amount, should an example showing lower payments be included in the disclosure?

4. Should the Board provide additional sample forms for other ARM plans? If so, what would be the most useful features to illustrate in sample disclosures? For instance, should the Board illustrate ARMs with graduated payments, buydowns, discounts, or other features?

5. Should the variable rate disclosures for home equity lines of credit be expanded to track the expanded disclosure requirements for ARMs? The Board has excluded home equity lines from coverage because the Board believes that open-end variable rate plans have not been identified with the problems of consumer confusion and duplicative regulations associated with other ARMs. However, the Board seeks comment on the appropriate treatment of home equity lines.

List of Subjects in 12 CFR Part 226

Advertising, Bank, banking, Consumer protection, Credit, Federal Reserve System, Finance, Penalties, Truth in Lending.

(4) Regulatory Flexibility Analysis

The Board's Division of Research and Statistics has prepared a regulatory flexibility analysis. A copy of the analysis may be obtained from Publications Services, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, at (202) 452-3245.

PART 226—[AMENDED]

(5) Text of Proposed Revision

12 CFR Part 226 is amended as follows:

1. The authority citation for Part 226 continues to read as follows:

Authority: 15 U.S.C. 1604 as amended.

2. Part 226 is revised by removing from footnote 38 to § 226.17 the phrase "the variable rate example under § 226.18(f)(4)." by adding paragraph (j) to § 226.17, by removing footnote 43 to paragraph (f) of § 226.18, by revising paragraph (f) of § 226.18, by revising paragraph (g) of § 226.18, and by revising Appendix H, to read as follows:

Subpart C—Closed-End Credit

§ 226.17 General Disclosure Requirements.

* * * * *

(j) *Consumer handbook.* (1) A creditor that offers variable rate credit secured by the consumer's principal dwelling shall make available at its place of business a clear and concise description of the nature of the loans offered by the creditor. This disclosure shall be made in terms readily understandable by the layman and shall include a description of all significant loan terms.

(2) The booklet titled *Consumer Handbook on Adjustable Rate Mortgages* published by the Board and the Federal Home Loan Bank Board constitutes a disclosure in compliance with the requirements of this paragraph. Other brochures may also be deemed to comply with this paragraph.

* * * * *

§ 226.18 Content of Disclosures.

* * * * *

(f) *Variable rate.* (1) If the annual percentage rate may increase after consummation, the following disclosures, except as provided in paragraph (2):

(i) The circumstances under which the rate may increase.

(ii) Any limitations on the increase.

(iii) The effect of an increase.

(iv) An example of the payment terms that would result from an increase.

(2) If the annual percentage rate may increase after consummation and the transaction is secured by the consumer's principal dwelling, disclosures substantially similar to those contained in Appendix H–4, "Transaction Secured by Consumer's Principal Dwelling," including an example of the payment terms that would result from rate increases of 2 percentage points at the end of each of the first 3 years during which a rate increase is permitted, with no increases for the rest of the term. Inapplicable disclosures may be deleted.

(g) *Payment schedule.* * * *

(3) In a transaction subject to paragraph (f)(2) of this section, the creditor may comply with this paragraph by providing the examples required by appendix H–4.

* * * * *

Appendix H—Closed-End Model Forms and Clauses

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H–4—Variable Rate Model Clauses

* * * * *

Transaction Secured by Consumer's Principal Dwelling

Your rate is based on (identification of index and margin or formula used). Based on the index, your initial rate will be (initial accrual rate) for (initial term).

Rate Increases

Your rate can change (frequency).

[Your rate cannot increase more than —— % at each adjustment.]

[Your rate cannot increase more than —— % over the term of your loan.]

[There are no limits on increases to your rate.]

Payment Increases

Your payment can change (frequency).

[Your payment cannot increase more than (amount or percentage) at each adjustment.]

[There are no limits on increases to your payment.]

[If any of your payments are not sufficient to cover the interest due, the difference will be added to your loan amount. Your loan amount cannot increase by more than ——%.]

[If an interest rate increase is foregone because of a rate cap, it may be imposed at a later time.]

The examples below show how your monthly payments *might* change depending on future changes in the index rate or formula used to calculate your interest. These are only illustrations to show the possible effects of rate changes—no one can actually predict what rates will do in the future. An increase would make your future payments higher while a decrease could make them lower than they are now. The first example below shows what your payments will be if the index rate [or formula] stays the same. The second example shows what your payments will be if your index rate [or formula] goes up 2% in each of the first three years during which rate increases are permitted, with no increases for the rest of the term. [The examples also show the effect of rate or payment caps on your payments.] [HOWEVER, THERE IS NO CAP ON TOTAL INCREASES TO YOUR INTEREST RATE DURING YOUR LOAN TERM.]

Year	Monthly payment if no change in rate	Monthly payment if rate increases 2 percent in first 3 years

Example Based on $100,000 Loan for 30 Years

Your rate is based on the 6-month Treasury bill rate plus 3%. Based on the index, your initial rate will be 13% for one year.

Rate Increases

Your rate can change yearly.

Your rate cannot increase more than 2% at each adjustment, but there are no limits on overall increases to your rate.

Payment Increases

Your payment can change yearly.

There are no limits on increases to your payments.

If an interest rate increase is foregone because of a rate cap, it may be imposed at a later time.

The examples below show how your monthly payments *might* change depending on future changes in the index rate or formula used to calculate your interest. However, these are only illustrations to show the possible effects of rate changes—no one can actually predict what rates will do in the future. An increase in the rate would make your future payments higher while a decrease could make them lower than they are now. The first example below shows what your payments will be if the index rate stays the same. The second example shows what your payments will be if your index rate goes up 2% in each of the first three years of the loan with no increases for the rest of the term. HOWEVER, THERE IS NO CAP ON TOTAL INCREASES TO YOUR INTEREST RATE DURING YOUR LOAN TERM.

Year	Monthly payment if no change in rate	Monthly payment if rate increases 2 percent in first 3 years
1	$1106.20	$1106.20
2	1106.20	1263.11
3	1106.20	1422.08
4–30	1106.20	1582.47

By order of the Board of Governors of the Federal Reserve System, May 9, 1985.

William W. Wiles,

Secretary of the Board.

[FR Doc. 85–11644 Filed 5–14–85; 8:45 am]

BILLING CODE 6210–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 85–NM–44–AD]

Airworthiness Directives; McDonnell Douglas Model DC–9 and C–9 (Military) Series Airplanes, Fuselage Numbers 1 Through 1248

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes a new airworthiness directive (AD) that would require inspection, and repair, if necessary, of the upper anticollision light doubler on certain McDonnell Douglas DC–9 series airplanes. This proposal is prompted by reports of upper anticollision light doubler cracks, the failure of which could result in significant damage to the adjacent structure and cause the subsequent loss of cabin structural integrity.

DATES: Comments must be received no later than July 8, 1985.

ADDRESSES: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 85–NM–44–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168. The applicable service information may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director, Publications and Training, C1–750 (54–60). This information also may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle Washington, or at 4344 Donald Douglas Drive, Long Beach, California.

FOR FURTHER INFORMATION CONTACT:
Mr. Michael N. Asahara, Sr., Aerospace Engineer, Airframe Branch, ANM-122L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California 90808; telephone (213) 548-2826.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in the light of comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 85-NM-44-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

Two operators have reported eight instances where cracks were found in the upper anticollision light doubler on airplanes having logged between 39,093 and 59,970 landings. Typically, the doubler exhibited a single crack at one or both ends of the cutout in the long axis of the doubler, originating at a plate nut clearance hole. Laboratory analysis by the manufacturer has determined that the cracks are attributed to fatigue. If not corrected, crack growth in the doubler could result in damage to adjacent structure and cause the subsequent loss of cabin structural integrity. Inspecting the doubler for cracks and accomplishing preventive/repair modification in accordance with this AD will minimize the potential of crack development and/or growth.

Since this situation is likely to exist or develop on other airplanes of this same type design, an AD is proposed to require repetitive nondestructive inspection of the upper anticollision light doubler for fatigue cracks.

Approximately 548 airplanes of U.S. registry would be affected by the proposed AD. It would require approximately 10 manhours per airplane to accomplish the required repair and 4 manhours per airplane to accomplish the required inspections. The average labor charge is $40 per manhour. Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be $306,880.

For these reasons, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because few, if any, Model DC-9 and C-9 (Military) series airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket. A copy may be obtained by contacting the person identified under the caption **"FOR FURTHER INFORMATION CONTACT."**

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, the Federal Aviation Administration proposes to amend § 3913 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) by adding the following new airworthiness directive:

McDonnell Douglas: Applies to McDonnell Douglas Model DC-9 and C-9 (Military) series airplanes, fuselage numbers 1 through 1248, certificated in all categories, with more than 30,000 landings. Compliance required as indicated, unless previously accomplished.

A. Within the next 1,600 landings after the effective date of this AD, inspect the skin and doublers around the upper anti-collision light cutout for cracks in accordance with McDonnell Douglas Service Bulletin 53-186, dated April 17, 1985 (hereinafter referred to as SB 53-186), Figure 2, or later FAA approved revisions.

B. If no cracks are found under Condition I, Phase I, as referenced in SB 53-186, perform repetitive eddy current inspections at intervals not to exceed 1 year in accordance with Figure 2, of SB 53-186, until such time stress coining of plate nut clearance holes as outlined under Condition I, Phase II is accomplished.

Note.—Accomplishment of Phase II eliminates the requirements for Phase I repetitive inspections.

C. If cracks are found, before further flight:

1. For cracks less than 1.00 inch long, repair cracked area in accordance with Condition II, of the Accomplishment Instructions in SB 53-186.

2. For cracks 1.00 to 1.25 inches long, repair cracked area in accordance with Condition III, of the Accomplishment Instructions in SB 53-186.

3. For cracks greater than 1.25 inches, repair in accordance with data approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

D. Terminating Action. Completion of the Accomplishment Instructions of SB 53-186, or later FAA approved revisions, constitutes terminating actions(s) for this AD.

E. Alternative inspections, modifications, or other actions which provide an acceptable level of safety may be used when approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

F. Upon request of operator, an FAA maintenance inspector, subject to prior approval of the Manager, Los Angeles Aircraft Certification Office, FAA Northwest Mountain Region, may adjust the repetitive inspection intervals specified in this AD to permit compliance at an established inspection period of the operator if the request contains substantiating data justify the increase for that operator.

All persons affected by this proposal who have not already received these documents from the manufacturer may obtain copies upon request to the McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director, Publications and Training, D1-750 (54-60). These documents also may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at 4344 Donald Douglas Drive, Long Beach, California.

(Sec. 313(a), 314(a), 601 and 603 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421 and 1423); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.85)

Issued in Seattle, Washington, on May 8, 1985.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 85-11645 Filed 5-14-85; 8:45 am]

BILLING CODE 4910-13-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 270

[Release No. IC-14508; S7-10-85]

Request for Comments on Certain Issues Arising Under the Investment Company Act of 1940 Relating to Scheduled Premium Variable Life Insurance

AGENCY: Securities and Exchange Commission.

ACTION: Extension of time for comment.

SUMMARY: The Securities and Exchange Commission today announced that it had extended from May 10 until July 10, 1985, the date by which comments on Investment Company Act Release No. 14421 (March 15, 1985) [50 FR 11709, March 25, 1985] must be submitted. The Commission has received a request that the comment period be extended and believes that an extension of time until July 10, 1985, will be beneficial since it will result in the receipt of additional useful comments.

DATE: Comments must be received on or before July 10, 1985.

ADDRESS: Comments should be submitted in triplicate to John Wheeler, Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, D.C. 20549 (Reference to File No. S7-10-85). All comments will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street NW., Washington, D.C. 20549.

FOR FURTHER INFORMATION CONTACT: Robert E. Plaze, Attorney (202) 272-2622, Office of Insurance Products and Legal Compliance, Division of Investment Management, Securities and Exchange Commission, 450 Fifth Street NW., Washington, 20549.

SUPPLEMENTARY INFORMATION: In Investment Company Act Release No. 14421, the Commission requested written comments on proposed amendments to Rule 6e-2, which grants insurance company separate accounts exemptive relief from various provisions of the Investment Company Act in order to permit the sale of scheduled premium variable life insurance. The American Council of Life Insurance, an insurance industry representative, has requested that the comment period on the rule be extended. In view of this request and in order to receive the benefit of comments from the greatest number of interested persons, the Commission has extended the comment period for Investment Company Act Release No. 14421 from May 10 until July 10, 1985.

By the Commission.

John Wheeler,

Secretary.

[FR Doc. 85-11769 Filed 5-14-85; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 115

Certification of Cargo Containers and Road Vehicles Pursuant to International Conventions

AGENCY: Customs Service, Treasury.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the Customs Regulations to reflect the transfer of functions concerning certification of containers and road vehicles for transportation under Customs seal, pursuant to international Customs conventions, from the Secretary of Transportation (acting through the Coast Guard) to the Secretary of the Treasury (acting through the Customs Service). This transfer is mandated by Executive Order 12445 of October 17, 1983.

This notice invites public comment with respect to this proposal.

DATE: Comments should be received on or before July 15, 1985.

ADDRESS: Comments (preferably in triplicate) should be addressed to the Commissioner of Customs, Attention: Regulations Control Branch, U.S. Customs Service, 1301 Constitution Avenue, NW., Room 2426, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Donald Reusch, Office of Regulations and Rulings (202-566-5706) or Arnold L. Sarasky, Office of Inspection and Control, (202-566-8648), U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229.

SUPPLEMENTARY INFORMATION:

Background

By Executive Order 11459, published in the **Federal Register** (34 FR 5057), March 11, 1969, the President designated the Secretary of Transportation to take all necessary actions to administer the approval and certification of containers and vehicles for International Transport of Goods Under Cover of TIR Carnets (TIR Convention), done at Geneva on January 15, 1959 (TIAS 6633), and the Customs Convention on Containers, done at Geneva on May 18, 1956 (TIAS 6634). Actual administration was undertaken by the Commandant of the U.S. Coast Guard and regulations setting forth the specific requirements are contained in title 49, Code of Federal Regulations, Parts 420 through 424 (49 CFR Parts 420 through 424).

On October 17, 1983, the President signed E.O. 12445, transferring the administration of approval and certification of containers and road vehicles to the Secretary of the Treasury. In addition to the two Conventions previously mentioned, the E.O. mandates the administration of a third, the Customs Convention on the International Transport of Goods Under Cover of TIR Carnets (TIR Convention), done at Geneva on November 14, 1975 (TIAS), which replaces the 1959 convention as to signatories to both conventions.

Under this program, owners and operators of containers and road vehicles may choose to submit the conveyances (containers or road vehicles) themselves, or a proposed design for such conveyances, to various Certifying Authorities worldwide for approval. Three such Certifying Authorities, all named in the proposed regulations, would be designated by the Commissioner of Customs to perform the examination and certification functions for the U.S. The proposed regulations set forth the species of the certification program, and the approval of a conveyance would merely expedite the movement of the container and the merchandise contained therein.

The regulations by which the Coast Guard administered this area did not reflect the provisions of the TIR Convention, 1975, and did not distinguish between Convention provisions applicable to road vehicles and those applicable to containers. The five parts previously codified in the Coast Guard Regulations (49 CFR Parts 420-424), have been re-designated as Subparts A through F of new Part 115, Customs Regulations (19 CFR Part 115). References to Commandant of the Coast Guard have been changed to Commissioner of Customs, and section references within the regulations have been changed to reflect the recodification.

The proposed regulations do not inlcude the Oceanographic Society, Inc., which was listed in § 421.1, Coast Guard Regulations (49 CFR 421.1), as a designated Certifying Authority. They cannot be located and are therefore presumed to no longer exist.

Comments

Before adopting this proposal, consideration will be given to any written comments timely submitted to Customs. Comments submitted will be

available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 553), § 1.6, Treasury Department Regulations (31 CFR 1.6), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9:00 a.m. and 4:30 p.m. at the Regulations Control Branch, Customs Headquarters, Room 2426, 1301 Constitution Avenue, NW., Washington, D.C. 20229.

E.O. 12291 and Regulatory Flexibility Act

Inasmuch as Customs does not believe that the proposal meets the criteria for a "major rule" within the meaning of § 1(b) of E.O. 11291, a regulatory impact analysis has not been prepared.

It has not been determined whether the proposed regulation would have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601-612). However, we will continue to review this matter and will consider any comments submitted thereon before issuing a final rule.

Drafting Information

The principal author of this document was Larry L. Burton, Regulations Control Branch, Office of Regulations and Rulings, Customs Headquarters. However, personnel from other Customs offices participated in its development.

List of Subjects in 19 CFR Part 115

Cargo vessels, Coastal zone, Freight, Harbors, Maritime carriers, Vessels.

Amendments to the Regulations

It is proposed to amend Chapter I of title 19, Code of Federal Regulations (19 CFR Chapter I), by adding a new Part 115 to read as follows:

PART 115—CARGO CONTAINER AND ROAD VEHICLE CERTIFICATION PURSUANT TO INTERNATIONAL CUSTOMS CONVENTIONS

Subpart A—General

Sec.

Subpart B—Administration

Subpart C—Procedures for approval of Containers by Design Type

Subpart D—Procedures for Approval of Containers After Manufacture

Subpart E—Procedures for Approval of Individual Road Vehicles

Subpart F—Procedures for Approval of Road Vehicles by Design Type

Authority: 5 U.S.C. 301, 19 U.S.C. 66, 1624; E.O. 12445 of October 17, 1983.

Subpart A—General

§ 115.1 Purpose.

This chapter establishes procedures for certifying containers and road vehicles in conformance with the Customs Convention on Containers (1956) (TIAS 6634), the Customs Convention on the International Transport of Goods Under Cover of TIR Carnets (1959) (TIAS 6633), and the Customs Convention on the International Transport of Goods Under Cover of TIR Garnets, November 14, 1975 (TIAS), by applying the procedures and technical conditions set forth in the annexes to these conventions.

§ 115.2 Application.

(a) Certification of containers and road vehicles for international transport under Customs seal is voluntary. This chapter does not require certification of containers and road vehicles.

(b) The Customs Convention on the International Transport of Goods Under Cover of TIR Carnets (TIR Convention), January 15, 1959 (20 UST 184, TIAS 6633), requires that the approval of road vehicles be made by competent authorities of the country in which the owner or carrier is a resident or is established, and that containers should be similarly approved by the competent authority of the country where it is first used for transport under Customs seal. The Customs Convention on Containers, May 18, 1956 (20 UST 301, TIAS 6634), requires that the approval of containers be made by competent authorities of country in which the owner is a resident or is established or by those of the country where the container is used for the first time for transport under Customs seal. The TIR Convention, 1975, generally provides that a road vehicle, or a container for which approval at a stage after manufacture is desired, shall be approved by the competent authority where the vehicle or container is located or where the vehicle is registered. The 1975 TIR Convention also provides that the Certifying Authority of the country of manufacture, if that country is a contracting party to the Convention, may approve a series of road vehicles or containers presented for design type approval. The Certifying Authority where the owner is a resident or is established may approve road vehicles and containers presented to it for approval by design type if such road vehicle is manufactured in the territory of a noncontracting party. If approval after manufacture is desired, the container shall be presented to the Certifying Authority of the country where the container is located. The procedures for applying for certification are contained in §§ 115.28, 115.38, 115.49, and 115.63 of this part.

§ 115.3 Definitions.

For the purposes of this part—

(a) *Certifying Authority.* "Certifying Authority" means a nonprofit firm or association designated by the Commissioner of Customs to certify containers and road vehicles for

international transport under Customs seal.

(b) *Commissioner.* "Commissioner" means the Commissioner of Customs.

(c) *Container.* "Container" means an article of transport equipment (lift van, portable tank, or other similar structure):

(1) Fully or partially enclosed to consititute a compartment intended for containing goods;

(2) Of a permanent character and strong enough to be suitable for repeated use;

(3) Specifically designed to facilitate the carriage of goods by one or more modes of transport, without intermediate reloading;

(4) Designed for ready handling, particularly its transfer from one mode of transport to another;

(5) Designed to be easily filled and emptied; and

(6) Having an internal volume of 1 cubic meter (35.3 cubic feet) or more.

(d) *Manufacturer.* "Manufacturer" means an organization or person constructing containers or road vehicles for certification in accordance with this chapter.

(e) *Prototype.* "Prototype" means a sample unit of a series of identical containers or road vehicles all built so far as practical under the same conditions.

(f) *Road Vehicle.* "Road Vehicle", as defined in Chapter 1, Article 1 of the Customs Convention on the International Transport of Goods Under Cover of TIR Carnets (TIR Convention), November 14, 1975 (TIAS), means not only any power-driven road vehicle but also any trailer or semi-trailer designed to be coupled to it.

(g) *Customs and TIR Plan.* "Customs and TIR Plan" means the drawing of a vehicle or container that illustrates each requirement in §§ 115.30, 115.40, 115.51, or 115.65, as appropriate to this part.

(h) The definitions in the subject Conventions shall be considered applicable to terms not specifically defined above.

§ 115.4 Conflicting provisions.

The provisions of the most recent TIR Convention shall apply in the event of conflict between it and an earlier TIR Convention covered by these regulations.

Subpart B—Administration

§ 115.6 Designated Certifying Authorities.

(a) The American Bureau of Shipping, 65 Broad St., New York, New York 10004.

(b) International Cargo Gear Bureau, Inc., 17 Battery Place, New York, New York 10004.

(c) The National Cargo Bureau, Inc., One World Trade Center, Suite 2757, New York, New York 10048.

§ 115.7 Designation of additional Certifying Authorities.

(a) The Commissioner may designate as a Certifying Authority any nonprofit firm or association that he finds competent to carry out the functions of §§ 115.8 through 115.14 of this subpart.

(b) Any designation may be terminated by the Commissioner.

§ 115.8 Certifying Authorities responsibilities—road vehicles.

(a) *General.* Road vehicles may be approved individually or by design type.

(b) *Individual approval.* The Certifying Authority to whom a road vehicle is submitted for approval shall inspect such road vehicle produced in accordance with the general rules contained in Annex 3 of the TIR Convention, 1975.

(c) *Design type approval.* The Certifying Authority to whom a road vehicle is submitted for design type approval shall examine the drawings and detailed design specifications submitted with the application for approval. The Certifying Authority shall advise the applicant of any changes that must be made to the proposed design type in order that approval may be granted. The Certifying Authority shall examine one or more vehicles to confirm that such vehicles comply with the technical conditions contained in Annex 2 of the TIR Convention, 1975. The Certifying Authority shall notify the applicant of its decision to grant design type approval, and it shall issue an approval certificate complying with Annexes 3 and 4 of the TIR Convention, 1975.

(d) *Supplementary examinations.* If a road vehicle approved by design type is the subject of an extended production run or several production runs under one certificate of approval, the Certifying Authority shall confirm by examination of one or more road vehicles during the manufacturing process, or by other means, that such vehicles continue to meet the approved drawings and detailed design specifications and the technical requirements of Annex 2 of the TIR Convention, 1975.

§ 115.9 Certifying Authorities responsibilities—containers.

(a) *General.* Containers may be approved for transport under seal by design type at the manufacturing stage or at a stage subsequent to manufacture.

(b) *Design type approval.* The Certifying Authority to whom a container is submitted for design type approval shall examine the drawings and detailed design specifications submitted with the application for approval. The Certifying Authority shall advise the applicant of any changes that must be made to the proposed design type so that approval may be granted. The Certifying Authority shall examine one or more containers to confirm that such containers comply with the technical requirements of Part 1, Annex 7, TIR Convention, 1975, and Annex 1 of the Customs Convention on Containers, 1956. The Certifying Authority shall issue a certificate authorizing the applicant to affix an approval plate, as described in Annex 7 of the TIR Convention, 1975, for all containers manufactured in conformity with the specifications of the type of container approved. This certificate shall comply with the model certificate in Appendix 2, Part 11, Annex 7 of the TIR Convention, 1975. When approval of a container is granted under the Customs Convention on Containers (1956), the Certifying Authority shall issue a certificate conforming to the model shown in Annex 2 of that Convention.

(c) *After manufacture.* The Certifying Authority to whom containers are submitted for approval after manufacture, shall examine as many containers as necessary to ascertain that they comply with the technical conditions prescribed in Part 1, Annex 7, TIR Convention, 1975, and Annex 1 of the Customs Convention on Containers, 1956. The Certifying Authority shall issue a certificate of approval authorizing the applicant to affix an approval plate to the specific number or series of containers being approved. The certificate shall comply with the model certificate of approval in Appendix 3, Part 11, Annex 7, TIR Convention, 1975. When approval of a container is granted under the Customs Convention on Containers (1956), the Certifying Authority shall issue a certificate conforming to the model shown in Annex 2 of that Convention.

(d) *Supplementary examinations.* If a road vehicle approved by design type is the subject of an extended production run or several production runs under one certificate of approval, the Certifying Authority shall conform by examination of one or more road vehicles during the manufacturing process, or by other means, that such vehicles continue to meet the approved drawings and detailed design specifications and the technical requirements of Annex 2 of the TIR Convention, 1975.

§ 115.10 Certificate of approval.

A Certifying Authority shall issue a certificate of approval by design type for a specified number or unlimited series of containers that are approved in accordance with the procedures contained in §§ 115.29, 115.31, 115.38, 115.41, 115.49, 115.52, 115.63 and 115.66 of this part.

(a) *Road vehicles.* A Certifying Authority shall issue a certificate of approval conforming to the model in Annex 4 of the 1975 TIR Convention for vehicles submitted for individual or design type approval if it is satisfied that the vehicles comply with the technical conditions prescribed in Annex 2 of the TIR Convention, 1975.

(b) *Containers*—(1) *Approval after Manufacture.* A Certifying Authority shall issue a certificate of approval conforming to the model in Appendix 3 to Annex 7 of the TIR Convention, 1975, for containers approved at a stage after manufacture, when it has ascertained that the containers comply with the technical conditions prescribed in Annex 7 of the TIR Convention, 1975. The certificate shall be valid for the number of containers approved.

(2) *Design type approval.* A Certifying Authority shall issue a single certificate of approval conforming to the model in Appendix 2, Annex 7 of the TIR Convention, 1975, for containers approved by design type when it has been ascertained that the container type complies with the technical conditions prescribed in Annex 7 of the 1975 TIR Convention. The certificate shall be valid for all containers manufactured in conformity with the specifications of the type approved.

(c) *Provisions common to both approval procedures.* (1) The certificate of approval issued pursuant to paragraphs (a) and (b) of this section shall be valid for either the specific number of containers approved, or for an unlimited series of containers of the approved type.

§ 115.11 Establishment of fees.

(a) Each Certifying Authority shall establish and file with the Commissioner a schedule of fees for the performance of the certification procedures under this chapter. The fees shall be based on the costs (including transportation expenses) actually incurred by the Certifying Authority. The fees are subject to approval by the Commissioner before their use by the Certifying Authority.

(b) Each Certifying Authority shall make available a schedule of its fees approved by the Commissioner. In addition, the schedules of approved fees for all the Certifying Authorities are available from the Headquarters, U.S. Customs Service, Office of Inspection and Control, 1301 Constitution Avenue, NW., Washington, D.C. 20229.

§ 115.12 Records maintained by Certifying Authority.

(a) Each Certifying Authority shall maintain—

(1) a copy of each individual certificate of approval issued, together with a copy of the plans (in case of design type approval) and the application to which the approval refers, along with any information submitted by the manufacturer for the certification of a container or a road vehicle.

(2) A record of each serial number assigned and affixed by the manufacturer to the road vehicles and containers manufactured under a design type approval and containers approved at a stage after manufacture;

(b) The Commissioner may examine the Certifying Authority's files required by paragraph (a) of this section.

§ 115.13 Records to be furnished Customs.

Each Certifying Authority shall furnish the Headquarters, U.S. Customs Service, Office of Inspection and Control, 1301 Constitution Avenue, NW., Washington, D.C. 20229, unless waived by Customs;

(a) A copy of each issued certificate of approval for containers by design type and a copy of the plans and application to which the approval refers;

(b) A copy of each issued individual approval for a container or road vehicle.

§ 115.14 Meetings on program.

If determined necessary by Customs, each Certifying Authority's representative for certification functions shall meet, after notice, with the Commissioner to review their administration of the certification program.

§ 115.15 Reports by road vehicle or container manufacturer.

Each manufacturer shall forward to the appropriate Certifying Authority, quarterly or when otherwise requested by that Authority:

(a) The registration number or other identifying information of road vehicles, or serial numbers assigned to containers manufactured under a certificate of approval by design type; and

(b) An attestation that each road vehicle or container to which a serial number was assigned was manufactured in full compliance with the certificate of approval by design type.

§ 115.16 Notification of Certifying Authority by manufacturer.

In order that the Certifying Authority can schedule an appropriate inspection, the manufacturer shall give notification to that Authority before each production run of road vehicles or containers to be built pursuant to plans approved by the Certifying Authority, or revised plans (approved or unapproved).

§ 115.17 Appeal to Commissioner of Customs.

(a) Any manufacturer, carrier, or owner may, within 30 days after he has been notified by a Certifying Authority of an adverse determination, including any review provided, appeal that determination to the Commissioner.

(b) Any determination which is appealed remains in effect pending a decision by the Commissioner.

§ 115.18 Decision of Commissioner of Customs final.

The decision of the Commissioner on any matter appealed to him is final.

Subpart C—Procedures for Approval of Containers by Design Type

§ 115.25 General.

The Certifying Authority shall, at the request of a manufacturer or an owner, evaluate containers for approval by design type during the manufacturing stage.

§ 115.26 Eligibility.

Any manufacturer of containers which will be manufactured in a type series from a standard design and specifications so that each container has identical characteristics, may apply for an approval by design type.

§ 115.27 Where to apply.

A manufacturer may apply for approval of a container by design type to a Certifying Authority of the country in which the container is manufactured if such country is a contracting party to the TIR Convention, 1975. An owner may apply for approval of a container by design type to a Certifying Authority of the country in which he is a resident or is established, if the container is manufactured in the territory of a country which is not a contracting party to the TIR Convention, 1975.

§ 115.28 Application for approval.

Each application by a manufacturer or an owner for certification of a container by design type must include—

(a) Four copies, each no larger than 3 feet by 4 feet, of the Customs and TIR plan;

(b) Customs and TIR plan number;

(c) Four copies of the specifications which include the following information:

(1) The name and address of the manufacturer or the owner; and

(2) A description of the container including the—

(i) Type of construction;

(ii) Dimensions;

(iii) Material of construction;

(iv) Coating system used;

(v) Identification marks and numbers; and

(vi) Tare weight;

(d) The location and date for inspection; and

(e) A statement signed by the manufacurer that—

(1) A container of the design type concerned is available for inspection and approval by the Certifying Authority before, during, and after the production run;

(2) Notification will be given to the Certifying Authority of each change in the design before adoption; and

(3) Each container will be marked with—

(i) The metal plate required in § 115.32;

(ii) The identification number or letter of the design type assigned by the manufacturer; and

(iii) The serial number of the container assigned by the manufacturer.

(f) A statement by the owner that it is a resident or is established in the U.S. as evidenced by incorporation, registration, or the conduct of substantial business activities within the U.S., its territories, or possessions.

§ 115.29 Plan review.

(a) A manufacturer or owner who wants containers to be approved by design type must submit the plans and specifications for the container to the Certifying Authority.

(b) The Certifying Authority that examines the plans and specifications submitted in accordance with paragraph (a) of this section shall—

(1) Approve the plans and specifications in accordance with the requirements of § 115.30 and arrange to inspect a container in accordance with § 115.31; or

(2) Advise the applicant of any necessary changes to be made for compliance with the requirements of § 115.30.

(c) If changes in the design of the container are made during production but after approval of the plans and specifications by the Certifying Authority, the manufacturer shall immediately notify the Certifying Authority and furnish it with "as-built" drawings of the container so that the plans can be reviewed and one or more containers inspected during the production stage to confirm that they continue to comply with the requirements of § 115.30.

§ 115.30 Technical requirements for containers by design type.

The plans and specifications of a container that are submitted in accordance with the requirements contained in § 115.29, and the one or more containers that are inspected in accordance with the requirements of § 115.31 must comply with the requirements of Annex 6 of the Customs Convention on the International Transport of Goods Under Cover of TIR Carnets (TIR Convention), November 14, 1975 (TIAS). Copies of Annex 6 may be obtained from the Headquarters, U.S. Customs Service, Office of Inspection and Control, 1301 Constitution Avenue, NW., Washington, D.C. 20229.

§ 115.31 Examination, inspection, and testing.

(a) Before the issuance of a certificate of approval by design type, the Certifying Authority shall:

(1) Make a physical examination of one or more containers of the production series concerned;

(2) Assure itself as to the adequacy of the manufacturer's system to control quality of materials used, manufacturing methods, and finished containers; and

(3) Require the manufacturer to make available to the Certifying Authority records of material, including affidavits furnished by suppliers.

(b) The Certifying Authority shall conduct such examinations, inspections, and tests of the production run containers as it deems necessary.

§ 115.32 Approval plates.

(a) The manufacturer shall affix, in a clearly visible place on or near one of the doors or other main openings of each container manufactured to the approved design, a metal approval plate measuring at least 20 by 10 centimeters (7.8 by 3.9 inches). The following shall be embossed on or stamped into the surface of the approval plate:

(1) "Approved for transport under Customs seal."

(2) "USA/(number of the certificate of approval)/(last two digits of year of approval)." (e.g. "USA/1600/84" means "United States of America certificate of approval number 1600, issued in 1984)."

(3) Identification of the type of container and of the number of the container in the type series.

(4) The serial number assigned to the container by the manufacturer (manufacturer's number).

§ 115.33 Termination of approval.

Any container, the essential features of which are changed, shall no longer be covered by the design type approval. Such a container may be made available to a Certifying Authority for inspection and individual approval in accordance with subpart D of this part. However, repairs in kind do not constitute a change of the essential features.

Subpart D—Procedures for Approval of Containers After Manufacture

§ 115.37 General.

This subpart provides for the approval and certification of containers after manufacture, and for those altered so as to void their design type approval.

§ 115.38 Application.

A written request for approval of a container after manufacture may be made by the owner or operator to a Certifying Authority and must include the following:

(a) Type of container;

(b) Name and business address of applicant;

(c) Identification marks and numbers;

(d) Tare weight;

(e) Nominal overall dimensions in centimeters;

(f) Type of construction and essential particulars of structure (nature of materials, parts which are reinforced, whether bolts are riveted or welded, and similar matters); and

(g) Proposed location and date for inspection of container.

§ 115.39 Eligibility.

Containers to be approved after the manufacturing stage may be submitted to a Certifying Authority by the owner or operator for inspection—

(a) In the country in which the owner or operator is a resident or is established;

(b) In the country in which the container is used for the first time for transport under Customs seal; or

(c) In a country in which the owner or operator is able to produce the containers for which approval is sought.

§ 115.40 Technical requirements for containers.

A container that is submitted for inspection for approval after manufacture, must comply with the requirements of Annex 7 of the Customs Convention on the International Transport of Goods Under Cover of TIR Carnets (TIR Convention), November 14, 1975 (TIAS). Copies of Annex 7 may be obtained from the Headquarters, U.S. Customs Service, Office of Inspection

and Control, 1301 Constitution Avenue, NW., Washington, D.C. 20229.

§ 115.41 Certificate of approval for containers approved after manufacture.

The Certifying Authority shall issue an individual certificate of approval for each container that meets the requirements in § 115.40.

§ 115.42 Approval Plates.

The owner or operator applicant shall, upon receipt of a certificate of approval from the Certifying Authority, affix an approval plate in the manner specified for containers approved by design type (see § 115.32), but without any identification numbers or letters indicating the type of container.

§ 115.43 Termination of approval.

Approval of a container terminates upon a change in the container by a major repair or alteration of any of the essential features required in § 115.40. Repairs by replacement in kind do not constitute a change of the essential features.

Subpart E—Procedures for Approval of Individual Road Vehicles

§ 115.48 General.

This subpart provides for the approval and certification of individual road vehicles that comply with the technical requirements in § 115.51.

§ 115.49 Application.

A written request for approval of an individual road vehicle may be made by the manufacturer, owner, or carrier to a Certifying Authority and must include—

(a) Type of vehicle;

(b) Name and business address of owner or operator;

(c) Name of the manufacturer;

(d) Chassis number;

(e) Engine number (if applicable);

(f) Registration number;

(g) Particulars of construction;

(h) Any photos or diagrams required by the Certifying Authority to facilitate approval; and

(i) A proposed place and date for inspection of the road vehicle.

§ 115.50 Eligibility.

A road vehicle may be submitted for inspection by its owner or operator to a Certifying Authority of the country in which the owner or operator is a resident or is established, or where the vehicle is registered.

§ 115.51 Technical requirements.

A road vehicle that is submitted for inspection for individual approval must comply with the requirements of Annex 3 of the Customs Convention on the International Transport of Goods Under Cover of TIR Carnets (TIR Convention), November 14, 1975, (TIAS). Copies of Annex 3 may be obtained from the Headquarters, U.S. Customs Service, Office of Inspection and Control, 1301 , Constitution Avenue, NW., Washington, D.C. 20229.

§ 115.52 Approval.

The Certifying Authority shall issue a certificate of approval, valid for 2 years, to each road vehicle that complies with the applicable requirements in § 115.51.

§ 115.53 Certificate of approval.

A certificate of approval must be kept on the vehicle as evidence of approval.

§ 115.54 Renewal of certificate.

A certificate of approval may be renewed if the Certifying Authority determines by inspection every 2 years that the vehicle continues to comply with the applicable requirements in § 115.51.

§ 115.55 Termination of approval.

Approval of a road vehicle terminates—

(a) Upon expiration of the certificate of approval; or

(b) Upon a change in the road vehicle by a major repair or alteration of any of the essential features requred in § 115.51. Repairs by replacement in kind do not constitute a change of the essential features.

Subpart F—Procedures for Approval of Road Vehicles by Design Type

§ 115.60 General.

This subpart provides for the approval and certification of road vehicles manufactured by design type.

§ 115.61 Eligibility.

Any manufacturer or owner of road vehicles which are being manufactured in a type series from a standard design and specifications, so that each road vehicle has identical characteristics, may apply for an approval by design type.

§ 115.62 Where to apply.

A manufacturer may apply for approval of a road vehicle by design type to a Certifying Authority of the country in which the road vehicle is manufactured, if such country is a contracting party to the TIR Convention, 1975. An owner may apply for approval of a road vehicle by design type to a Certifying Authority of the country in which it is a resident or is established, if the road vehicle is manufactured outside the territory of a country which is a contracting party to the TIR Convention, 1975.

§ 115.63 Application for approval.

Each application by a manufacturer or an owner for certification of a road vehicle by design type must include—

(a) Four copies, each no larger than 3 feet by 4 feet, of the Customs and TIR plan;

(b) Customs and TIR plan number;

(c) Four copies of the specifications which include the following information:

(1) The name and address of the manufacturer or the owner; and

(2) A description of the road vehicle including the—

(i) Particulars of construction;

(ii) Dimensions;

(iii) Construction materials; and

(iv) Marks and numbers, including chassis, engine, and registration numbers;

(d) A statement signed by the manufacturer that—

(1) It will present vehicles of the type concerned to the Certifying Authority which that Authority may wish to examine.

(2) Permit the Certifying Authority to examine further units at any time during or after the production run;

(3) Notify the Certifying Authority of each change in the design or specifications before adoption;

(4) Mark the road vehicles in a visible place with the identification number or letters of the design type and the serial number of the vehicle in the type series manufacturer's number; and

(5) Keep a record of vehicles manufactured to the design type.

(e) A statement by the owner that it is a resident or is established in the U.S. as evidenced by incorporation, registration, or the conduct of substantial business activities within the U.S., its territories, or possessions.

§ 115.64 Plan review.

(a) A manufacturer or owner who wants road vehicles to be approved by design type must submit the plans and specifications of the road vehicle to the Certifying Authority.

(b) The Certifying Authority that examines the plans and specifications submitted in accordance with paragraph (a) of this section shall—

(1) Approve the plans and specifications in accordance with the requirements of § 115.65 and arrange to inspect a road vehicle in accordance with § 115.66; or

(2) Advise the applicant of any necessary changes to be made for compliance with the requirements of § 115.65.

(c) If changes in design of the road vehicle are made during production but after approval of the plans and specifications by the Certifying Authority, the manufacturer shall immediately notify the Certifying Authority and furnish it with "as-built" drawings of the road vehicle so that the plans can be reviewed and one or more road vehicles inspected during the production stage to confirm that they continue to comply with the requirements of § 115.65.

§ 115.65 Technical requirements for road vehicles by design type.

(a) The plans and specifications of a road vehicle that are submitted in accordance with the requirements contained in § 115.64, and the one or more road vehicles that are inspected in accordance with the requirements of § 115.66, must comply with the requirements of Annex 3 of the Customs Convention on the International Transport of Goods Under Cover of TIR Carnets (TIR Convention), November 14, 1975 (TIAS). Copies of Annex 3 may be obtained from the Headquarters, U.S. Customs Service, Office of Inspection and Control, 1301 Constitution Avenue, NW., Washington, D.C. 20229.

§ 115.66 Examination, inspection, and testing.

(a) Before the issuance of a certificate of approval by design type, the Certifying Authority shall:

(1) Make a physical examination of one or more containers of the production series concerned;

(2) Assure itself as to the adequacy of the manufacturer's system to control quality of materials used, manufacturing methods, and finished road vehicles; and

(3) Require the manufacturer to make available to the Certifying authority records of materials, including affidavits furnished by suppliers.

(b) The Certifying Authority shall conduct such examinations, inspections, and testing of the production run road vehicles as it deems necessary.

§ 115.67 Approval certificate.

The holder of the approval certificate shall, before using the vehicle for the carriage of goods under the cover of a TIR Carnet, fill in as may be required on the approval certificate:

—The registration number given to the vehicle (item No. 1) or,

—In the case of a vehicle not subject to registration, particulars of his name and business address (item No. 8).

(See Annex 4 of the Convention for model of certificate of approval):

§ 115.68 Termination of approval.

Any road vehicle whose essential features are changed shall no longer be covered by the design type approval. Such a road vehicle may be made available to a Certifying Authority for inspection and individual approval in accordance with Subpart E of this part. However, repairs in kind do not constitute a change of the essential features.

Alfred R. De Angelus,

Acting Commissioner of Customs.

Approved: December 21, 1984.

John M. Walker, Jr.,

Assistant Secretary of the Treasury.

[FR Doc. 85-11695 Filed 5-14-85; 8:45 am]

BILLING CODE 4820-02-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Ch. I, Subchapter C

[Docket No. 85N-0043]

Parenteral Drug Products Containing Benzyl Alcohol or Other Antimicrobial Preservatives; Intent and Request for Information

AGENCY: Food and Drug Administration.

ACTION: Notice of intent.

SUMMARY: The Food and Drug Administration (FDA) is considering proposing a rule that would (1) prohibit the use of any antimicrobial preservative or, alternatively, certain specific antimicrobial preservatives in single-dose parenteral drug products for human use; and (2) require the labeling of multiple-dose parenteral drug products for human use which contain any antimicrobial preservative or certain specific antimicrobial preservatives to bear a caution about use in newborn infants. The agency is considering this action because of reports linking the use of parenteral drug products containing an antimicrobial preservative, particularly bacteriostatic water for injection and bacteriostatic sodium chloride injection preserved with benzyl alcohol, to morbidity and mortality among low-weight newborn infants. The purpose of this notice is to (1) give interested persons an opportunity to submit comments on these possible actions; (2) request information and data on related issues and problems; and (3) discuss the agency's policy regarding required labeling warnings for bacteriostatic water for injection and bacteriostatic sodium chloride injection.

DATE: Comments by July 15, 1985.

ADDRESS: Written comments to the Dockets Management Branch (FA-305), Food and Drug Administration, Room 462, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Richard L. Arkin, Center for Drugs and Biologics (HFN-364), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-6490.

SUPPLEMENTARY INFORMATION:

Background

FDA has been concerned about preservatives used in bacteriostatic water for injection and bacteriostatic sodium chloride injection since the agency began to receive reports suggesting a relationship between the administration of such solutions preserved with benzyl alcohol and a sometimes fatal toxic reaction in low birth weight premature infants. The reports have come from medical centers where neonatal intensive care staffs used the products to flush intravascular catheters and to reconstitute drugs for delivery through such catheters. The syndrome possibly linked to these products is characterized by central nervous system depression, metabolic acidosis, and gasping respirations. The syndrome can lead to serious renal and other system failures, hypotension, and, less frequently, to intracranial hemorrhage and death. High levels of benzyl alcohol and its metabolites, benzoic acid and hippuric acid, have been found in blood and urine from newborns suffering from the syndrome. It is theorized that the immature liver of the low-weight, premature infant (and of the fetus, for that matter) is incapable of properly metabolizing and excreting benzyl alcohol or its metabolites.

Action Already Taken

Shortly after the agency started to receive these reports, agency staff contacted all known manufacturers of bacteriostatic water for injection and bacteriostatic sodium chloride injection as well as staff of the United States Pharmacopeial Convention (U.S.P.C.) and arranged for a meeting to be held at FDA. At this meeting, held on June 4, 1982, the manufacturers present voluntarily agreed to place on the product labels for the drugs warning language which would read, "Not for use in newborns." In addition, the U.S.P.C. agreed to publish a revision to the U.S.P. monographs. (*United States Pharmacopeia XX/National Formulary XV*) for these products requiring such warning language on the product labels.

The U.S.P. amended monographs requiring the label of these two products to bear the statement "Not for use in newborns" appeared in Supplement 4 to *USP XX* issued January 1, 1983, and became effective May 1, 1983. The monographs had already required that product labeling include the names and proportions of added preservatives.

FDA'S Policy on the Required Label Warnings

At the time of the June 4, 1982 meeting, FDA considered publishing a rule requiring that explanatory information regarding the label warning and the problems necessitating the warning be added to the professional labeling for these products. Upon reeevaluation, however, FDA has concluded that formal rulemeking is not required because 21 CFR 201.57(e) already provides that a required warning statement which limits the use of a product be explained in the labeling. Further, § 201.57(e) also provides that as soon as there is reasonable evidence of an association of a serious hazard with a drug, the "Warning" section of the labeling is to be revised to include an appropriate warning. Therefore, if such disclusure is not made in the physician labeling of these two products, the product would be considered to be misbranded.

Sodium chloride injection and sterile water for injection do not contain an antimicrobial preservative and are widely marketed and can be substituted for the bacteriostatic products for use in newborn infants. At the same time, there are valid medical uses for multiple-dose containers of bacteriostatic water for injection and bacteriostatic sodium chloride injection. Therefore, it is the agency's position that these bacteriostatic products should remain available, provided that their labels and labeling contain adequate warnings against use in newborn infants.

Is There a Need for Additional Action?

In addition to bacteriostatic water for injection and bacteriostatic sodium chloride injection, otrher parenteral drug products containing benzyl alcohol or other preservatives are used frequently in newborn infants. For example, heparin solutions, which may contain benzyl alcohol, are oftern used to keep intravascular catheters open and thus could pose an additional hazard to low-weight infants whose treatment requires intravascular catheterization. Other products are sued in the treatment of low-weight newborn infants with varying frequency. Low-weight newborn infants often have multiple conditions requiring medical treatment. Because the individual care requirements of low-weight newborn infants vary, it is difficult to identify all the drug products that may be used in newborn infants and the extent of their use.

In addition to newborn infants, other patient populations may be at risk from the use of antimicrobial preservatives in parenteral drug products. Because benzyl alcohol and other antimicrobial preservatives are metabolized in the liver, patients with impaired liver function may be especially at risk. Although there are, at present, no data available to FDA indicating a problem with respect to the use of antimicrobial preservatives in parenteral drug products in hepatically compromised patients, other than low-weight newborn infants, the data regarding newborn infants suggest that other hepatically compromised groups may also be at risk.

Possible Future Actions for Which Comment Is Sought

A. Prohibit Use of Antimicrobial Preservatives in Single-Dose Containers

The agency is unaware of any medical or scientific reason for using benzyl alcohol or any other antimicrobial preservative in single-dose containers of parenteral solutions. For this reason, and because of the documented problems with benzyl alcohol in newborn infants, the agency in considering whether to propose to prohibit the use of benzyl alcohol in single-dose products, such as heparin solutions, which are frequently administered to newborn infants. In addition, because other antimicrobial preservatives are metabolized in a manner similar to benzyl alcohol, and because many such preservatives are chemically similar, these other preservatives may also present hazards to low-weight newborn infants. Thus, the agency is also considering whether to propose to prohibit the use of any antimicrobial preservative in single-dose containers of parenteral products frequently administered to newborn infants. Finally, because (1) it is difficult to identify which products may be administered to newborn infants, (2) there does not appear to be any rationale for including antimicrobial preservatives in single-dose containers, and (3) such preservatives may have an adverse effect on individuals with impaired liver function, the agency is also considering whether to prohibit the use of all antimicrobial preservatives in single-dose containers of parenteral solutions.

B. Requirement for Labeling Statements

The use of preservatives in multiple-dose parenteral products is a recognized pharmaceutical necessity which could not be eliminated without endangering the public health. If an antimicrobial preservative were not included in a multiple-dose container, the product could become contaminated after the first dose is removed from the container. Thus, the agency is not considering prohibiting the use of such preservatives. The agency is considering, however, whether to propose to require a warning in the labeling of (1) all multiple-dose parenteral products containing benzyl alcohol frequently administered to newborn infants, or (2) all multiple-dose parenteral products frequently administered to newborns containing any antimicrobial preservative, or (3) all multiple-dose parenteral product containers. The warning would state that caution should be used in the administration of these drugs to newborn infants and individuals with impaired liver function.

Request for Comments, Data, and Information

The agency is interested in receiving data on the potential safety problems associated with the use of an antimicrobial preservative other than benzyl alcohol in products administered to newborn infants, patients with impaired liver function, or all patients, as well as data concerning potential danger, if any, to fetuses posed by administering antimicrobially preserved parenteral drugs to pregnant women.

The agency also is interested in receiving comments on the possible restrictions on the use of antimicrobial preservatives in single-dose containers and the warning requirements discussed above, including suggestions for appropriate warning language. Specifically, the agency is interested in comments on whether such actions should be limited to heparin and other products frequently administered to newborn infants or should extend to all parental products. The agency is also interested in receiving comments on whether only benzyl alcohol should be subject to the discussed actions or whether all antimicrobial preservatives should be included.

In addition to substances added for the purpose of destroying or inhibiting the multiplication of microorganisms, some scientists consider such additives as antioxidants and stabilizers to fall within the category of preservatives. These additives, while generally

considered nontoxic, have been associated with toxicity reports from time to time. Thus, the agency is also interested in receiving data or comments concerning the need for a general warning statement or other actions applicable to parenteral drug products containing any substance that could be considered a preservative intended for newborn infants, other special patient populations, or for all patients.

In addition to submitting data, comments, or suggestions regarding the issues discussed above or related concerns, the agency is interested in receiving data concerning the economic effects of any of the actions discussed above.

Interested persons may, on or before July 15, 1985, submit to the Dockets Management Branch (address above) written comments concerning this notice of intent. 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 at the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: May 3, 1985.

Frank E. Young,

Commissioner of Food and Drugs.

[FR Doc. 85-11662 Filed 5-14-85; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Part 334

[Docket No. 78N-036L]

Laxative Drug Products for Over-the-Counter Human Use; Tentative Final Monograph

AGENCY: Food and Drug Administration.

ACTION: Notice of proposed rulemaking; extension of comment period.

SUMMARY: The Food and Drug Administration (FDA) is extending to June 14, 1985, the comment period for the notice of proposed rulemaking to establish conditions for the safety, effectiveness, and labeling of over-the-counter (OTC) laxative drug products. This action is being taken in response to a request to allow more time for interested persons to address adequately several important issues and to consult experts so that more informed comments may be submitted to FDA.

DATE: Written comments by June 14, 1985.

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: William E. Gilbertson, Center for Drugs and Biologics (HFN-210), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4960.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of January 15, 1985 (50 FR 2124), FDA issued a notice of proposed rulemaking to establish conditions for the safety, effectiveness, and labeling of OTC laxative drug products. The notice of proposed rulemaking is part of the ongoing review of OTC drug products conducted by the agency. Interested persons were given until May 15, 1985, to comment on the notice of proposed rulemaking.

In response to the proposal, one comment requested a 30-day extension of the comment period to study the issues adequately relating to bulk-forming fiber laxatives and to confer with outside consultants.

FDA has carefully considered the request. The agency believes that information described by the request may be of assistance in establishing the final rule for OTC laxative drug products and is in the public interest. Therefore, the agency considers a general extension of the comment period for 30 days to be appropriate. Accordingly, the comment period for submissions by any interested person is extended to June 14, 1985. Comments may be seen in the Dockets Management Branch, Food and Drug Administration, at the address noted above, between 9 a.m. and 4 p.m., Monday through Friday.

Dated May 9, 1985.

John R. Wessel,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 85-11651 Filed 5-10-85; 2:32 pm]

BILLING CODE 4160-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Parts 25, 203, 205, 213, 221, and 244

[Docket No. R-85-1226; FR-1954]

Use of Commitment Correspondents in Connection With FHA Mortgage Insurance

Correction

In FR Doc. 85-10734 beginning on page 18680 in the issue of Thursday, May 2, 1985, make the following corrections:

1. On page 18682, in the third column, under **PART 25—MORTGAGEE REVIEW BOARD**, and above the **Authority** citation, insert: "1. The authority citation for 24 CFR Part 25 is revised to read as set forth below and any authority citation following any section in Part 25 is removed:".

2. On page 18685, in the first column, the authority citation for Part 203 should have followed amendatory instruction 9.

3. On page 18687, in the first column, the authority citation for Part 205 should have followed amendatory instruction 15.

4. On page 18687, the authority citation for Part 213 should have followed amendatory instruction 19 in the first column.

5. On page 18687, in the second column, the authority citation for Part 221 should have followed amendatory instruction 22.

6. On page 18688, in the first column, amendatory instruction "30" under Part 244, should read "34".

BILLING CODE 1505-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP-300128; FRL-2835-7]

Alpha-(p-Nonylphenyl) Omega-Hydroxypoly(Oxyethylene) Mixture of Dihydrogen Phosphate and Monohydrogen Phosphate Esters and the Corresponding Salts; Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes to expand the exemption from the requirement of a tolerance for *alpha*-(*p*-nonylphenyl)-omega-hydroxypoly(oxyethylene) mixture of dihydrogen phosphate and monohydrogen phosphate esters and the corresponding ammonium, calcium, magnesium, monoethanolamine, potassium, sodium, and zinc salts of the phosphate esters when used as inert ingredient surfactants, related adjuvants of surfactants in pesticide formulations applied to growing crops or to raw agricultural commodities after harvest. This proposed regulation was requested by DeSoto, Inc.

DATE: Written comments, identified by the document control number [OPP-300128], must be received on or before June 14, 1985.

ADDRESSES:

By mail, submit comments to: Program Management and Support Division (TS–757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW., Washington, D.C. 20460.

In person, deliver comments to: Registration Support and Emergency Response Branch, Registration Division (TS–767), Environmental Protection Agency, Rm. 716, 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 to the submitter. 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: N. Bhushan Mandava, Registration Support and Emergency Response Branch, Environmental Protection Agency, 401 M St. SW., Washington, D.C. 20460.

Office location and telephone number: Registration Support and Emergency Response Branch, Rm. 724A, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, 703–557–7700.

SUPPLEMENTARY INFORMATION: At the request of DeSota, Inc., the Administrator proposes to amend 40 CFR 180.1001(c) by expanding the existing exemption from the requirement of a tolerance for *alpha*-(p-nonylphenyl)-omega-hydroxypoly(oxyethylene) mixture of dihydrogen phosphate and monohydrogen phosphate esters and the corresponding ammonium, calcium, magnesium, monoethanolamine, potassium, sodium, and zinc salts of the phosphate esters when used as surfactant, related adjuvants of surfactants in pesticide formulations. The amendment would expand the poly(oxyethylene) content from 4–14 moles to 4–14 moles or 30 moles. A separate entry is not necessary to reflect this change.

Inert ingredients are all ingredients which are not active ingerdients as defined in 40 CFR 162.3(c), and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting and spreading agents; propellants in aerosal dispensers; and emulsifiers. The term "inert" is not intended to imply nontoxicity; the ingredients may or may not be chemically active.

Preamble to proposed rulemaking documents of this nature include the common or chemical name of the substance under consideration, the name and address of the firm making the request for the exemption, and toxicological and other scientific bases used in arriving at a conclusion of safety in support of the exemption.

Name of inert ingredient. *Alpha*-(p-nonylphenyl)-omega-hydroxypoly(oxyethylene) mixture of dihydrogen phosphate and monohydrogen phosphate esters and the corresponding ammonium, calcium, magnesium, monoethanolamine, potassium, sodium, and zinc salts of the phosphate esters.

Name and address of requester: DeSoto, Inc., Harahan, LA 70183.

Bases for approval. 1. The *alpha*-(p-nonylphenyl)-omega-hydroxypoly(oxyethylene) mixture of dihydrogen phosphate and monohydrogen phosphate esters are cleared under 21 CFR 175.105 for use only as components of adhesives.

2. *Alpha*-(p-nonylphenyl)-omega-hydroxypoly(oxyethylene) mixture of dihydrogen phosphate and monohydrogen phosphate esters, barium salt is cleared under 21 CFR 177.2600 for use in rubber articles intended for repeated use.

3. *Alpha*-(p-nonylphenyl)-omega-hydroxypoly(oxyethylene) mixture of dihydrogen phosphate and monohydrogen phosphate esters is cleared under 21 CFR 178.3400 for use as emulsifiers and/or surface-active agents.

4. The parent surfactant is already cleared under 40 CFR 180.1001(c) under the general heading *alpha*-(p-nonylphenyl)-omega-hydroxypoly(oxyethylene) mixture of dihydrogen phosphate and monohydrogen phosphate esters and the corresponding ammonium, calcium, magnesium, monoethanolamine, potassium, sodium, and zinc salts of the phosphate esters; the nonyl group is a propylene trimer isomer and the poly(oxyethylene) content averages 4–14 moles.

The present clearance can be amended to reflect this modest change (from 4–14 moles to 4–14 moles or 30 moles) in the moles of poly(oxyethylene).

5. The Agency does not consider this change in the poly(oxyethylene) content to be of toxicological significance.

Accordingly, the present entry in 40 CFR 180.1001(c) should be amended to reflect the change in poly(oxyethylene) content from 4–14 moles to 4–14 moles or 30 moles.

Based on the above information, and review of its use, it has been found that, when used in accordance with good agricultural practices, these ingredients are useful and do not pose a hazard to humans or the environment. It is concluded, therefore, that the proposed amendment to 40 CFR Part 180 will protect the public health, and it is proposed that the regulation be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains these inert ingredients, may request within 30 days after publication of this document in the **Federal Register** that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, an Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating both the subject and the petition and document control number, "[OPP–300128]." All written comments filed in response to this notice of proposed rulemaking will be available for public inspection in the Registration Support and Emergency Response Branch at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

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

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

List of Subjects in 40 CFR Part 180

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

Dated: May 6, 1985.

Robert V. Brown,

Acting Director, Registration Division, Office of Pesticide Programs.

PART 180—[AMENDED]

Therefore, it is proposed that 40 CFR Part 180 be amended as follows:

1. The authority citation for 40 CFR Part 180 continues to read as follows:

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

2. Section 180.1001(c) is amended by revising the entry *alpha*-(*p*-nonylphenyl)-omega-hydroxypoly(oxyethylene) mixture of dihydrogen phosphate and monohydrogen phosphate esters and the corresponding salts, to read as follows:

§ 180.1001 Exemptions from the requirement of a tolerance.

* * * * *

(c) * * *

Inert ingredients	Limits	Uses[1]
* * * * *		
Alpha-(*p*-nonylphenyl)-omega-hydroxypoly(oxyethylene) mixture of dihydrogen phosphate and monohydrogen phosphate esters and the corresponding ammonium, calcium, magnesium, monoethanolamine, potassium, sodium, and zinc salts of the phosphate esters; the nonyl group is a propylene trimer isomer and the poly(oxyethylene) content averages 4–14 moles or 30 moles.		Surfactants, related adjuvants of surfactants.
* * * * *		

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[FR Doc. 85–11692 Filed 5–14–85; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 180

[OPP-300129; FRL-2835-8]

Triethylene Glycol Diacetate; Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed Rule.

SUMMARY: This document proposes that triethylene glycol diacetate be exempted from the requirement of a tolerance when used as an inert ingredient solvent in pesticide formulations applied to beef cattle only. This proposed regulation was requested by the Stauffer Chemcial Co.

DATE: Written comments, identified by the document control number [OPP-300129], must be received on or before June 14, 1985.

ADDRESSES:

By mail, submit comments to: Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW., Washington, D.C. 20460.

In person, deliver comments to: Registration Support and Emergency Response Branch, Registration Division (TS-767), Environmental Protection Agency, Rm. 716, 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 of all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. All written comments will be available for public inspection in Rm. 236 at the address given above from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT:

By mail: N. Bhushan, Mandava, Registration Support and Emergency Response Branch, Environmental Protection Agency, 401 M St. SW., Washington, D.C. 20460.

Office location and telephone number: Registration Support and Emergency Response Branch, Rm. 724A, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, 703-557-7700.

SUPPLEMENTARY INFORMATION: At the request of Stauffer Chemical Co., the Administrator proposes to amend 40 CFR 180.1001(e) by establishing an exemption from the requirement of a tolerance for triethylene glycol diacetate when used as a solvent in pesticide formulations applied to beef cattle only.

Inert ingredients are all ingredients which are not active ingredients as defined in 40 CFR 162.3(c), and include but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acid; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting and spreading agents; propellants in aerosol dispensers; and emulsifiers. The term "inert" is not intended to imply nontoxicity; the ingredient may or may not be chemically active.

Preambles to proposed rulemaking documents of this nature include the common or chemical name of the subtance under consideration, the name and address of the firm making the request for the exemption, and toxicological and other scientific bases used in arriving at a conclusion of safety in support of the exemption.

Name of inert ingredient. Triethylene glycol diacetate.

Name and address of requester. Stauffer Chemical Co., Richmond, CA 94804.

Bases for approval. 1. Triethylene glycol diacetate is cleared under 21 CFR 177.1200 for use with cellophane in packaging food.

2. Triethylene glycol diacetate and its possible metabolite triethylene glycol monoacetate have sufficiently low residues (less than 0.1 ppm combined residues) to not be considered toxicologically significant by the Agency.

Based on the above information, and review of its use, it has been found that, when used in accordance with good agricultural practices, this ingredient is useful and does not pose a hazard to humans or the environment. It is concluded, therefore that the proposed amendment to 40 CFR Part 180 will protect the public health, and it is proposed that the regulation be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains this inert ingredient, may request within 30 days after publication of this notice in the **Federal Register** that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating both the subject and the petition and document control number, "[OPP-300129]." All written comments filed in response to this notice of proposed rulemaking will be available for public inspection in the Registration Support and Emergency Response Branch at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

The Office of Management and Budget has exempted this rule from the

requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-534, 94 Stat. 1164, 5 U.S.C. 601-612), the Administator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

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

Dated: May 6, 1985.

Robert V. Brown,

Acting Director, Registration Division, Office of Pesticide Programs.

PART 180—[AMENDED]

Therefore, it is proposed that 40 CFR Part 180 be amended as follows:

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

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

2. Section 180.1001(e) is amended by adding and alphabetically inserting the inert ingredient as follows:

§ 180.1001 Exemptions from the requirement of a tolerance.

* * * * *

(e) * * *

Inert ingredients	Limits	Uses
* *	* *	*
Triethylene glycol diacetate (CAS Reg. No. 111-21-7).	For use on beef cattle only.	Solvent.
* *	* *	*

* * * * *

[FR Doc. 85-11691 Filed 5-14-85; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 261

[FRL-2832-4]

Hazardous Waste Management System: Indentification and Listing of Hazardous Waste; Correction

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule; technical correction, notice of availability, and extensions of comment period.

SUMMARY: On December 21, 1984, (49 FR 49784) EPA proposed to add additional hazardous chemicals to the list of commercial chemical products which are hazardous wastes when discarded or intended to be discarded (40 CFR 261.33). Today's notice serves three purposes: (1) To correct several mistakes made in the December 21, 1984, NPRM [FR Doc. 84-33126]; (2) to announce the availability of the background document; and (3) to extend the comment period for the subject proposal.

DATE: Comments on the proposed rule must be submitted on or before June 30, 1985. Any person may request a hearing on this proposal by filing a request with Eileen B. Claussen, whose address appears below, by June 14, 1985. Requests must contain the information prescribed in 40 CFR 260.20(d).

ADDRESSES: Comments should be sent to the Docket Clerk, Office of Solid Waste (WH-562), U.S. Environmental Protection Agency, 401 M Street, SW., Washington D.C. 20460. Comments should identify the regulatory docket: "Michigan Petition." Requests for a hearing should be addressed to Eileen B. Claussen, Director, Characterization and Assessment Division, Office of Solid Waste (WH-562B), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460. The public docket for this proposal is located in the lower level basement, Southeast entrance, U.S. Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460, and is available for viewing from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT: The RCRA Hotline at (800) 424-9346 or at (202) 382-3000. For technical information contact Agnes Ortiz, Office of Solid Waste (WH-562B), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460, (202) 382-4770.

SUPPLEMENTARY INFORMATION:

I. Background

On December 21, 1984 (49 FR 49784), EPA proposed the listing of additional commercial chemical products in 40 CFR 261.33 and Appendix VIII. Commercial chemical products are considered as hazardous waste when discarded or intended to be discarded.

The Agency received a number of questions and comments concerning various aspects of the proposal. In reviewing these, a number of typographical and other errors have been identified which require correction. In addition, the Agency would like to announce availability of a background document supporting the proposal.

II. Corrections

The following errors have been identified in the preamble of this proposal:

(1) On page 49784, column 1, under Summary; line 5—change 109 to 121; line 8—change twenty-eight to thirty-five; and line 10—change 81 to 86. On page 49784, column 3, under A. Michigan Petition—"The State of Michigan provided to EPA 11 volumes of background material to support this claim. . ." instead of "1 volumes."

(2) In the tables provided for the new listings:

EPA hazardous waste No.	Compound name	Action taken	Reason
P157	Oxydemeton-methyl	Correction	This item is provided twice in the table on page 49786; remove one.
P142	Phosacetim	do	Do.
P145	Phosphamidon	do	Do.
P153	Dioxathion	Data	The oral rat LD50 is 20 mg/kg.
P158	Mustard gas	do	The inhalation rat LC50 is 0.014 mg/l/1h.
P147	Monocrotophos	do	The CAS No. is changed to 6923-22-4.
U278	Antimony trioxide	Delete	Antimony trioxide is not sufficiently toxic for listing in 261.33. (EPA Hazardous Waste No. U278 corresponds to Bendiocarb).
U306	4-Chloro-m-phenylenediamine.	Spelling	The compounds should appear as 4-chloro-o-phenylendiamine.
U284	Dinocap	Data	The CAS No. is changed to 6119-92-2.

III. Availability of Background Document

The December 21, 1984, proposal noticed the availability of a background document for the proposed action. This background document will be available as of April 30, 1985, for review in the public docket. Copies of the background document will also be available for viewing at all EPA regional libraries, as well as the EPA headquarters library, Room 2404, 401 M Street SW., Washington, D.C. 20460.

Dated: April 29, 1985.

Jack W. McGraw,

Acting Assistant Administrator.

PART 261—[AMENDED]

The following corrections are made in the document appearing at 49 FR 49784 (December 21, 1984).

1. The authority citation for Part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, and 6922.

§ 261.33 [Amended]

2. Amend § 261.33(e) by correcting the spelling of the following waste stream appearing 10 lines from the bottom of the first column of page 49792 to read as follows:

EPA Hazardous Waste No.	Substance
P26	Paraquat.

3. Amend § 261.33(f) by removing the following waste stream appearing 28 lines from the bottom of the third column of page 49792.

Hazardous Waste No.	Substance
D34	Heptachlor epoxide.

[FR Doc. 85-11595 Filed 5-14-85; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 261

[SW-FRL-2836-4]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule and request for comment.

SUMMARY: The Environmental Protection Agency (EPA) today is proposing to exclude solid wastes generated at three facilities from the lists of hazardous wastes contained in 40 CFR 261.31 and 261.32. This action responds to delisting petitions submitted under 40 CFR 260.20, which allows any person to petition the Administrator to modify or revoke any provision of Parts 260 through 265, 124, 270, and 271 of Title 40 of the Code of Federal Regulations, and 40 CFR 260.22, which specifically provides generators the opportunity to petition the Administrator to exclude a waste on a "case-specific basis" from the hazardous waste list. The effect of this action, if promulgated, would be to exclude certain wastes generated at particular facilities from listing as hazardous wastes under 40 CFR, Part 261.

The Agency has previously evaluated one of the petitions which is discussed in today's notice. Based upon our review at that time, the petitioner was granted a temporary exclusion. Due to recent changes to the delisting criteria required by the Hazardous and Solid Waste Amendments of 1984, however, this petition, and the other two petitions for which we propose to grant an exclusion have been evaluated both for the factors for which the wastes were originally listed as well as for all other factors and toxicants reasonably expected to be present in these wastes.

DATES: EPA will accept public comments on these proposed exclusions until June 14, 1985. Any person may request a hearing on these proposed exclusions by filing a request with Eileen B. Claussen, whose address appears below, by June 5, 1985. The request must contain the information prescribed in 40 CFR 260.20(d).

ADDRESSES: Comments should be sent to the Docket Clerk, Office of Solid Waste (WH-562), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460.

Requests for a hearing should be addressed to Eileen B. Claussen, Director, Characterization and Assessment Division, Office of Solid Waste (WH-562), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460. Communications should identify the regulatory docket number "Section 3001—Delisting Petitions (2)."

The public docket for these proposed exclusions is located in Room S-212A, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460, and is available for viewing from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT: RCRA Hotline, toll free at (800) 424-9346, or at (202) 382-3000. For technical information, contact Mr. David Topping, Office of Solid Waste (WH-562B), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460, (202) 475-8551.

SUPPLEMENTARY INFORMATION:

Background

On January 16, 1981, as part of its final and interim final regulations implementing section 3001 of RCRA, EPA published an amended list of hazardous wastes from non-specific and specific sources. This list has been amended several times, and is published in 40 CFR 261.31 and 261.32. These wastes are listed as hazardous because they typically and frequently exhibit any of the characteristics of hazardous wastes identified in Subpart C of Part 261 (*i.e.*, ignitability, corrosivity, reactivity, and extraction procedure (EP) toxicity) or meet the criteria for listing contained in 40 CFR 261.11(a)(2) of 261.11(a)(3).

Individual waste streams may vary, however, depending on raw materials, industrial processes, and other factors. While a waste that is described in these regulations generally is hazardous, a specific waste meeting the listing description from an individual facility may not be. For this reason, 40 CFR 260.20 and 260.22 provide an exclusion procedure, allowing persons to demonstrate that a specific waste from a particular generating facility should not be regulated as a hazardous waste.

To be excluded, petitioners must show that a waste generated at their facility does not meet any of the criteria under which the waste was listed. (See 40 CFR 260.22(a) and the background documents for listed wastes.) In addition, the Hazardous and Solid Waste Amendments of 1984 (HSWA) require the Agency to consider factors (including additional constituents), other than those for which the waste was listed if there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous. Accordingly, a petitioner also must demonstrate that his waste does not exhibit any of the hazardous waste characteristics, as well as present sufficient information for the Agency to determine whether the waste contains any other toxicants at hazardous levels. (See 40 CFR 260.22(a); section 222 of the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. 3001(f); and the background documents for the listed wastes.) Although wastes which are "delisted" (*i.e.*, excluded) are evaluated to determine whether or not they exhibit any of the characteristics of a hazardous waste, generators remain obligated to determine whether their waste remains non-hazardous based on the hazardous waste characteristics—namely, ignitability, reactivity, corrosivity, and EP toxicity.

In addition to wastes listed as hazardous in 40 CFR 261.31 and 261.32, residues from the treatment, storage, or disposal of listed hazardous wastes also are eligible for exclusion and remain hazardous wastes until exluded. (See 40 CFR §§ 261.3(c) and (d)(2).) Again, the substantive standard for "delisting" is: (1) That the waste not meet any of the criteria for which it was listed originally and (2) that the waste is not hazardous

after considering factors (including additional constituents) other than those for which the waste was listed, if there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous. Where the waste is derived from one or more listed hazardous wastes, the demonstration may be made with respect to each constituent or the waste mixture as a whole. (See 40 CFR 260.22(b).) Generators of these excluded treatment, storage, or disposal residues remain obligated to determine whether these residues exhibit any of the hazardous waste characteristics on a periodic basis.

Approach Used To Evaluate Delisting Petitions

The Agency first will evaluate the petition to determine if the waste (for which the petition was submitted) is non-hazardous based on the criteria for which the waste was origninally listed. If the Agency believes that the waste is still hazardous (based on the original listing criteria), it will propose to deny the petition. If, however, the Agency agrees with the petitioner that the waste is non-hazardous with respect to the criteria for which the waste was listed, it then will evaluate the waste with respect to any other factors or criteria, if there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous.

The Agency is using a hierarchical approach in evaluating petitions for the other factors or contaminants (*i.e.*, those listed in Appendix VIII of Part 261). This approach may, in some cases, eliminate the need for additional testing. The petitioner can choose to submit a raw materials list and process descriptions. The Agency will evaluate this information to determine whether any Appendix VIII toxicants are used or formed in the manufacturing and treatment process and are likely to be present in the waste at significant levels. If so, the Agency then will request that the petitioner perform additional analytical testing. If the petitioner disagrees, he may present arguments on why the toxicants would not be present in the waste, or, if present, why they would pose no toxicological hazard. The reasoning may include descriptions of closed or segregated systems, or mass balance arguments relating volumes of raw materials used to the rate of waste generation. If the Agency finds that the arguments presented by the petitioner are not sufficient to eliminate the reasonable likelihood of the toxicant's presence in the waste, the petition would be tentatively denied, for insufficient information. The petitioner then may choose to submit the additional analytical data on representative samples of the waste during the public comment period.

Rather than submitting a raw materials list, petitioners may test their waste for any additional toxic constituents that may be present and submit this data to the Agency. In this case, for any constituents from Appendix VIII of Part 261 for which the wastes is not tested, the petitioner should submit an explanation of why they would not be present in the waste or, if present, why they would pose no toxicological hazard.

In making a delisting determination, the Agency evaluates each petitioned waste against the listing criteria and factors cited in 40 CFR 261.11(a)(2) and (a)(3). Specifically, the Agency considers whether the waste is acutely toxic, as well as the toxicity of the constituents, the concentration of the constitutents in the waste, their tendency to migrate and bioaccumulate, their persistence in the environment once released from the waste, plausible types of management of the waste, and the quantities of the waste generated. In this regard, the Agency has developed an analytical approach to the evaluation of wastes that are landfilled. (Landfilling is considered here since that is the only reasonable management scheme for the wastes being evaluated today.)[1] The overall approach, which includes a ground-water transport model, is used to predict reasonable worst-case contaminant levels in ground water in nearby receptor wells (*i.e.*, the model estimates the ability of an aquifer to dilute the toxicant from a specific volume of waste). The receptor-well concentration determined by the model then will be compared directly to a health-based standard. If the value at the well predicted by the model is less than the health-based standard, then the waste could be considered non-hazardous and a candidate for delisting. If the value at the well is above the health-based standard, however, then the waste probably still will be considered hazardous, and not excluded from Subtitle C control. This approach was described in detail and published in 50 FR 7882, February 26, 1985.

This approach evaluates the petitioned wastes assuming a reasonable worst-case land disposal scenario. This approach has developed a sliding regulatory scale which suggests that a large volume of waste exhibiting a particular extract level not be delisted, while a smaller volume of the same waste could be considered non-hazardous.[2] The Agency believes this to be a reasonable outcome since a larger quantity of a waste (and the toxicants in the waste) might not be diluted sufficiently to generate well concentrations below a health-based standard. The approach selected predicts that the larger the waste volume, the higher the level of toxicant in the receptor well. The mathematical relationship yields at least a ten-fold dilution of the toxicant concentration initially entering the aquifer (*e.t.*, any waste exhibiting extract levels equal to or less that ten times a health-based standard will generate a toxicant concentration at the receptor well equal to or less than that same health-based standard). Depending on the volume of waste, up to an additional five-fold dilution may be imparted, resulting in a total dilution of up to fifty times.

The Agency is proposing to use this approach as one factor to determine the potential impact of unregulated disposal of petitioned waste on human health and the environment. In fact, the Agency has used this approach in evaluating each of the wastes proposed for exclusion in today's publication. As a result of this evaluation, we are proposing to grant those petitions discussed in this notice.

It should be noted that EPA has not verified the submitted test data before proposing to grant these exclusions. The sworn affidavits submitted with each petition bind the petitioners to present truthful and accurate test results. In addition, the Agency has initiated a spot sampling and analysis program to verify the representative nature of the data for some percentage of the petitions submitted before final exclusions will be granted.

Finally, before the Hazardous and Solid Waste Amendments of 1984, the Agency granted temporary exclusions without first requesting public comment. The amendments specifically require the Agency to provide notice and an opportunity for comment before granting an exclusion. All of the exclusions proposed today, including the one for which a temporary exclusion has been granted, will not become effective unless and until made final. A notice of final exclusion will not be published until all public comments (including those at requested hearings, if any) are addressed.

[1] Although these wastes may be treated by stabilization or some other means, eventually they will be disposed of on or in land in some way.

[2] Other factors may result in the denial of a petition, such as actual field ground-water monitoring data or spot-check verification data.

Petitioners

The proposed exclusions published today involve the following petitioners:

Mansfield Products Company, Mansfield, Ohio
Teledyne Monarch Rubber Company, Hartville, Ohio
Watervliet Arsenal, Watervliet, New York

I. Mansfield Products

A. Petition for Exclusion

Mansfield Products Company, a division of White-Westinghouse Corporation, involved in the production of washers, dryers, ranges, and dry-cleaning machines, petitioned the Agency in March, 1981, to exclude its treated sludge listed as EPA Hazardous Waste No. F006—Wastewater treatment sludges from electroplating operations except from the following processes: (1) Sulfuric acid anodizing of aluminum; (2) tin plating on carbon steel; (3) zinc plating (segregated basis) on carbon steel; (4) aluminum or zinc-aluminum plating on carbon steel; (5) cleaning/stripping associated with tin, zinc, and aluminum plating on carbon steel; and (6) chemical etching and milling of aluminum. The listed constituents of concern for this waste are cadmium, hexavalent chromium, nickel, and cyanide (complexed).

Based upon the Agency's review of their petition, Mansfield was granted a temporary exclusion on August 6, 1981 (see 46 FR 40158). The Agency's basis for granting the exclusion was the low migration potential of the constitutents of concern—namely, cadmium, hexavalent chromium, nickel, and cyanide (complexed)—from the waste. On November 8, 1984, the Hazardous and Solid Waste Amendments were enacted. In part, the Act requires the Agency to consider factors (including additional constituents) other than those for which the waste was listed, if the Agency has a reasonable basis to believe that such additional factors could cause the waste to be hazardous (see Section 222 of the Amendments, 42 U.S.C. 3001(f)). As a result of these new requirements and in anticipation of these changes, additional data was submitted by Mansfield on November 16, 1983. The Agency has re-evaluated Mansfield's petition to: (1) Determine whether the temporary exclusion should be made final, based on the original criteria and (2) evaluate the waste for factors (other than those for which the waste was listed) to determine whether the waste is non-hazardous. Today's notice is our re-evaluation of this petition.

Mansfield has submitted a detailed description of its electroplating and wastewater treatment processes, including schematic diagrams; total constituent analyses of the sludge for cadmium, total chromium, nickel, and cyanide; EP toxicity test results for cadmium, total chromium, and nickel; the results from a distilled water leach test for cyanide; and reactivity test data for sulfides.

Mansfield also submitted total constituent and EP toxicity test results for arsenic, barium, lead, mercury, selenium, and silver; total oil and grease analyses; and total organic carbon (TOC) analyses on representative waste samples. Mansfield further submitted a list of all raw materials used in the maufacturing process. The Agency requested this information, as noted above, to determine whether constituents other than those for which the waste was originally listed are present in the waste at levels of regulatory concern.

Mansfield manufactures washers, dryers, ranges, and dry cleaning machines. In their manufacturing processes, steel parts are coated with nickel sulfate and are treated with a chromic acid sealer as part of an alkaline phosphate pre-paint surface preparation step to enhance porcelain enamel deposition. Mansfield's waste treatment system consists of batch reduction of the chromic acid rinse wastewaters followed by equalization, addition of lime and polymers (which results in the precipitation of suspended solids, phosphates, and metallic hydroxides) and pH adjustment. Solids are removed by clarification and are transported to a sludge well where they are dewatered by rotary vacuum filtration to a 25–30 percent solids content. Mansfield claims that its treated wastewater sludge is non-hazardous due to the immobile nature of nickel and chromium and the negligible levels of cadmium and cyanide in the sludge. Mansfield also believes that their sludge is not hazardous for any other reason.

Samples were collected from random areas of a receiving hopper as each batch of sludge was discharged from the rotary vacuum filter. Mansfield's demonstration was originally based upon four samples collected during a five-month period in 1980. For the purposes of further testing, four additional samples were collected during a one-week period in 1983. These samples were collected at different times of the day so as to reflect any short-term variability in the sludge. Mansfield claims that the samples taken over both time periods reflect any variation in constituent concentration in the waste since the manufacturing processes used at their facility are uniform. Furthermore, Mansfield claims that the use of raw materials does not vary over time. Consequently, they believe the samples they have collected and analyzed adequately characterize their waste.

Total constituent analyses and EP toxicity analyses of the treatment sludge for the listed constituents as well as the other EP toxic metals revealed the maximum concentrations reported in Table 1.

TABLE 1.—MAXIMUM CONCENTRATIONS

	Total constituent analysis (mg/kg)	EP leachate analysis (mg/l)
Cd	2	<0.01
Cr(total)*	128	0.2
Ni	970	12.8
CN(total)	<0.005	*<0.005
As	<1.0	<0.10
Ba	26	<0.05
Pb	56	0.11
Hg	<5	<0.01
Se	2	<0.02
Ag	1	<0.01

*Hexavalent chromium is listed as the constituent of concern for this waste; however, since the concentration of total chromium is low, a determination of the concentration of hexavalent chromium is unnecessary.
*From distilled water leach test.

Total oil and grease values reported for the vacuum filter sludge did not exceed 0.16 percent. Sludge samples analyzed for TOC did not exceed 0.27 percent. Mansfield also submitted a list of all raw materials used in their process. This list indicated that no Appendix VIII constitutents, other than those tested for, are used in their process and that formation of any of these constituents is highly unlikely. Mansfield also provided test data indicating that the sludge is not ignitable, corrosive, or reactive. Mansfield claims to generate a maximum of 1,500 tons per year of vacuum filter sludge.

B. Agency Analysis and Action

Mansfield has demonstrated that the treatment sludge generated from its vacuum filter is non-hazardous. The Agency believes that the total of eight samples collected during the two sampling periods were non-biased and adequately represent any variations that may occur in the wastes petitioned for exclusion. Due to the nature and consistency of the operations involved (*i.e.*, the facility is not a job shop and production does not vary seasonally), the Agency also believes that the samples are representative of the waste generated by Mansfield. The Agency also accepts Mansfield's claims that the duration of the sampling period was long enough to cover any scheduled changes in the product line, since the

facility does not vary its product line over the course of the year.

The Agency's conclusion that sampling adequately represents Mansfield's waste was confirmed by a comparison of the total constituent analyses of each sample as well as a statistical analysis of the EP toxicity data from each sample. This analysis would have, but did not, detect any significant variability in the waste (*i.e.*, the standard deviation was low.[4]

The Agency has evaluated the mobility of the constituents from Mansfield's waste using a vertical and horizontal spred (VHS) model.[5] The Agency's evaluation of the 1,500 tons of vacuum filter sludge generated annually and the corresponding maximum extract levels using the VHS model has generated the receptor well concentrations exhibited in Table 2.

TABLE 2.—VHS MODEL: RECEPTOR WELL CONCENTRATIONS (PPM)

	Cd	Cr	Ni
Vacuum filter sludge	0.0006	0.01	0.699
Health based standard	0.01	0.05	0.350

The vacuum filter sludge exhibited cadmium and chromium levels (at the receptor well) below the National Interim Primary Drinking Water Standards. Therefore these constituents are not of regulatory concern. The predicted maximum nickel value exceeds the Agency's interim standard.[6] However, as discussed in Appendix I, the Agency is not yet in a position to deny a petition based solely on a waste's nickel content. The Agency, however, will grant final exclusion, if the concentrations of nickel expected to reach receptors is less than the interim nickel standard (350 ppb) and there is no other reason to deny the petition. In particular, although the Agency is using the systemic toxicity portion of the Ambrose study to calculate a health-based standard for nickel, this study is also flawed (*i.e.*, poor survival of animals in the control group). Therefore, the Agency believes that this value should not be used to deny delisting petitions. Rather, the Agency is in the process of conducting a study on the reproductive effects of nickel in rats. This study, once completed, will provide the Agency with a sound basis for the re-estimation of an ADI and a health-based standard for nickel. Until this is done, no final decision will be made with regard to this petition.

Cyanide levels were not evaluated using the VHS model since the total concentration in the waste is well below the U.S. Public Health Service's suggested drinking water standard of 0.2 ppm[7] (i.e., ikf all the cyanide were to leach out, it would not exceed the health-based standard for cyanide). Total cyanide levels in the waste also are below the air threshold limit of 10 ppm set by the American Conference of Governmental Industrial Hygienists (ASCGIH).[8] These constituents, therefore, are not of regulatory concern.[9]

Furthermore, the Agency has also concluded that no other hazardous constituents are present in the vacuum filter waste at levels of regulatory concern (*i.e.*, none are above any health-based standard at the receptor well in the VHS model). The raw materials used by Mansfield in their manufacturing process do not contain any additional hazardous constituents. For organic toxicants, this is confirmed by comparing the level of TOC and oil and grease present in the waste to the raw materials list. The TOC present reflects the oil and grease in the waste.[10]

The Agency believes, therefore, that the differences in the levels of TOC and oil and grease are not significant and that no other organic hazardous constituents are present in the waste. For the other toxic metals, the data submitted by Mansfield show low maximum extract levels. Using these values in the VHS model results in predicted levels at the well which are less than the applicable health-based standards as seen in Table 3.

TABLE 3.—VHS MODEL: RECEPTOR WELL CONCENTRATIONS (PPM)

	As	Ba	Pb	Hg	Se	Ag
Vacuum filter sludge	0.005	0.003	0.006	0.0005	0.001	0.005
Health-based standard	0.05	1.0	0.05	0.002	0.01	0.05

The Agency believes that, based upon the constituents and factors evaluated, Mansfield's waste is non-hazardous and, as such, should be excluded from hazardous waste control. Since this evaluation did not include the waste's nickel content, the Agency's final

[4] See standard t-test in *Biometry: The Principles and Practice of Statistics in Biological Research;* Sokal, R. and Rohlf, F.J., 1969.

[5] The model approximates the dispersion of toxicants in an aquifer in the vertical and horizontal directions perpendicular to ground-water flow. The VHS model is used to predict reasonable worst-case contaminant levels in a receptor well 500 ft. from the contaminant source. The model primarily considers the maximum extract concentrations from leachate tests and the volume of waste to be disposed. The model determines the ability of an aquifer to dilute the toxicant from a specific volume of waste without exceeding a health-based standard at the receptor well. See 50 FR 7896–7900, February 26, 1985 for details.

[6] In previous notices, the Agency has used 632 ppb as the health-based standard for nickel (see 50 *FR* 7882, February 26, 1985). A number of persons have raised concerns, however, with the study on which this value was calculated (*i.e.*, the data provided does not permit statistical analysis and there are inconsistencies in the dose-response and generational relationships). Therefore, a group of experts was convened to evaluate the existing studies on nickel to determine what data can be used to develop a long-term health advisory or a drinking water standard for nickel. The group generally concluded that the study on which the 632 ppb value was calculated should not be used; rather, they felt that another study was more appropriate to derive a drinking water criterion for nickel. From these data, an ADI of 700 ug/day was estimated which results in an allowable concentration in drinking water of 350 ug/1. (See Appendix I to this preamble for a more detailed discussion.)

[7] Drinking Water Standards, U.S. Public Health Service, Publication 956, 1962 (0.2 ppm).

[8] See *Documentation of the Threshsold Limt Values for Substances in Workroom Air;* American Conference of Governmental Industrial Hygienists; Third edition, 1971, Cincinnati, Ohio.

[9] To confirm our conclusion that the waste is non-hazardous, the Agency has used an alternative method. The Agency calculated the toxicant levels expected at the receptor well using the upper limit of a 95% confidence interval in addition to the maximum extract level. (See footnote 5).

Based upon the data submitted by Mansfield, a confidence interval for each constituent of concern can be calculated. This enables the accuracy with which the sampled mean concentration reflects the true mean concentration of each constituent in the waste to be determined. The upper confidence limit may be calculated and used in the VHS model instead of the maximum EP value reported in the petiton. The use of both the upper confidence limit and the maximum reported EP value ensures that the impact of all reasonable variations in the waste extract level on the toxicant concentrations at the receptor well have been taken into account. The confidence interval (CI) is determined using the following equation:

$$CI = X \pm t\,(s/n^{1/2})$$

where:

x = mean concentration in the samples
t = t-value obtained from statistical tables
s = standard deviation
n = number of samples

It the upper limit of a 95% confidence interval is evaluated using the AHS model and generates a receptor-well concentration below the health-based standard (e.g., the drinking water standard) then it can be concluded that, at least 95 times out of the 100, all receptor-well concentrations will fall below this level. The calculated upper limits for cadmium, chromium, and nickel are 0.01 mg/1, 0.02 mg/1, and 0.03 mg/1, respectively. Using the calculated upper limit values in the VHS model, the receptor-well concentrations will not exceed the National Interim Primary Drinking Water Standards for cadmium and chromium. The method does predict a maximum nickel concentration of 0.4933 mg/1, which exceeds the Agency's interim standard. As discussed earlier, however, the Agency is still evaluating the waste's nickel content.

[10] On a theoretical basis, one would expect TOC to be 85% of the value for oil and grease. TOC values higher than those for oil and grease generally are observed, however, due to an artifact of the test method for oil and grease. The difference between the levels of TOC and oil and grease is due to the loss of volatile components of the oil and grease during the test.

decision will be deferred, as explained in footnote 6 and Appendix I. Until this proposal becomes final, however, EPA believes that Mansfield may continue to handle their waste as non-hazardous, under the existing temporary exclusion published in the **Federal Register** at 46 FR 40158, August 6, 1981.

II. Teledyne Monarch Rubber Company

A. Petition for Exclusion

Teledyne Monarch Rubber Company (Teledyne), located in Hartville, Ohio, is involved in the manufacture of bonded rubber and steel automotive parts. Teledyne has petitioned the Agency to exclude its treated sludge, presently listed as both EPA Hazardous Waste No. F006—Wastewater treatment sludges from electroplating operations except from the following processes: (1) Sulfuric acid anodizing of aluminium; (2) tin plating on carbon steel; (3) zinc plating (segregated basis) on carbon steel; (4) aluminum or zinc-aluminum plating on carbon steel; (5) cleaning/stripping associated with tin, zinc, and aluminum plating on carbon steel; and (6) chemical etching and milling of aluminum, and EPA Hazardous Waste No. K062—Spent pickle liquor from steel finishing operations. The listed constitutents of concern in EPA Hazardous Waste No. F006 are cadmium, hexavalent chromium, nickel, and cyanide (complexed), and, for EPA Hazardous Waste No. K062, the listed constituents of concern are hexavalent chromium and lead. Teledyne has petitioned to exclude both their continuously generated sludge and the sludge previously generated and contained in their surface impoundments because it does not meet the criteria for which it is listed.[11]

Teledyne's manufacturing processes include cleaning, surface preparation, and finishing operations. Teledyne claims that the wastewater from these operations is successfully treated to produce a non-hazardous sludge, with the constituents of concern present either in insignificant concentrations or only in an essentially immobile form. Teledyne further claims that this waste is not hazardous for any other reason.

In support of their petition, Teledyne has submitted a detailed description of its manufacturing and wastewater treatment pocesses, including lists of raw materials and schematic diagrams. Teledyne also has submitted analytical data to characterize the wastewater treatment sludge in its as-disposed condition. This includes the results of total constituent analyses for all the EP toxic metals, nickel, and cyanide; EP toxicity test results for all EP toxic metals and nickel; and the Oily Waste EP Toxicity test [12] for arsenic, barium, cadmium, chromium, lead, nickel, and selenium. Test results were also provided on representative samples for total organic carbon (TOC) and oil and grease content. Cyanide concentrations from distilled water leachate tests were also reported. Much of the information was requested, as noted above, in order to determine if hazardous constitutents other than those for which the waste was listed are present in the waste at levels of regulatory concern.

Teledyne's wastewater treatment system consists of water and oil separation followed by chemical coagulation. The solids are then removed in clarifiers and dewatered in a filter press. The dewatered sludge is held on-site in three surface impoundments, identified as S–1, S–2, and S–3. Each surface impoundment measures approximately 30 ft. by 40 ft.

In order to characterize the sludge, samples were collected from both the filter press and the surface impoundments. Filter press samples were collected daily over a four-week period. Samples were collected at different times of the day so as to account for any short-term variability in the sludge. These daily samples were composited to produce four samples representing one week each. The surface impoundments were characterized by making composite samples from each quadrant of each impoundment. Each composite consisted of five grab samples. A backhoe was used to collect these grab samples. Five buckets of sludge were removed from each quadrant. One grab sample was collected from each bucket-load of sludge.

Teledyne claims that the total of these samples reflect any variation in the constituent concentration of the sludge. Teledyne also states that, historically, the only changes in manufacturing activities have been increases in production and not changes in processes. Furthermore, Teledyne claims that the use of raw materials does not vary over time. Consequently, they believe that the samples they have collected and analyzed adequately characterize their wastes.

Total constituent analyses of the wastewater treatment sludge collected from the filter press and the inpoundments revealed the maximum concentration reported in Table 1. Table 1 also presents maximum concentrations from EP and Oily Waste EP leachate tests. (The Oily Waste EP procedure was required, as noted above, because the sludge's oil and grease content was reported at values up to 3.8%).

TABLE 1.—MAXIMUM CONCENTRATIONS

	Filter press			Impoundments		
	Total constituent analysis (mg/kg)	EP leachate analysis (mg/1)	Oily waste EP leachate analysis (mg/1)	Total constituent analysis (mg/kg)	EP leachate analysis (mg/1)	Oily waste EP eachate analysis (mg/1)
As	7.0	0.006	0.24	21.0	<0.001	0.072
Ba	183	0.04	0.1	50	0.06	0.1
Cd	3.9	<0.005	0.057	3.0	<0.005	0.054
Cr(total)	417	<0.05	0.4	280	<0.05	<0.065
CrVI	33	<0.01	0.129	68	<0.01	<0.026
Pb	290	0.007	0.035	135	0.003	0.02
Hg	2.2	<0.0004	NR	<0.1	<0.0004	NR
Se	1.7	0.250	0.018	33.0	0.003	0.025
Ag	<0.3	<0.01	NR	1.0	<0.01	NR
Ni	410	3.5	15.3	1700	6.5	10.3
CN(total)	5.4	<0.2(a)	NA	<1	<0.0002(a)	NA
CN(free)	2.8	(a)	NA	<1	(a)	NA

NR-test not required due to low concentration in constituent analysis.
NA-test is not applicable.
(a)-Leachate test for total CN was performed with a distilled water extraction. Due to the low total CN values, free CN analysis was not required.

[11] Teledyne originally submitted their petition on August 12, 1983. On November 8, 1984, the Hazardous and Solid Waste Amendments were enacted. In part, the Act requires the Agency to consider factors (including additional constitutents) other than those for which the waste was listed if the Agency has a reasonable basis to believe that such additional factors could cause the waste to be hazardous. (See Section 222 of the Amendments, 42 U.S.C. 3001(f).) In anticipation of either enactment of this legislation or regulatory changes by the Agency, EPA requested additional information from Teledyne (see 49 *FR* 4803, February 8, 1984). This additional information was submitted by Teledyne on May 8, and October 22, 1984.

[12] The Agency requested that Teledyne run the Oily Waste EP toxicity test on their waste due to a total oil and grease content of 3.8 percent. The Agency has decided to use the Oily Waste EP To determine the migratory potential of metals from wastes containing greater than 1 percent oil and grease content. See 49 FR 42591, October 31, 1984. See also Method 1330 in "Proposed Sampling and Analytical Methodologies for Addition to Test Methods for Evaluating Solid Waste," as referenced in 49 FR 38790, October 1, 1984.

Teledyne's organic carbon analysis of the waste indicated values of 4.39 to 6.15 percent. Descriptions of the manufacturing and wastewater treatment processes, however, along with the submitted lists of raw materials, indicated that no other Appendix VIII hazardous constituents, other than those tested for, are used in the process and thus are not expected, nor would they likely be formed, in the sludge. (The Agency's analysis of Teledyne's raw materials included the evaluation of confidential information provided directly by the manufacturers of those materials.) Teledyne also provided data indicating that the sludge is not ignitable, corrosive, or reactive. Finally, Teledyne claims that the maximum volume of waste generated at its plant is 136 tons annually; 5200 cubic yards of previously generated waste is currently held on-site in three surface impoundments.

B. Agency Analysis and Action

Teledyne has demonstrated that its wastewater treatment system produces a non-hazardous sludge. The Agency believes that the samples collected by Teledyne were non-biased and adequately reflect any variations which may occur in the waste stream petitioned for exclusion. The key factor which could vary constituent concentrations in the continuously generated (filter press) sludge would be the use of different raw materials due to changes in the product line being manufactured. Variations in raw materials can be expected when a facility either performs as a job shop or changes its product line on a seasonal basis. Since this facility does not perform as a job shop or have seasonal variations, the Agency believes that Teledyne's claim of uniformity in manufacturing and treatment processes is substantiated. Also, the collection of samples from the full depth of each quadrant of the three impoundments is believed to adequately reflect any stratification or areal variations that may have occurred. The samples, therefore, are believed to be representative of the treated sludge from the full array of raw materials used by Teledyne.

The Agency's conclusion was confirmed by a comparison of the total constituent analyses of each sample as well as a statistical analysis of the EP toxicity data from each sample. This analysis would have, but did not, detect any significant variability in the waste (*i.e.*, the standard deviation was low).[13]

[13] See footnote 4.

The Agency has evaluated the mobility of the constituents from Teledyne's waste using the vertical and horizontal spread model (VHS model).[14] The Agency's evaluation of Teledyne's waste, using the combined volume in impoundments S–1, S–2, and S–3 (5200 cubic yards) and the reported Oily Waste EP results as input parameters, has generated the maximum predicted receptor well concentrations exhibited in Table 2. (Where leachate concentrations were below the detection limit, the value of the detection limit was used to predict these concentrations.)

TABLE 2.—CALCULATED MAXIMUM RECEPTOR WELL CONCENTRATION (MG/1)

	As	Be	Cd	Cr(total)	CrVI	Pb	Se	Ni
Filter press	0.005	0.002	0.001	0.006	0.002	0.0006	0.005	0.289
Impoundments	0.007	0.010	0.005	<0.005	0.002	0.002	0.002	0.930
Health-based standard	0.05	1.0	0.01	0.05	0.05	0.05	0.01	0.350

For both the filter press sludge and the impoundment sludge, the predicted maximum levels at the receptor well for the EP toxic metals are below the National Interim Primary Drinking Water Standards. These constituents are, therefore, not of regulatory concern.[15] For the impoundment sludge the predicted maximum nickel value exceeds the Agency's interim standard.[16]

However, as discussed earlier (see Agency Analysis and Action for Mansfield Products, Inc., above and as indicated in Appendix I), the Agency is not yet in a position to deny a petition based solely on a waste's nickel content. Therefore, until current studies are completed and a health-based standard for nickel is re-estimated, no final decision on the impoundment sludge will be made.

Since distilled water leachate tests for cyanide on both the filter press and impoundment samples indicated no results above the detection limit (0.2 mg/1), the level of leachable cyanide is not of regulatory concern.[17] Also, the low constituent values of total cyanide are not of regulatory concern from an atomspheric contamination route. These levels are all below the workroom air threshold limit of 10 ppm set by the American Conference of Government Industrial Hygienists.[18]

Furthermore, the Agency has also concluded that no other hazardous constituents are present in Teledyne's waste at levels of regulatory concern (*i.e.*, none would be above any health-based standard at the receptor well in the VHS model). Since TOC values are higher than the sludge's oil and grease content,[19] the Agency carefully evaluated all raw materials used in Teledyne's processes. As described previously, this evaluation indicated that no hazardous constituents, other than those tested for, would be expected, nor would they likely be formed, in the waste.

The Agency believes that based upon the constituents and factors evaluated, Teledyne's wastewater treatment sludge is non-hazardous and, as such, should be excluded from hazardous waste control.[20] Since this evaluation did not include the waste's nickel content, the Agency's final decision will be deferred, as explained in footnote 6 and Appendix I. The Agency will evaluate the potential hazard posed by the nickel content of Teledyne's waste after a health-based standard is developed from the current study.

III. Watervliet Arsenal

A. Petition for Exclusion

Watervliet Arsenal (Watervliet), located in Watervliet, New York, is involved in the manufacture of armament for the U.S. Armed Services. Watervliet has petitioned the Agency to

[14] See footnote 4.

[15] The calculated upper limits for the Oily Waste EP leachate values of cadmium, chromium, and nickel are as follows: 0.07 mg/1, 0.4 mg/1, and 15.1 mg/1, respectively, for the filter press sludge; and 0.09 mg/1, 0.05 mg/1, and 10.36 mg/1, respectively, for the impoundment sludge. Using these calcualated upper limit values for the Oily Waste EP leachate values in the VHS model, the receptor well concentrations will not exceed the National Interim Primary Drinking Water Standard. The predicted nickel concentration from the impoundment sludge, however, exceeds the Agency's interm standard. See footnote 9 for an explanation of the confidence interval calculation.

[16] See footnotes 6 and Appendix I.

[17] See footnote 7.

[18] See footnote 8.

[19] See footnote 10.

[20] Groundwater monitoring data from the vicinity of the impoundments is currently being reviewed by the Agency. This review was prompted by variations in the levels of certain indicator parameters in recent groundwater samples. This data is not conclusive and additional testing is in progress. The Agency will evaluate the results of current and previous groundwater testing and will not make final this exclusion until it has been determined that, if groundwater contamination does exist, Teledyne's impoundments are not the source of that contamination.

exclude its treated sludge presently listed as EPA Hazardous Waste No. F006—Wastewater treatment sludges from electroplating operations except from the following processes: (1) Sulfuric acid anodizing of aluminum; (2) tin plating on carbon steel; (3) zinc plating (segregated basis) on carbon steel; (4) aluminum or zinc-aluminum plating on carbon steel; (5) cleaning/stripping associated with tin, zinc, and aluminum plating on carbon steel; and (6) chemical etching and milling of aluminum. The listed constituents of concern in EPA Hazardous Waste No. F006 are cadmium, hexavalent chromium, nickel, and cyanide (complexed). Watervliet has petitioned to exclude its waste because it does not meet the criteria for which it is listed.[21]

Watervliet's plating operations consist of a number of cleaning and surface preparation steps, followed by the electroplating of various metals. Watervliet claims that the wastewater from these processes is successfully treated to produce a non-hazardous sludge, with the constituents of concern present either in insignificant concentrations or only in an essentially immobile form. Watervliet further claims that this waste is not hazardous for any other reason.

In support of this claim, Watervliet has submitted detailed descriptions of its manufacturing and wastewater treatment processes, including lists of raw materials and schematic diagrams. Watervliet has also submitted analytical data to characterize the wastewater treatment sludge in its as-disposed condition. This includes the results of total constituent analyses for all EP toxic metals, nickel, and cyanide and Oily Waste EP toxicity test results for all EP toxic metals and nickel. Test results were also provided on representative samples for TOC and oil and grease content. Additionally, ground-water monitoring reports were provided. Much of the information was requested, as noted above, in order to determine if hazardous constituents other than those for which the waste was listed are present in the waste at levels of regulatory concern.

Watervliet's wastewater treatment system treats the cyanide-and chromium-bearing wastewaters from plating operations, as well as oily wastewaters from various machining and other mechanical operations. Sludge is generated only from the chromate reduction and oily waste treatment processes. The maximum annual sludge generation rate is estimated to be 576 cubic yards. Before disposal, the sludge is dewatered for 2–4 months in two drying beds. In order to characterize the sludge in its as-disposed condition, full-depth core samples were collected from each quadrant of drying bed I. These cores were composited to produce four samples representing one quadrant each. Bed II was characterized by collecting six-full depth cores from random locations in the bed and compositing them to produce one sample. Watervliet claims that these samples are representative of their sludge and reflect any variability in constituent concentrations, since during the time period that sludge was being accumulated in the beds, the manufacturing and wastewater treatment processes included the full range of potential variations.

Constituent analyses of these samples revealed the maximum concentrations reported in Table 1. Maximum concentrations from the Oily Waste EP tests are also presented in Table 1. (The Oily Waste EP procedure was used because the sludge's oil and grease content was reported at values up to 13%.)

Table 1.—Maximum Concentrations (mg/kg)

	Total constituent analysis (mg/kg)	Oily waste EP leachate analysis (mg/l)
As	5.76	<0.5
Ba	37.29	<10
Cd	1.24	0.19
Cr (total)[22]	17295	2.5
Pb	870.05	<0.5
Hg	0.057	0.029
Ni	170.18	1.97
Se	0.01	0.023
Ag	0.18	0.03
CN (total)	0.88	NR

NR = test not required due to low concentration of cyanide in constituent analysis.
[22] See footnote 3.

Sludge samples analyzed for total organic carbon indicated a maximum level of 2.81 percent. Watervliet's description of its manufacturing and wastewater treatment processes, along with the submitted lists of raw materials, indicated that no other Appendix VIII hazardous constituents would be expected, nor would they likely be formed, in the sludge. Test results also indicate that the sludge is not ignitable, corrosive, or reactive.

B. Agency Analysis and Action

Watervliet has demonstrated that its wastewater treatment system produces a non-hazardous sludge. The Agency believes that the core samples collected by Watervliet were non-biased and adequately reflect any variations which may occur in the waste stream petitioned for exclusion. The key factor which could vary constitutent concentratons in this waste would be the use of different raw materials due to changes in the product line being manufactured. Variations in raw materials can be expected when a facility either performs as a job shop or changes its product line on a seasonal basis. Since this facility does not perform as a job shop or have seasonal variations, the Agency believes that Watervliet's claim of uniformity in manufacturing and treatment processes is substantiated. Also, the collection of full-depth cores from different areas of the drying beds is believed to adequately reflects any stratification or areal variations that may have occurred. Therefore, the samples are believed to be representative of the treated sludge from the full array of raw materials used by Watervliet.

The Agency's conclusion was confirmed by a comparison of the total constituent analyses of each sample as well as a statistical analysis of the Oily Waste EP test results from each sample. This analysis would have, but did not, detect any significant variability in the waste [*i.e.*, the standard deviation was low.[23]

The Agency has evaluated the mobility of the constituents from Watervliet's waste using the vertical and horizontal spread model (VHS model).[24] The Agency's evaluation of Watervliet's waste, using the maximum values for estimated annual sludge generation and reported leachate concentrations as input parameters, has resulted in the maximum predicted receptor well concentrations exhibited in Table 2.

[21] Watervliet originally submitted their petition on December 22, 1982. On November 8, 1984, the Hazardous and Solid Waste Amendments of 1984 were enacted. In part, the Act requires the Agency to consider factors (including additional constituents) other than those for which the waste was listed if the Agency has reasonable basis to believe that such additional factors could cause the waste to be hazardous (See Section 222 of the Amendments, 42 U.S.C. § 3001(f).) In anticipation of either enactment of this legislation or regulatory changes by the Agency, EPA requested additional information from Watervliet (see 49 *FR* 4803, February 8, 1984). This additional information was submitted by Watervliet on September 6 and November 28, 1984.

[23] See footnote 4.

[24] See footnote 5.

TABLE 2.—CALCULATED MAXIMUM RECEPTOR WELL CONCENTRATION (MG/L)

As	Ba	Cd	Cr(total)	Pb	Hg	Ni	Se	Ag	CN
Calculated Maximum Receptor Well Concentration (mg/l)									
0.011	0.225	0.004	0.056	0.011	0.001	0.044	0.001	0.001	0.001
Health-Based Standards									
0.05	1.0	0.01	0.05	0.05	0.002	0.350	0.01	0.05	0.2

The predicted maximum levels at the receptor well for all EP toxic metals except total chromium are well below the National Interim Primary Drinking Water Standards (NIPDWS), the nickel value is below the Agency's interim standard,[25] and cyanide level is below the U.S. Health Service's suggested drinking water standard.[26]

The predicted maximum well concentration for total chromium (0.056 mg/l) slightly exceeds the NIPDWS value of 0.05 mg/l. This prediction is based upon the highest reported chromium leachate value, however, which exceeds the next highest value by a factor of three. Statistical evaluation of all the reported chromium leachate values indicates that, if the upper limit of the 95% confidence interval is used, the VHS model predicts a maximum well concentration of 0.035 mg/l. Since use of the maximum leachate value results in a concentration approximately equal to the NIPDWS, and the statistical evaluation results in a predicted concentration well below the NIPDWS, the Agency concludes that the constituent is not of regulatory concern.[27]

The ground-water monitoring data supplied by Watervliet tends to support this conclusion. Downgradient monitoring wells, however, show high levels of manganese (*i.e.*, up to 7 mg/l), which is not an Appendix VIII hazardous constituent.[28] The results of analytical tests indicate that manganese is present in the sludge (520 mg/kg) and that it is leachable (5.3 mg/l from EP leachate tests). Therefore, the source of downgradient manganese may be the dewatering beds.[29] The absence of the EP toxic metals and nickel in the downgradient wells, however, indicates that these metals do not leach at significant levels.

The Agency did not request free or leachable cyanide analysis because of the low total cyanide concentrations in Watervliet's waste. The previous calculation (using the VHS model) for cyanide assumed that all of the cyanide in the waste would be leachable. (The maximum total cyanide concentration was simulated using a 20:1 dilution of the EP leachate tests.) Free and photodegradable cyanide also are not expected to create a health hazard through atmospheric contamination. If all of the cyanide in the waste were released into the atmosphere, the result still would be well below the air threshold limit of 10 ppm established by the American Conference of Governmental Industrial Hygiensts.[30] Based upon the constituent values reported by Watervliet, therefore, the sludge's cyanide concentration is not of regulatory concern.

The Agency also has concluded that no other hazardous constituents are present in Watervliet's waste at levels of regulatory concern (*i.e.*, none would be above any health-based standard at the receptor well in the VHS model). For organic toxicants, this is confirmed by comparing the levels of TOC and oil and grease in the waste to the raw materials list. The TOC present reflects the oil and grease in the waste. (The fact that the oil and grease level exceeds the TOC level may be due to the use of silicone-based oils or some other interferences in the oil and grease analytical method.) The Agency believes, therefore, that the differences in the levels of TOC and oil and grease are not significant and that no other organic hazardous constituents are present in the waste.

The Agency believes that based upon the constituents and factors evaluated, Watervliet's waste is non-hazardous and, as such, should be excluded from hazardous waste control. The Agency, therefore, proposes to grant an exclusion to Watervliet Arsenal, located in Watervliet, New York, for its electroplating wastewater treatment sludge as described in its petition.

Regulatory Impact

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This proposal to grant exclusions is not major since its effect is to reduce the overall costs and economic impact of EPA's hazardous waste management regulations. This reduction is acheived by excluding wastes generated at specific facilities from EPA's listed hazardous wastes, thereby enabling the facility to treat its waste as non-hazardous.

Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. §§ 601–612, whenever an Agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). The Administrator may certify, however, that the rule will not have a significant economic impact on a substantial number of smal entities.

This amendment will not have an adverse economic impact on small entities since its effect will be to reduce the overall costs of EPA's hazardous waste regulations. Accordingly, I hereby certify that this proposed regulation will not have a significant economic impact on a substantial number of small entities.

This regulation, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 261

Hazardous materials, Waste treatment and disposal, Recycling.

[25] See footnote 6 and Appendix I.

[26] See footnote 7.

[27] The calculated upper limits for the Oily Waste EP leachate values of cadmium, chromium, and nickel are 0.176 mg/l, 1.55 mg/l, and 0.202 mg/l, respectively. Therefore, using these calculated upper limit values for the Oily Waste EP leachate values in the VHS model, the receptor well concentrations will not exceed the National Interim Primary Drinking Water Standards or the interim health-based standard for nickel. See footnote 9 for an explanation of the confidence interval calculation.

[28] Manganese is a non-conventional pollutant which is not often present in waters because its hydroxides and carbonates are only sparingly soluble. It appears that recommended limitations on manganese in drinking water are based upon aesthetic and economic factors rather than physiological hazards (guidelines issued as National Secondary Drinking Water Regulations recommend a maximum level of 0.05 mg/l), although some evidence indicates that excessive levels of manganese may produce health effects.

Since the source and migration potential of the manganese cannot be clearly defined, and because the resultant potential health hazard, if any, cannot be established at this time, the Agency is not in a position to evaluate the manganese content in this waste. Thus, the Agency's proposal to exclude this waste from hazardous waste control is based upon all factors and constituents except for manganese. The Agency specifically solicits comments on the potential hazard, if any, posed by the manganese concentrations in Watervliet's waste.

[29] Due to previous landfilling in the vicinity of the dewatering beds, the source of the manganese cannot be precisely determined. Specifically, the area between the upgradient well and the dewatering beds is the former path of the Erie Canal. This portion of the canal was filled in the early 1940's Therefore, the fill material also could be the source of the manganese.

[30] See footnote 8.

Dated: May 6, 1985.

Jack McGraw,

(Acting) Assistant Administrator for Solid Waste and Emergency Response.

Appendix I

Criteria Used for Evaluation of Allowable Concentration of Nickel in Wastes

For the purpose of deciding whether to grant delisting petitions based on the nickel content of a waste, the Agency has decided, as an interim measure, to use 350 μg/l as the health-based standard against which to compare the well concentration predicted by the VHS pollutant dispersion model. Since the history of the Agency's development of a health-based standard for nickel in drinking and surface waters has been somewhat confusing and contradictory, a description of the reasons for our decision is provided below.

In 1980, the Agency established an Ambient Water Quality Criterion (AWQC) for nickel of 13.4 μg/l. This value was established as the criterion for the protection of human health (USEPA, 1980), and was published in the Federal Register on November 28, 1980.[1] The 13.4 μg/l AWQC value was based on an Allowable Daily Intake (ADI) of 0.031 μg/day, derived from a reproductive effects study conducted by Schroeder *et al.* (1971). Upon subsequent evaluation, the Agency determined that there were a number of problems with this study. The Agency, therefore, believes that this study is not suitable for the development of a criterion. Briefly, the problems associated with the study by Schroeder and Mitchener were as follows: too few animals were used; the animals used for mating were not randomly selected; historical data for stillbirths among unexposed control animals in the laboratory conducting the study are not available; the reproductive assessment protocol used was not a standard one; subsequent studies did not provide supporting evidence; and animals were simultaneously exposed to other metals (Stara, 1983; Rubenstein and Bellin, 1985).

Due to these concerns, a revision of the 1980 AWQC was suggested (de Rosa, 1981) (but not formally published in the Federal Register). An ADI of 1.47 mg/day, and an AWQC of 632 μg/l were developed. These values were based on the reproductive effects part of a study conducted by Ambrose et al. (1976). This study also assessed other effects of dosing with nickel. This reproductive study also can be faulted, however, on technical grounds: the data provided do not enable a proper statistical analysis, that is, one which takes into account genetic similarities (*i.e.*, size and stillborn rates of individual litters), and there are inconsistencies in the dose-response and generational relationships (Seilkop, 1982; Stara, 1983; Compton and Patterson, 1983; Sonich Mullen, 1984; Rubenstein and Bellin, 1985; Bellin, 1985).[2]

In an attempt to assess what, if any, data can be used to develop a long-term health advisory or a drinking water standard, the Agency convened a group of experts to assess the scientific information available.[3] The group concluded that, in view of the deficiencies of both the 1971 study by Schroeder and Mitchener, and the reproductive effects part of the 1976 study by Ambrose, the results of the systemic toxicity portion of the 1976 Ambrose study (rather than the reproductive effects section) should be used to derive a drinking water criterion for nickel (Sonich Mullen, 1984). From these data, an ADI of 700 μg/day was estimated. This results in an allowable concentration in drinking water of 350 μg/l.[4]

Therefore, this is the health-based standard the Agency has decided to use (at the present time) for purposes of granting delisting petitions.[5] At the same time, since the systemic toxicity portion of the Ambrose study is also flawed (*i.e.*, poor survival of animals in the control group), we believe that this value should not be used to deny delisting petitions, *i.e.*, we believe it inappropriate to deny a petition based solely on its nickel content.

Rather, the Agency is in the process of conducting a study on the reproductive effects of nickel in rats. This study will employ a two-generation dosing regimen, and will assess both reproductive and teratogenic effects in rats of nickel in drinking water. In addition, the Agency is undertaking a study of the comparative absorption of nickel from water, food, and milk.

These studies, once completed and validated, will provide the Agency with a sound basis for the re-estimation of an ADI and a health-based standard for nickel. It then will be possible to determine whether to grant those delisting petitions for which no final decision had yet been made, as well as those which would have been denied on the 350 μg/l AWQC value.

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Sonich Mullen, C., 1984. *Memorandum* to E. V. Ohanian on consensus following the review meeting on nickel. July 26.

Stara, J. F. 1983. *Memorandum* to Pat Tobin on nickel and ambient water quality criterion. August 15.

USEPA, 1980. Ambient water quality criteria for nickel. 440/5–80–060. Washington, D.C.

Witmer, C. 1982. Toxicity of orally ingested nickel compounds. Unpublished report to the American Iron and Steel Institute. September 27.

[1] AWQC are non-regulatory scientific assessments of human health and ecological effects. These assessments are intended to be used for development of enforceable maximum acceptable levels of a pollutant in ambient waters (USEPA, 1980). The 24-hour aquatic life is 56 μg/l at a $CaCO_3$ hardness of 50 μg/l (USEPA,1980).

[2] Since, at the time, it was felt that the results of the Ambrose reproductive study were the best available data, the Agency, while cognizant of its deficiencies, nevertheless used the 632 ppb value in the evaluation of several delisting determinations. See, for example, 50 *FR* 7882–7900, February 26, 1985. In addition, based on this value, the Agency also considered adding nickel as a constitutent of concern to spent pickle liquor generated from the finishing of stainless steel.

[3] In addition to Agency personnel, the following experts participated: Dr. Foulkes (University of Concinnati); Mr. Hellerstein (ICAIR); Dr. Perry (Washington University); and Dr. Sunderman (University of Connecticut).

[4] 700 μg/day/2 l water/day = 350 μg/l water.

[5] The Agency recognizes that this value does not take into account the fraction of the ADI that is contributed by the consumption of nickel in food other than water (the contribution of air is estimated to be negligible). The 350 ppb value is used because of the uncertainty both in the systemic effects data (Rubenstein and Bellin 1985), and becaused there is uncertainty regarding the proper value to use for intestinal absorption (compare the 5% factor used by EPA (Sonich Mullen, 1984) and the 10% value reported by Bennett (1982)). Moreover, there is disagreement regarding the contribution to the total daily intake from food (400 μg/day is estimated by EPA (Sonich Mullen, 1984), and 175 μg/day is cited by Bennett (1982)).

For the reasons set out in the preamble, 40 CFR Part 261 is proposed to be amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for Part 361 continues to reads as follows:

Authority: Secs. 1006, 2002(a), 3001 and 3002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended [42 U.S.C. 6905, 6912(a), 6921, and 6922].

2. In Appendix XI, add the following wastestreams in alphabetical order:

Appendix XI—Wastes Excluded Under §§ 260.20 and 260.22.

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES

Facility	Address	Waste description
(a) Wastes Excluded From Non-Specific Sources		
Mansfield Products Company.	Mansfield, OH	Wastewater treatment sludges (EPA Hazardous Waste No F006) generated from electroplating operations after May 15, 1985.
Teledyne Monarch Rubber Company.	Hartville, OH	Wastewater treatment sludges (EPA Hazardous Waste Nos. F006 and K062) generated from electroplating operations and steel finishing operations after May 15, 1985 as well as those disposed in on-site impoundments on or before this date.
Watervliet Arsenal.	Watervliet, NY	Wastewater treatment sludges (EPA Hazardous Waste No F006) generated from electroplating operations after May 15, 1985.

[FR Doc. 85-11688 Filed 5-14-85; 8:45 am]
BILLING CODE 6560-50-M

Notices

Federal Register
Vol. 50, No. 94
Wednesday, May 15, 1985

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

May 10, 1985.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) An indication of whether section 3504(h) of Pub. L. 96-511 applies; (9) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404-W Admin. Bldg., Washington, D.C. 20250, (202) 447-2118.

Comments on any of the items listed should be submitted directly to: Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503, ATTN: Desk Officer for USDA.

If you anticipate commenting on a submission but find that preparation time will prevent you from doing so promptly, you should advise the OMB Desk Officer of your intent as early as possible.

Extension

- Food and Nutrition Service.

Nutrition Education and Training Program Annual Participation Report, State Plan, and Recordkeeping
FNS 42
Recordkeeping, Annually
State or local governments; Non-profit institutions; 2,514 responses; 10,405 hours; not applicable under 3504(h)
Helen Lilly (703) 756-3554

Jane A. Benoit,
Departmental Clearance Officer.

[FR Doc. 85-11740 Filed 5-14-85; 8:45 am]
BILLING CODE 3410-01-M

Agricultural Marketing Service

National Advisory Committee for Tobacco Inspection Services; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. 1) announcement is made of the following Committee meeting:

Name: National Advisory Committee for Tobacco Inspection Services.
Date: June 12, 1985.
Place: Lexington Marriott Resort, 1800 Newtown Pike, Lexington, Kentucky 40505.
Time: 1:30 p.m.
Purpose: To review various regulations issued pursuant to the Tobacco Inspection Act (49 Stat. 731; 7 U.S.C. 511 *et seq.*), to hear from individuals who have requested to address the Committee and who have been prescheduled to do so, and to discuss the level of tobacco inspection and related services. In particular, the Committee will address the level of inspection services to burley markets, that is, the number of sets of graders and their distribution among markets.

The meeting is open to the public. Public participation will be limited to written statement submitted before or at the meeting unless otherwise requested by the Committee Chairperson. Persons, other than members, who wish to address the Committee at the meeting are requested to contact Lioniel S. Edwards, Director, Tobacco Division, Agricultural Marketing Service, 300 12th Street, S.W., U.S. Department of Agriculture, Washington, D.C. 20250, (202) 447-2567.

Dated: May 9, 1985.

William T. Manley,
Deputy Administrator, Marketing Programs.

[FR Doc. 85-11739 Filed 5-14-85; 8:45 am]
BILLING CODE 3410-02-M

Farmers Home Administration

Natural Resource Management Guide Meeting; San Juan, PR

AGENCY: Farmers Home Administration, USDA

ACTION: Notice of meeting.

SUMMARY: The Farmers Home Administration (FmHA) State Office located in San Juan, Puerto Rico, is announcing a public information meeting to discuss its draft Natural Resource Management Guide.

DATES: Meeting on June 7, 1985, 10:00 a.m. to 12:00 noon.

Comments must be received no later than July 17, 1985.

ADDRESS: Meeting location at Federal Building, Room G-51, San Juan, Puerto Rico.

Written comments and further information will be addressed to: State Director, FmHA, Post Office Box 6106-G, San Juan, Puerto Rico 00936, Telephone (809) 753-4308.

All written comments will be available for public inspection during regular work hours at the above address.

SUPPLEMENTARY INFORMATION: FmHA's Puerto Rico State Office has prepared a draft Natural Resource Management Guide. The Guide is a brief document describing the major environmental standards and review requirements that have been promulgated at the Federal and local levels and that affect the financing of FmHA activities in Puerto Rico. The purpose of the meeting is to discuss the Guide as well as to consider comments and questions from interested parties. Copies of the Guide can be obtained by writing or telephoning the above contact.

Any person or organization desiring to present formal comments or remarks during the meeting should contact FmHA in advance, if possible. It will also be possible at the start of the meeting to make arrangements to speak. Time will be available during the meeting to informally present brief, general remarks or pose questions. Additionally, a 30-day period for the submission of written comments will follow the meeting.

Dated: May 9, 1985.

David J. Howe,

Director, Program Support Staff.

[FR Doc. 85-11685 Filed 5-14-85; 8:45 am]

BILLING CODE 3410-07-M

Food and Nutrition Service

Organization, Functions and Delegations of Authority; Correction

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice; correction.

SUMMARY: In the Notice document published April 17, 1985 at 50 FR 15203, paragraph (g)(i) is corrected by inserting the words "District of Columbia" between the words Delaware and Maryland; (g)(v) is corrected by inserting "Kentucky" between the words Georgia and North Carolina; (g)(vi) is corrected by inserting the words "New Mexico" between the words Oklahoma and Arkansas; and (g)(vii) should be corrected as follows: Western Regional Office: Alaska, American Samoa, Arizona, California, Guam, Hawaii, Idaho, Nevada, Oregon, Washington, Commonwealth of the Northern Mariana Islands and Trust Territory of the Pacific Islands.

Dated: May 9, 1985.

Robert E. Leard,

Administrator.

[FR Doc. 85-11686 Filed 5-14-85; 8:45 am]

BILLING CODE 3410-30-M

COMMISSION ON CIVIL RIGHTS

Alabama Advisory Committee; Agenda for 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 Alabama Advisory Committee to the Commission will convene at 7:00 p.m. and will end at 9:00 p.m. on June 9, 1985, and on June 10, 1985, at 9:00 a.m. to 6:00 p.m. at the Prattville Holiday Inn, 565 Cobbs Ford Road, the Heritage I Room, Millbrook, Alabama. The purpose of the meeting is to hold an Advisory Committee briefing and a community forum on county redistricting.

Persons desiring additional information, or planning a presentation to the Committee, should contact Advisory Committee Chairperson Abigail Turner, or Bobby Doctor in the Southern Regional Office, at (404) 221-4391.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., April 29, 1985.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 85-11668 Filed 5-14-85; 8:45 am]

BILLING CODE 6335-01-M

Idaho Advisory Committee; Cancellation

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 Idaho Advisory Committee to the Commission originally scheduled for May 16, 1985, at the Lewiston Community Center, 1424 Main Street, Lewiston, Idaho, (FR Doc. 85-10124, on page 16528) has been cancelled.

Dated at Washington, D.C., May 10, 1985.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 85-11675 Filed 5-14-85; 8:45 am]

BILLING CODE 6335-01-M

Illinois 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 Illinois Advisory Committee to the Commission will convene at 10:00 a.m. and will end at 3:30 p.m. on May 31, 1985, at the U. S. Commission on Civil Rights, 230 S. Dearborn Street, Room 3280, Chicago, Illinois. The purpose of the meeting is to plan for future committee projects.

Persons desiring additional information, or planning a presentation to the Committee, should contact Clark Roberts, director of the Midwestern Regional Office, at (312) 353-7371.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., May 7, 1985.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 11669 Filed 5-14-85; 8:45 am]

BILLING CODE 6335-01-M

Ohio 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 Ohio Advisory Committee to the Commission will convene at 10:00 a.m. and will end at 12:00 noon on May 25, 1985, at the Holiday Inn Downtown, 802 W. 8th Street, Banquet Room C, Cincinnati, Ohio. The purpose of the meeting is to discuss the status of the education project and provide an orientation for new committee members.

Persons desiring additional information, or planning a presentation to the Committee, should contact Clark Roberts, director of the Midwestern Regional Office, at (312) 353-7371.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., May 7, 1985.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 85-11670 Filed 5-14-85; 8:45 am]

BILLING CODE 6335-01-M

Minnesota 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 Minnesota Advisory Committee to the Commission will convene at 6:00 p.m. and will end at 9:00 p.m. on June 3, 1985, at the Holiday Inn Downtown, 1313 Nicolett Mall, the Board Room, Minneapolis, Minnesota. The purpose of the meeting is to plan for future committee projects.

Persons desiring additional information, or planning a presentation to the Committee, should contact Clark Roberts, director of the Midwestern Regional Office, at (312) 353-7371.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., May 7, 1985.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 85-11671 Filed 5-14-85; 8:45 am]

BILLING CODE 6335-01-M

Missouri Advisory Committee; Agenda for 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 Missouri Advisory Committe to the Commission will convene at 9:00 a.m. and will end at 12:00 p.m. on May 24, 1985, at the Hilton Airport Plaza, Parlor No. 120, I-29 and 112th Street, NW., Kansas City, Missouri. The purpose of the meeting is

to develop program planning and identify cities for future civil rights community forums.

Persons desiring additional information, or planning a presentation to the Committee, should contact Melvin Jenkins, director of the Central States Regional Office at (816) 374–5253.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., May 7, 1985.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 85–11672 Filed 5–14–85; 8:45 am]

BILLING CODE 6335–01–M

South Carolina 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 Carolina Advisory Committee to the Commission will convene at 7:00 p.m. and will end at 9:00 p.m., on June 23, 1985, at the Town House, 1615 Gervais Street, the Gervais Room, Columbia South Carolina. The purpose of the meeting is to hold a briefing session for community forum on voting procedures for June 24th.

Persons desiring additional information, or planning a presentation to the Committee, should contact Advisory Committee Chairperson Elizabeth Patterson or Bobby Doctor, director of the Southern Regional Office at (404) 221–4391.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C, May 7, 1985.

Bert Silver,

Assistant Staff Directors for Regional Programs.

[FR Doc. 85–11673 Filed 5–14–85; 8:45 am]

BILLING CODE 6335–01–M

South Carolina 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 Carolina Advisory Committee to the Commission will convene at 9:00 a.m. and will end at 6:00 p.m., on June 24, 1985, at the Russell Street Inn, 491 Russell Street, Carriage House, Orangeburg, South Carolina. The purpose of the meeting is to hold a community forum on voting procedures in the city and county of Orangeburg.

Persons desiring additional information, or planning a presentation to the Committee, should contact Advisory Committee Chairperson Elizabeth Patterson or Bobby Doctor, director of the Southern Regional Office at (404) 221–4391.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C, May 7, 1985.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 85–11674 Filed 5–14–85; 8:45 am]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

Office of the Secretary

Agency Forms Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposals for collections of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of the Census
Title: Construction Progress Reporting Survey (Private Nonresidential)
Form Number: Agency—C–307, C–400; OMB—N/A
Type of Request: New
Burden: 190 respondents; 95 reporting hours
Needs and Uses: This survey is needed to gather information on construction activities from member corporations of the Business Roundtable. The data will be used to evaluate the coverage of our sampling frames for large industrial construction
Affected Public: Businesses or other for-profit institutions
Frequency: One time
Respondent's Obligation: Voluntary
OMB Desk Officer: Timothy Sprehe, 395–4814

Agency: Bureau of the Census
Title: October 1985 School Enrollment Supplement
Form Number: Agency—CPS–1: OMB—0607–0464
Type of Request: Reinstatement
Burden: 57,000 respondents, 3,200 reporting hours
Needs and uses: This survey is conducted to obtain essential detailed statistics in order to analyze the status of young high school graduates and dropouts in the labor force
Affected Public: Individuals or households
Frequency: Annually
Respondent's Obligation: Voluntary
OMB Desk Officer: Timothy Sprehe, 395–4814.

Copies of the above information collection proposals can be obtained by calling or writing DOC Clearance Officer, Edward Michals (202) 377–4217, Department of Commerce, Room 6622, 14th and Constitution Avenue NW., Washington, D.C. 20230.

Written comments and recommendations for the proposed information collections should be sent to Timothy Sprehe, OMB Desk Officer, Room 3235, New Executive Office Building, Washington, D.C. 20503.

Dated: May 10, 1985.

Edward Michals,

Departmental Clearance Officer.

[FR Doc. 85–11696 Filed 5–14–85; 8:45 am]

BILLING CODE 3510–07–M

Foreign-Trade Zones Board

[Order No. 301]

Resolution and Order Approving the Application of Wisconsin, Ltd., for a Special-Purpose Subzone in Sturgeon Bay, WI, Adjacent to the Green Bay Customs Port of Entry

Proceedings of the Foreign-Trade Zones Board, Washington, D.C.

Resolution and Order

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board has adopted the following Resolution and Order:

The Board, having considered the matter, hereby orders:

After consideration of the application of the Foreign Trade Zone of Wisconsin, Ltd., grantee of Foreign-Trade Zone 41, filed with the Foreign-Trade Zones Board (the Board) on November 16, 1984, requesting special-purpose subzone status for the shipyard of Bay Shipbuilding Corporation in Sturgeon Bay, Wisconsin, adjacent to the Green Bay Customs port of entry, the Board, finding that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations would be satisfied, and that the proposal would be in the public interest, if approval is subject to certain conditions, approves the application subject to the following conditions: (1) Any steel plate, angles, shapes, channels, rolled steel stock, bars, pipes and tubes, classified under Schedule 6, Part 2, Subpart B, TSUS, and not incorporated into merchandise otherwise classified, and which is used in manufacturing shall be subject to Customs duties in accordance with applicable law, if the same item is then being produced by a domestic steel mill; and (2) in addition to the annual report, Bay Shipbuilding shall advise the Board's Executive Secretary as to significant new

contracts, with appropriate information concerning foreign purchases otherwise dutiable, so that the Board may consider whether any foreign dutiable items are being imported for manufacturing in the subzone primarily because of subzone status and whether the Board should consider requiring Customs duties to be paid on such items.

The Secretary of Commerce, as Chairman and Executive Officer of the Board, is hereby authorized to issue a grant of authority and appropriate Board Order.

Foreign-Trade Zones Board, Washington, D.C.

Grant of Authority to Establish a Foreign-Trade Subzone in Sturgeon Bay, Wisconsin, Adjacent to the Green Bay Customs Port of Entry

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide the establishment, operation, and maintenance of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes", as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized and empowered to grant to corporations the privilege of establishing, operating, and maintaining foreign-trade zones in or adjacent to ports of entry under the jurisdiction of the United States;

Whereas, the Board's regulations (15 CFR 400.304) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved, and where a significant public benefit will result;

Whereas, the Foreign Trade Zone of Wisconsin, Ltd., grantee of Foreign-Trade Zone No. 41, has made application (filed November 16, 1984, Docket No. 51–84, 49 FR 46922) in due and proper form to the Board for authority to establish a special-purpose subzone at Bay Shipbuilding Corporation's shipyard in Sturgeon Bay, Wisconsin, adjacent to the Green Bay Customs port of entry;

Whereas, notice of said application has been given and published, and full opportunity has been afforded all interested parties to be heard; and,

Whereas, the Board has found that the requirements of the Act and the Board's regulations would be satisfied if approval is given subject to the conditions stated in the resolution;

Now, therefore, in accordance with the application filed November 16, 1984, the Board hereby authorizes the establishment of a subzone at Bay Shipbuilding's Sturgeon Bay Shipyard, designated on the records of the Board as Foreign-Trade Subzone No. 41E at the location mentioned above and more particularly described on the maps and drawings accompanying the application, said grant of authority being subject to the provisions and restrictions of the Act and the Regulations, and those stated in the resolution accompanying this action, and also to the following express conditions and limitations:

Activation of the subzone shall be commenced within a reasonable time from the date of issuance of the grant, and prior thereto, any necessary permits shall be obtained from Federal, State, and municipal authorities.

Officers and employees of the United States shall have free and unrestricted access to and throughout the foreign-trade subzone in the performance of their official duties.

The grant shall not be construed to relieve responsible parties from liability for injury or damage to the person or property of others occasioned by the construction, operation, or maintenance of said subzone, and in no event shall the United States be liable therefor.

The grant is further subject to settlement locally by the District Director of Customs and District Army Engineer with the Grantee regarding compliance with their respective requirements for the protection of the revenue of the United States and the installation of suitable facilities.

In witness whereof, the Foreign-Trade Zones Board has caused its name to be signed and its seal to be affixed hereto by its Chairman and Executive Officer or his delegate at Washington, D.C. this 6th day of May 1985, pursuant to Order of the Board.

Foreign-Trade Zones Board.

William T. Archey,

Assistant Secretary of Commerce for Trade Administration, Chairman, Committee of Alternates.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 11741 Filed 5–14–1985; 8:45 am]

BILLING CODE 3510-DS-M

[Order No. 303]

Approval for Amendment of Zone Plan of Foreign-Trade Zone No. 84, Harris County, TX, Within the Houston Customs Port of Entry

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), and the Foreign-Trade Zones Board Regulations (15 CFR Part 400), the Foreign-Trade Zones Board (the Board) adopts the following order:

Whereas, the Port of Houston Authority (PHA), Grantee of Foreign-Trade Zone No. 84, has applied to the Board for authority to amend its zone plan by replacing 8 of the originally approved private sites with 10 new ones, located in Harris County, Texas, within the Houston Customs port of entry;

Whereas, the application was accepted for filing on August 29, 1984, and notice inviting public comment was given in the **Federal Register** on September 11, 1984 (Docket No. 39–84, 49 FR 35671);

Whereas, an examiners committee has investigated the application in accordance with the Board's regulations and recommends approval;

Whereas, the Board has found that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations would be satisfied if approval is given subject to the conditions stated below;

Now, therefore, the Board hereby orders:

That the Grantee is authorized to amend its zone plan in accordance with the application filed August 29, 1984, subject to the conditions in Board Order 214, July 15, 1983 (48 FR 34792), including the same time limitation (7/15/88), and the numbering system assigned by the Board, as amended (Table 1, amended 2/22/85). The Grantee shall notify the Executive Secretary of the Board for approval prior to the commencement of any manufacturing operations. The authority given in this Order is subject to settlement locally by the District Director of Customs and the District Army Engineer regarding compliance with their respective requirements relating to foreign-trade zones.

Signed at Washington, D.C. this 6th day of May 1985.

William T. Archey,

Assistant Secretary of Commerce for Trade Administration, Chairman, Committee on Alternates, Foreign-Trade Zones Board.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 85–11742 Filed 5–14–85; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

[A-588-501]

Offshore Platform Jackets and Piles From Japan

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the United States Department of Commerce, we are initiating an antidumping duty investigation to determine whether offshore platform jackets and piles from Japan are being, or are likely to be, sold in the United States at less than fair value. We are notifying the United States International Trade Commission (ITC) of this action so that it may determine whether imports of these products are causing material injury, or threaten material injury, to a United States industry. If this investigation proceeds normally the ITC will make its preliminary determination on or before June 3, 1985, and we will make ours on or before September 26, 1985.

EFFECTIVE DATE: May 15, 1985.

FOR FURTHER INFORMATION CONTACT: Francis R. Crowe, Office of Investigations, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230; telephone: (202) 377–4087.

SUPPLEMENTARY INFORMATION:

The Petition

On April 19, 1985, we received a petition in proper form filed by Kaiser Steel Corporation (Kaiser) and the International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers filing on behalf of the U.S. producer(s) and workers producing offshore platform jackets and piles for sale in the U.S. West Coast market. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleged that imports of the subject merchandise from Japan are being, or are likely to be, sold in the United Statese at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports are causing material injury, or threaten material injury, to a United States industry.

The petitioners based the United States price on an estimate of a Japanese producer's bid price for a platform scheduled for delivery in May 1985.

Petitioners submit that due to the unique nature of the product, it would be inappropriate to base foreign market value on home market or third country sales. Thus, the petitioners based foreign market value on an estimated constructed value for the same platform based upon economic research conducted in Japan and upon Kaiser's cost estimates for its own bid on the platform. To the sum of fabrication and assembly costs, they added the statutory minimum of 10 percent for general expenses and 8 percent of general expenses and cost for profit.

Based on the comparison of these estimated values, petitioners alleged a dumping margin of 25 percent.

Initiation of Investigation

Under section 732(c) of the Act, we must determine, within 20 days after a petition is filed, whether it sets forth the allegations necessary for the initiation of an antidumping duty investigation and whether it contains information reasonably available to the petitioner supporting the allegations.

We examined the petition on offshore platform jackets and piles and have found that it meets the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating an antidumping duty investigation to determine whether offshore platform jackets and piles from Japan are being, or are likely to be, sold in the United States at less than fair value. If our investigation proceeds normally, we will make our preliminary determination by September 26, 1985.

Scope of Investigation

The products covered by this investigation are steel jackets (templates) and piles for offshore platforms, subassemblies thereof that do not require removal from a transportation vessel and further U.S. onshore assembly, and appurtenances attached to the jackets and piles. These platforms are also known as conventional fixed platforms and are permanently affixed by the piles to be seabed. The platforms are not mobile. These jackets and piles are currently classified in the *Tariff Schedules of the United States* under item 652.97.

Notification of ITC

Section 732(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonconfidential information. We will also allow the ITC access to all privileged and confidential information in our files, provided it confirms that it will not disclose such information either publicly or under an administrative protective order without the consent of the Deputy Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by June 3, 1985, whether there is a reasonable indication that imports of offshore platform jackets and piles from Japan are causing material injury, or threaten material injury, to a United States industry. If its determination is negative the investigation will terminate; otherwise, it will proceed according to the statutory procedures.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 85–11738 Filed 5–14–85; 8:45 am]

BILLING CODE 3510–DS–M

[C–580–504]

Initiation of Countervailing Duty Investigation: Offshore Platform Jackets and Piles From the Republic of Korea

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the U.S. Department of Commerce, we are initiating a countervailing duty investigation to determine whether manufacturers, producers or exporters in the Republic of Korea of offshore platform jackets and piles as described in the "Scope of Investigation" section below, receive benefits which constitute subsidies within the meaning of the countervailing duty law. We are notifying the U.S. International Trade Commission (ITC) of this action so that it may determine whether imports of the merchandise materially injure, or threaten material injury to, a U.S. industry. If this investigation proceeds normally, the ITC will make its preliminary determination on or before June 3, 1985, and we will make ours on or before July 5, 1985.

EFFECTIVE DATE: May 15, 1985.

FOR FURTHER INFORMATION CONTACT: Mary Martin or Rick Herring, Office of Investigations, Import Administration, International Trade Administration, United States Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230; telephone: (202) 377–3464 or (202) 377–0187.

SUPPLEMENTARY INFORMATION:

Petition

On April 19, 1985, we received a petition from the Kaiser Steel Corporation and the International Brotherhood of Boilermakers, Ironship Builders, Blacksmiths, Forgers and Helpers on behalf of the offshore platform jackets and piles industry. In compliance with the filing requirements of § 355.26 of the Commerce Regulations (19 CFR 355.26), the petition alleges that

manufacturers, producers or exporters in the Republic of Korea of offshore platform jackets and piles receive, directly or indirectly, benefits which constitute subsidies within the meaning of section 701 of the Tariff Act of 1930, as amended (the Act). Since the Republic of Korea is a "country under the Agreement" within the meaning of section 701(b) of the Act, Title VII of the Act applies to this investigation, and the ITC is required to determine whether imports of the subject merchandise from Korea materially injure, or threaten material injury to, a U.S. industry.

Initiation of Investigation

Under section 702(c) of the Act, we must determine, within 20 days after a petition is filed, whether the petition sets forth the allegations necessary for the initiation of a countervailing duty investigation and whether it contains information reasonably available to the petitioner supporting the allegations. We have examined this petition and we have found that the petition meets those requirements. Therefore, we are initiating a countervailing duty investigation to determine whether the manufacturers, producers or exporters in the Republic of Korea of offshore platform jackets and piles, as described in the "Scope of Investigation" section of this notice, receive benefits which constitute subsidies. If our investigation proceeds normally, we will make our preliminary determination on or before July 15, 1985.

Scope of Investigation

The products covered by this investigation are steel jackets (templates) and piles for offshore platforms; subassemblies thereof that do not require removal from a transportation vessel and further U.S. onshore assembly, and appurtenances attached to the jackets and piles. These platforms are also known as conventional fixed platforms and are permanently affixed by the piles to the seabed. The platforms are not mobile. These jackets and piles are currently provided for in item 652.97 of the 1985 Tariff Schedules of the United States (TSUS).

Allegations of Subsidies

The petition alleges that manufacturers, producers or exporters in the Republic of Korea of offshore platform jackets and piles receive benefits which constitute subsidies. We are initiating an investigation on the following allegations:

- Short-term Export Financing under the Export Financing Regulations.
- Deferred Export Loans from the National Investment Fund.
- Export Credit Financing from the Korean Export-Import Bank.
- Special and Accelerated Depreciation under Articles 11 and 25 of the "Act Concerning the Regulation of Tax Reduction and Exemption."
- Tax Incentives for Exporters under Article 22, 23 and 24 of the "Act Concerning the Regulation of Tax Reduction and Exemption."
- Export Guarantees.
- Export Credit Insurance.

We have determined not to investigate the following allegation:

- Petitioners allege that the Korean platform jackets and piles producers receive preferential financing for assembly yard development from the Korea Development Bank ("KDB") and/or other government institutions. In past investigations we have found this alleged program not to be countervailable (*See, Final Affirmative Countervailing Duty Determination: Cold-Rolled Carbon Steel Flat-Rolled Products from Korea and Final Negative Countervailing Duty Determination: Structural Shapes from Korea* (49 FR 47284)). Petitioners have presented no new evidence or alleged changed circumstances with respect to this program.

Notification of ITC

Section 702(d) of the Act requires us to notify the ITC of these actions, and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonconfidential information. We will also allow the ITC access to all privileged and confidential information in our files, provided it confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by June 3, 1985, whether there is a reasonable indication that imports of offshore platform jackets and piles from the Republic of Korea materially injure, or threaten material injury to, a U.S. industry. If its determination is negative, this investigation will terminate; otherwise, this investigation will continue according to the statutory procedures.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

May 9, 1985.

[FR Doc. 85-11734 Filed 5-14-85; 8:45 am]

BILLING CODE 3510-DS-M

[A-580-505]

Offshore Platform Jackets and Piles From the Republic of Korea

AGENCY: International Trade Administration/Import Administration/Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the United States Department of Commerce, we are initiating an antidumping duty investigation to determine whether offshore platform jackets and piles from the Republic of Korea (Korea) are being, or are likely to be, sold in the United States at less than fair value. We are notifying the United States International Trade Commission (ITC) of this action so that it may determine whether imports of these products are causing material injury, or threaten material injury, to a United States industry. If this investigation proceeds normally, the ITC will make its preliminary determination on or before June 3, 1985, and we will make ours on or before September 26, 1985.

EFFECTIVE DATE: May 15, 1985.

FOR FURTHER INFORMATION CONTACT: Francis R. Crowe, Office of Investigations, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230; telephone: (202) 377-4087.

SUPPLEMENTARY INFORMATION:

The Petition

On April 19, 1985, we received a petition in proper form filed by Kaiser Steel Corporation (Kaiser) and the International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers filing on behalf of the U.S. producer(s) and workers producing offshore platform jackets and piles for sale in the U.S. West Coast market. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleged that imports of the subject merchandise from Korea are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the

Tariff Act of 1930, as amended (the Act), and that these imports are causing material injury, or threaten material injury, to a United States industry.

The petitioners based the United States price on an estimate of a Korean producer's bid price for a platform scheduled for delivery in May 1985.

Petitioners argue that, due to the unique nature of this product, it would be inappropriate to base foreign market value on home market or third country sales of jackets and piles. Thus, the petitioners based foreign market value on an estimated constructed value for the same platform based upon Kaiser's cost estimates for its own bid on the platform adjusted for differences between U.S. and Korean labor costs and additional Korean investment costs alleged to be necessary to complete the project. To the sum of fabrication and assembly costs, they added the statutory minimum of 10 percent for general expenses and 8 percent of general expenses and cost for profit.

Based on the comparison of these estimated values, petitioners alleged dumping margins of from 48 to 53 percent.

Initiation of Investigation

Under section 732(c) of the Act, we must determine, within 20 days after a petition is filed, whether it sets forth the allegations necessary for the initiation of an antidumping duty investigation and whether it contains information reasonably available to the petitioner supporting the allegations.

We examined the petition on offshore platform jackets and piles and found that it meets the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating an antidumping duty investigation to determine whether offshore platform jackets and piles from Korea are being, or are likely or be, sold in the United States at less than fair value. If our investigation proceeds normally, we will make our preliminary determination by September 26, 1985.

Scope of Investigation

The products covered by this investigation are steel jackets (templates) and piles for offshore platforms, subassemblies thereof that do not require removal from a transportation vessel and further U.S. onshore assembly, and appurtenances attached to the jackets and piles. These platforms are also known as conventional fixed platforms and are permanently affixed by the piles to the seabed. The platforms are not mobile. These jackets and piles are currently classified in the *Tariff Schedules of the United States* (TSUS) under item 652.97.

Notification of ITC

Section 732(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonconfidential information. We will also allow the ITC access to all privileged and confidential information in our files, provided it confirms that it will not disclose such information either publicly or under an administratively protective order without the consent of the Deputy Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by June 3, 1985, whether there is a reasonable indication that imports of offshore platforms jackets and piles from Korea are causing material injury, or threaten material injury, to a United States industry. If its determination is negative the investigation will terminate; otherwise, it will proceed according to the statutory procedures.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

May 9, 1985.

[FR Doc. 85-11735 Filed 5-14-85; 8:45 am]

BILLING CODE 3510-DS-M

[A-583-403]

Certain Welded Rectangular Carbon Steel Pipes and Tubes From Taiwan; Postponement of Preliminary Antidumping Duty Determination

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice of postponement of preliminary antidumping duty determination.

SUMMARY: The preliminary antidumping duty determination involving certain welded rectangular carbon steel pipes and tubes from Taiwan is being postponed until not later than July 16, 1985.

EFFECTIVE DATE: May 15, 1985.

FOR FURTHER INFORMATION CONTACT: Karen Sackett, Office of Investigations, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, D.C. 20230; telephone: (202) 377-3003.

SUPPLEMENTARY INFORMATION: On January 11, 1985, we published the initiation of an antidumping duty investigation to determine whether certain pipes and tubes from Taiwan are being, or are likely to be sold in the United States at less than fair value (50 FR 1614). The notice stated that we would issue our preliminary determination by May 27, 1985, but since May 27 is Memorial Day, the preliminary determination would have been due May 28, 1985.

As detailed in the notice, the petitioner alleges that imports from Taiwan of certain pipes and tubes are being, or are likely to be, sold in the United States at less than fair value.

On May 2, counsel for the petitioner, the Mechanical Tubing Subcommittee of the Committee on Pipe and Tube Imports, further alleged that sales of certain pipes and tubes are being made at below cost of production. Petitioner requested, therefore, that we make our determination of foreign market value on the basis of the respondent's costs and that the deadline for the preliminary determination be extended for 50 days in order to allow sufficient time for the cost of production investigation. We intend to issue a preliminary determination not later than July 16, 1985.

This notice is published pursuant to section 733(c)(2) of the Act.

The United States International Trade Commission is being advised of this postponement, in accordance with section 733(f) of the Act.

Scope of Investigation

The products under investigation are welded rectangular (including square) carbon steel pipes and tubes having a wall thickness of less than 0.156 inch, as currently classified in the *Tariff Schedules of the United States, Annotated* (TSUSA), under item 610.4928.

Dated: May 8, 1985.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 85-11697 Filed 5-14-85; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Marine Mammals; Proposed Permit Modification No. 3; Southwest Fisheries Center, National Marine Fisheries Service

Notice is hereby given that the

Southwest Fisheries Center, National Marine Fisheries Service, P.O. Box 271, La Jolla, California 92038, has requested a modification of Permit No. 413 issued on April 20, 1983 (48 FR 17638), which was modified on July 6, 1983 (48 FR 31062) and May 11, 1984 (49 FR 20047), under the authority of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), the Endangered Species Act of 1973 (16 U.S.C. 1531–1543), the Regulations Governing the Taking and Importing of Marine Mammals, and the Regulations Governing Endangered Species Permits (50 CFR Parts 216 and 222).

The Permit Holder is requesting to take, on Kure Atoll, Hawaii, seventy (70) Hawaiian monk seals (*Monachus schauinslandi*) of both sexes and all age groups by bleach marking; each animal may be re-bleached once following molt. The requested take is from April through September 1985 only.

Concurrent with the publication of this Notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of the modification request to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this modification request should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Washington, D.C. 20235, on or before June 3, 1985. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular modification request would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

Documents submitted in connection with the above modification are available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street NW., Washington, D.C.; and

Regional Director, National Marine Fisheries Service, Southwest Region, 300 South Ferry Street, Terminal Island, California 90731.

Dated: May 6, 1985.

Richard B. Roe,

Director, Office of Protected Species and Habitat Conservation, National Marine Fisheries Service.

[FR Doc. 85–11772 Filed 5–14–85; 8:45 am]

BILLING CODE 3510–22–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Request for Public Comment on Bilateral Textile Consultations With the Government of Sri Lanka To Review Trade in Categories 337 (Playsuits) and 369pt. (Shop Towels)

May 10, 1985.

On April 30, 1985, the Government of the United States requested consultations with the Government of Sri Lanka with respect to Categories 337 and 369pt. (only TSUSA number 366.2740). This request was made on the basis of the agreement between the Governments of the United States and Sri Lanka relating to trade in cotton, wool and man-made fiber textile products of May 10, 1983. The agreement provides for consultations when the orderly development of trade between the two countries may be impeded by imports due to market disruption, or the threat thereof.

According to the terms of the bilateral agreement, if no mutually satisfactory solution is reached during consultations, the U.S. may establish prorated specific limits for the April 30–May 31, 1985 period and annual specific limits of 84,697 dozen for Category 337 and 786,445 pounds for Category 369pt. for the subsequent agreement period (June 1, 1985–May 31, 1986).

The Government of the United States has decided, pending a mutually satisfactory solution, to control imports in these categories exported during the 90-day consultation period which began on April 30, 1985 and extends through July 28, 1985 at the prescribed limits of 23,305 dozen for Category 337 and 216,396 pounds for Category 369pt.

In the event the limits established for the ninety-day period are exceeded, such excess amounts, if allowed to enter, may be charged to the limits established during the subsequent agreement year.

The United States remains committed to finding a solution concerning these categories. Should such a solution be reached in consultations with the Government of Sri Lanka, further notice will be pubished in the **Federal Register.**

Summary market statements for these categories follow this notice.

A description of the textile cateories in terms T.S.U.S. A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), JUne 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the TARIFF SCHEDULES OF THE UNITED STATES ANNOTATED (1985).

Anyone wishing to comment or provide data or information regarding the treatment of Categories 337 and 369pt. under the agreement with the Government of Sri Lanka, or any other aspect thereof, or to comment on domestic production or availability of textile products included in the category, is invited to submit such comments or information in ten copies to Mr. Walter C. Lenahan, Chairman, Committee for the Implementation of Textile Agreements, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230. Because the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, Room 3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C., and may be obtained upon written request.

Further comment may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

This letter and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Category 337—Cotton Playsuits, Sunsuits and Washsuits

Sri Lanka—Market Statement

April 1985.

Summary and Conclusions

United States imports of Cateogry 337 from Sri Lanka were 58,300 dozens in 1984. These imports compare with 21,800 dozens in 1983. Imports from Sri Lanka were 91,600 dozen in the twelve months period ending February 1985, almost a four-fold increase from the same period one year earlier. January—February 1985 imports were 37,600 dozens, an

annual rate of 225,400 dozens. This is a sharp and substantial increase, impacting a market already adversely affected by imports.

U.S. Production

U.S. Production of Category 337 has averaged near 3,300,000 dozens annually since 1979. In 1980, production dipped to 2,953,000 dozens and in 1981 production was 3,550,000 dozens, the highest level in the 5 year period from 1979 to 1983. Production in 1983 nearly recovered from the 1982 recession impacted level, reaching 3,361,000 dozens, near the 1979–1983 average level.

Imports

U.S. imports of Category 337 from all sources increased 60 percent between 1979 and 1981 and then slowed a to a 6.5 percent increase between 1981 and 1983. In 1984 imports rose 51.3 percent to reach a record of 2,768,000 dozens. In the twelve month period ending February 1985, imports of this category were 2,935,000 dozens, 41 percent higher than the same period one year earlier.

Import to Production Ratio

The import-to-production ratio of Category 337 has grown substantially since 1979. From a level of 33.1 percent in 1979, the ratio grew to 54.4 percent in 1983. With the large increase in imports, the ratio reached an all time high in 1984.

Domestic Producers' Market Share

Domestic producers' share of this market declined from 75.1 percent in 1979 to 64.8 in 1983. In 1984 the share probably droped below 60 percent due to the large increase in imports.

Imports Value vs Domestic Producers' Price

Two-thirds of Sri Lanka's imports into the U.S. in Category 337 were concentrated in two TSUSA numbers: 383.5028 (replaces 1984 number 383.5036) girl's and infants' cotton playsuits not ornamented, not knit; 383.5034 (replaces 383.5049)—WGI other cotton playsuits, etc. not knit, not ornamented. The duty paid value for these products are below the U.S. producer price for comparable items.

Category 369 Part—Cotton Shop Towels

Sri Lanka—Market Statement

April 1985.

Summary and Conclusions

U.S. imports of Category 369 Part, shop towels, from Sri Lanka during the year ending February 1985 were 8.9 million units, more than three times the 2.5 million units imported a year earlier. Imports for the first two months of 1985 alone reached 2.95 million units, 73 percent higher than the total imported from Sri Lanka during the same period in 1984. This is a sharp and substantial increase in imports into a sector a already adversely affected by imports.

Sri Lanka is the fourth largest supplier of cotton shop towels, accounting for 10 percent of the total imports in 1985. These imports from Sri Lanka are entered at duty-paid landed values which are below the U.S. producer price for comparable towels. The continuation of increasing low-priced imports from Sri Lanka threatens to intensify the market disruption occurring in the U.S. for such towels.

U.S. Producers' Market Share

The U.S. producers' share of Category 369pt. shop towel market declined from 59 percent in 1981 to 47 percent in 1984.

U.S. Production

U.S. production of cotton shop towels declined from 162 million units in 1981 to 126 million in 1982, a decrease of 22 percent. Production regained some of the loss in 1983 and 1984 to a level of 138 million units in 1984, up 10 percent over the recession impacted 1982 level. Production in 1984 was far below any level on record prior to 1982.

U.S. Imports

U.S. Imports of Category 369Pt., after remaining relatively flat at 94 million units during 1982 and 1983 due in part to the soft domestic market and the action taken by the United States on antidumping and countervailing duty cases with specific major suppliers, increased substantially in 1984. Imports in 1984 soared to a record high of 158 million units. Imports in the first two months of 1985 were down due to limited imports from China which had utilized most of its restraint level in 1984. Imports during the year-ending February 1985 were 156 million units, an increase of 47 percent over the 106 million imported a year earlier.

Import Penetration

In one year along the ratio of imports to domestic production increased from 73 percent in 1983 to 115 percent in 1984.

Import Values

Imports from Sri Lanka are entered under TSUSA No. 366.2740—cotton shop towels, other than pile or tuft construction. The duty-paid landed value of these imports from Sri Lanka are below the U.S. producer price for comparable towels.

May 10, 1985.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, D.C.

Dear Mr. Commissioner: This directive further amends, but does not cancel, the directive of May 10, 1984 from the Chairman of the Committee for the Implementation of Textile Agreements which establishes levels of restraint for certain specified categories of cotton, wool and man-made fiber textile products, produced or manufactured in Sri Lanka and exported during the twelve-month period which began on June 1, 1984.

Effective on May 16, 1985 paragraph one of the directive of May 10, 1984 is hereby further amended to include the following levels of restraint for cotton textile products in Categories 337 and 369pt.[1] exported during the ninety-day period which begin on April 30, 1985 and extends through July 28, 1985:

Category	Ninety-day level [2]
337	23,305 Dozen.
369pt. [1]	216,396 Pounds.

[1] In Category 369, only TSUSA number 366.2740.
[2] The levels have not been adjusted to account for any imports exported after April 29, 1985.

Textile products in Categories 337 and 369pt.[1] which have been exported to the United States before April 30, 1985 shall not be subject to this directive.

Textile products in Categories 337 and 369pt.[1] which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 85–11658 Filed 5–14–85; 8:45 am]

BILLING CODE 3510-DR-M

COMMODITY FUTURES TRADING COMMISSION

Subpoena Pursuant to Section 8(f) of the Commodity Exchange Act, 7 U.S.C. 12(f)

The Commodity Futures Trading Commission ("CFTC") hereby gives notice pursuant to section 8(f) of the Commodity Exchange Act, 7 U.S.C. 12(f), to persons who submitted information to the CFTC that is the subject of a subpoena served on the CFTC on April 15, 1985.[1] The subpoena directs the CFTC to provide a variety of information on and relating to live and feeder cattle contracts traded on the Chicago Merchantile Exchange from April 1, 1978 until December 31, 1980. The subpoena also directs the Commissioner to provide certain information which refers or relates to: REFCO, Inc., Thomas H. Dittmer, Paul Engler, Edward C. Apel, Ed Cox, Jr., Ed Cos, Sr., Howard Foley, Randy Kreiling, Raymond Lacy, Artie Nelson, Charles D. McVean, Robert L. Bone, Roy Woods, Robert Gottsch, Virgil Gottsch, Bruce Strange, Steven Johns, James Dudley, Cactus Feeders, Cactus Growers, Cactus, Inc., Double Tree Cattle Co.,

[1] In Category 369, only TSUSA number 366.2740.

[1] The subpoena was served at the behest of plaintiffs in five cases currently pending in the United States District Court for the Northern District of Iowa: *William Utesch, et al.*, v. *Thomas H. Dittmer and REFCO, Inc.*, No. C 83–4154; *Clarence Vos, et al.*, v. *Thomas H. Dittmer and REFCO, Inc.*, No. C 83–4155; *Victor C. Tomko* v. *Thomas H. Dittmer and REFCO, Inc.*, No. C 83–4156; *Eugene Von Roekel* v. *Thomas H. Dittmer and REFCO, Inc.*, No. C 83–4157; and *Mick Dro* v. *Thomas H. Dittmer and REFCO, Inc.*, No. C 83–4158. The subpoena issued out of the United States District Court for the District of Columbia. *William Utesch, et al.* v. *Thomas H. Dittmer, et al.*, F.S. 85–0237.

Double Tree Commodities, Agri Beff Financial, Frontier Feed Yards, and/or the Dittmer Family Trust. Documents produced pursuant to the subpoena may contain information submitted to the CFTC by persons that participated or were involved in the above-described matters. Any person who wishes a copy of the subpoena should contact M. Donley-Hoopes, Esq., Office of the General Counsel, CFTC, 2033 K Street, NW., Washington, D.C. 20581, (202) 254–9880. The CFTC will disclose information pursuant to the subpoena after the expiration of fourteen days from the date of this publication.

Whitney Adams,

Deputy General Counsel.

[FR Doc. 85–11794 Filed 5–14–85; 10:07 am]

BILLING CODE 6351–01–M

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Deputy Secretary for Management invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before June 14, 1985.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., Room 3208, New Executive Office Building, Washington, D.C. 20503. Requests for copies of the proposed information collection requests should be addressed to Margaret B. Webster, Department of Education, 400 Maryland Avenue, SW., Room 4074, Switzer Building, Washington, D.C. 20202.

FOR FURTHER INFORMATION CONTACT: Margaret B. Wester (202) 426–7304.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State and Federal Law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Deputy Under Secretary for Management publishes this notice containing proposed information collection requests prior to the submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Agency form number (if any); (4) Frequency of the collection; (5) The affected public; (6) Reporting burden; and/or (7) Recordkeeping burden; and (8) Abstract.

OMB invites public comment at the address specified above. Copies of the requests are available from Margaret Webster at the address specified above.

Dated: May 10, 1985.

Linda M. Combs,

Deputy Under Secretary for Management.

Office of Postsecondary Education

Type of Review Requested: Extension
Title: Pell Grant Program Student Validation Roster
Agency Form Number: ED 255–4
Frequency: As necessary
Affected Public: Businesses or other for-profit; Non-profit institutions; Small businesses or organizations
Reporting Burden: Responses: 1,000; Burden Hours: 12,000
Recordkeeping Burden: Recordkeepers: 1,000; Burden Hours: 500

Abstract: The Student Validation Roster is prepared by the Department and sent to participating postsecondary educational institutions to determine the accuracy of the Pell Grant recipient data previously submitted on the Student Aid Report. A school notates corrections on this roster and returns it to the Department for subsequent updating of the Department data which is then processed for end-of-year adjustments to the Pell authorization level at that school.

Type of Review Requested: Extension
Title: Lender's Application for Payment of Insurance Claim for the Federal Insured Student Loan Program
Agency Form Number: ED 1207
Frequency: On occassion
Affected Public: Businesses or other for-profit; Non-profit institutions; Small businesses or organizations
Reporting Burden: Responses: 36,000; Burden Hours: 5,400
Recordkeeping Burden: Recordkeepers: 12,000; Burden Hours: 1,400

Abstract: This form is used by lenders to request payment of claims on defaulted Federal insured student loans. It provides the Department with loan and payment history which is essential in determining the validity of a claim and the amount to be paid to the lender.

Office of Educational Research and Improvement

Type of Review Requested: New
Title: Institutional Characteristics of Postsecondary Institutions, 1985–86
Agency Form Number: G50–12P
Frequency: Annually
Affected Public: State or local governments; Non-profit institutions; Small businesses or organizations
Reporting Burden: Responses: 12,000; Burden Hours: 6,000
Recordkeeping Burden: Recordkeepers: 0; Burden Hours: 0

Abstract: This survey collects characteristics of institutions of postsecondary education in order to develop and maintain the Integrated Postsecondary Education Data System control file. The data requested includes the name, address, telephone number and type of institution, as well as tuition and fees information. Institutional accreditation is also verified.

[FR Doc. 85–11745 Filed 5–14–85; 8:45 am]

BILLING CODE 4000–01–M

Education Appeal Board

AGENCY: Department of Education.

ACTION: Notice of Applications for Review Accepted for Hearing by Education Appeal Board.

SUMMARY: This notice lists the applications for review accepted for hearing by the Education Appeal Board (Board) between September 25, 1984, and March 15, 1985. A summary of each appeal has been included to help potential intervenors. In addition, the notice explains how interested third parties may intervene in proceedings before the Board.

FOR FURTHER INFORMATION CONTACT: Orman W. Ketcham, Acting Chairman, Education Appeal Board, 400 Maryland Avenue, SW (Room 1065, FOB–6), Washington, D.C. 20202. Telephone: (202) 245–7835.

SUPPLEMENTARY INFORMATION: Under sections 451 through 454 of the General Education provisions Act (20 U.S.C. 1234 *et seq.*), the Education Appeal Board has authority to conduct (1) audit appeal hearings, (2) withholding, termination, and cease and desist hearings initiated by the Secretary of Education, and (3) other proceedings designated by the Secretary as being within the jurisdiction of the Board.

The Secretary has designated the Board as having jurisdiction over appeal proceedings related to final audit determinations, the withholding or termination of funds, and cease and desist actions for most programs administered by the Department of Education (ED). The Secretary also has designated the Board as having jurisdiction to conduct hearings concerning most ED administered programs that involve (a) a determination that a grant is void, (b) the disapproval of a request for permission to incur an expenditure during the term of a grant, or (c) determinations regarding cost allocation plans or special rates negotiated with specified grantees. Final regulations governing Board jurisdiction and procedures were published in the **Federal Register** on May 18, 1981, at 46 FR 27304 (34 CFR Part 78).

Applications Accepted

Elementary and Secondary Education

Appeal of the State of California, Docket No. 39–(171)–84, ACN 09–30029

California requested review of a final audit determination issued by the Assistant Secretary for Elementary and Secondary Education. The underlying audit reviewed Title I training and conference costs claimed by the Richmond Unified School District for fiscal years 1981 and 1982.

The Assistant Secretary disallowed conference costs finding that the costs were not necessary and reasonable for proper and efficient administration of the Title I program and that the conferneces were not designed to meet the special needs of educationally deprived students.

The Department seeks a refund of $21,255. California concedes liability of $3,046. The sum of $18,209 remains at issue.

Appeal of the State of California, Docket No. 42–(174)–84, ACN 09–30034

The State appealed a final audit determination issued by the Assistant Secretary for Elementary and Secondary Education. The audit reviewed travel and conference costs charged to the Title I program by the Los Angeles Unified School District during fiscal years 1981 and 1982.

The Assistant Secretary disallowed costs of food and lodging associated with training seminars because the costs were allegedly unnecessary, imprudent, and extravagant. The Assistant Secretary also disallowed conference costs finding that the conferences were general and failed to meet specific needs of educationally deprived students.

The Department seeks a refund of $699,450. California disputes liability.

Appeal of the Texas Education Agency, Docket No. 43–(175)–84, ACN 06–40101

The Texas Education Agency (Texas) requested review of a final audit determination issued by the Assistant Secretary for Elementary and Secondary Education. The final audit determination was based on an investigation of the Title I program in the Apple Springs Indepdent School District for fiscal years 1979 through 1981.

The Assistant Secretary disallowed salary costs of employees who performed functions unrelated to Title I.

The Department seeks a refund of $33,275. Texas disputes liability.

Vocational Rehabilitation

Appeal of Multi Resource Centers, Incorporated, Docket No. 40–(172)–84, ACN 05–30058

Multi Resource Centers, Incorporated, of Minneapolis, Minnesota, appealed a final audit determination issued by the Acting Regional Commissioner of the Rehabilitation Services Administration. The underlying audit reviewed costs claimed for the period July 1, 1981, through June 30, 1982.

The Acting Regional Commissioner disallowed personnel costs which were not adequately documented.

The Department seeks a refund of $7,725. Multi Resource Centers agrees to repay $1,147. The sum of $6,578 remains at issue.

Appeal of Rhode Island Department of Social and Rehabilitative Services, Docket No. 5–(180)–85, ACN 01–30020

The Rhode Island Department of Social and Rehabilitative Services (Rhode Island) requested review of a final audit determination issued by the Regional Commissioner of the Rehabilitation Services Administration. The final audit determination was based on an audit of Rhode Island's vocational rehabilitation program administered under the Rehabilitation Act of 1973.

The Regional Commissioner disallowed costs for training grants because grants allegedly were made without regard to economic need. A training encumbrance was disallowed because services allegedly were provided without obtaining prior or contemporaneous authorization.

The Department seeks a refund of $93,209.14. Rhode Island disputes liability.

Miscellaneous Programs

Appeal of Albany State College, Docket No. 41–(173)–84, ACN 04–30021

Albany State College, Albany, Georgia, appealed a final audit determination issued by the Office of Student Financial Assistance (OSFA) and the Assistance Management and Procurement Service (AMPS). The underlying audit reviewed programs under Title III of the Higher Education Act and student financial assistance programs. The Board has jurisdiction only over the Title III programs.

AMPS disallowed costs charged to the Title III program because the matching requirement allegedly was not met, Federal funds allegedly supplanted other funds, charges were allegedly unallowable, costs were allegedly documented inadequately, costs allegedly were incurred outside the grant period, and funds allegedly were converted for personal use. AMPS also requested the return of monies refunded to Albany State College by Valdosta State College.

The Department seeks a refund of $1,301,414. Of this amount $388,351 involves student financial assistance which is outside the Board's jurisdiction. Of the $913,063 under the Board's jurisdiction, Albany State College has agreed to repay $4,300. The sum of $908,763 remains at issue.

Appeal of Board of School Commissioners of Mobile County, Docket No. 1–(176)–85, ACN 04–30002

The Board of School Commissioners of Mobile County, Alabama (Mobile County), requested review of a final audit determination issued by the Assistance Management and Procurement Service (AMPS). The final audit determination was based on an audit of Emergency School Aid Act programs administered by Mobile County during the period July 1, 1980, through April 30, 1982.

AMPS disallowed costs which allegedly were inadequately documented, not part of an approved project, unallowable, and unrelated to program activities.

The Department seeks a refund of $253,048. Mobile County disputes the liability.

Appeal of the State of Colorado, Docket No. 2–(177)–85, ACN 08–30020

Colorado appealed a final audit determination by the Assistant Secretary for Special Education and Rehabilitative Services. The underlying audit reviewed the handicapped child

count at the Boulder RE-2 School District.

The Assistant Secretary disallowed expenditures for fiscal years 1980 through 1982 based on an alleged overcount of eligible handicapped children.

The Department seeks a refund of $600,406. Colorado disputes its liability.

Appeal of Lillian Anthony (Individually), Docket No. 4-(179)-85, ACN 03-30011.

Lillian Anthony, Washington, D.C., requested review of a final audit determination issued by the Assistance Management and Procurement Service (AMPS). The underlying audit reviewed a grant made to Ms. Anthony under the Women's Educational Equity Act for the period October 1, 1980, through June 30, 1982.

Costs were disallowed because the charges allegedly were unallowable, inadequately documented, and unrelated to the purpose of the grant. AMPS also requested the return of unexpended funds.

The Department seeks a refund of $26,935.63. Ms. Anthony disputes this liability.

Intervention

Section 78.43 of the final regulations establishing procedures for the Education Appeal Board provides that an interested person, group, or agency, may upon application to the Board Chairman, intervene in appeals before the Education Appeal Board.

An application to intervene must indicate to the satisfaction of the Board Chairman or, as appropriate, the Panel Chairperson, that the potential intervenor has an interest in, and information relevant to, the specific issues raised in the appeal. If an application to intervene is approved, the intervenor becomes a party to the proceedings.

These applications to intervene, or questions, should be addressed to Orman W. Ketcham, Acting Chairman, Education Appeal Board, 400 Maryland Avenue, SW. (Room 1065, FOB-6), Washington, D.C. 20202. Telephone: (202) 245-7835.

(Catalog of Federal Domestic Assistance No. not applicable)

(20 U.S.C. 1234)

Dated: May 9, 1985.

A. Wayne Roberts,

Deputy Under Secretary, Intergovernmental and Interagency Affairs.

[FR Doc. 85-11744 Filed 5-14-85; 8:45 am]

BILLING CODE 4000-01-M

National Institute of Education

Regional Educational Laboratories and Research and Development Centers Program; Correction

AGENCY: Department of Education.

ACTION: Correction—Regional Educational Laboratories and Research and Development Centers Program; Notice of Additional Information for the Transmittal of Applications for Grants for Institutional Operations for NIE Research and Development Centers.

SUMMARY: On May 14, 1985, a notice providing additional information for applicants under the Regional Educational Laboratories and Research and Development Centers Program was published at 50 FR 20122.

On page 20123, first column, second line, under "ADDITIONAL INFORMATION FOR APPLICANTS (GENERAL)", after the first indented phrase that ends "and the Center on Effective Secondary Schools.", the following sentence is added: "Applicants are advised that the Secretary discourages the use of Department of Education funds for development of instructional materials."

Dated: May 14, 1985.

William J. Bennett,

Secretary of Education.

[FR Doc. 85-11970 Filed 5-14-85; 12:35 pm]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Inventory of Commercial Activities

AGENCY: Department of Energy.

ACTIONS: Notice of DOE commercial activities scheduled for study in accordance with OMB Circular A-76.

SUMMARY: Pursuant to the requirements of the revised OMB Circular A-76 (dated August 1983), the DOE is publishing a revised inventory of its commercial activities scheduled for study. The listing also provides the principal location of the activity and the proposed review date. This inventory supersedes all previously published inventories. The Department will publish from time to time additions, changes and deletions to this inventory of commercial activities.

Organization and activity description	Geographic location	Date of review
Albuquerque Operations Office		
Plant and vehicle maintenance.	NM: Albuquerque	Dec. 1984.
Mail and file services	do	Do.
Supply operations	do	Jan. 1986.
Museum/library operations	do	Do.
Computer operations and data services.	do	Jun. 1986.
Bonneville Power Administration		
Health care services	OR: Portland	May 1984.
Heavy equip/vehicle maintenance.	do	Mar 1985.
Maintenance/shop support	WA: Vancouver	Sept. 1985.
Mail services	OR: Portland	Jan. 1986.
Supply and facility services.	do	May 1986.
Warehouse operations	WA: Vancouver	Do.
Graphics services	OR: Portland	Sept. 1986.
Library operations	do	Jan. 1987.
Engin. photogrammetry, surveying.	do	May 1987.
Employee development and training.	do	Sept. 1987.
Computer operations/ data analysis.	do	Jan. 1988.
Assistant Secretary, Conservation and Renewable Energy		
Correspondence management.	DC: Washington	July 1985.
Chicago Operations Office		
Facilities support	NY: New York	Aug. 1985.
Computer operations	do	Jan 1986.
Assistant Secretary, Defense Programs		
Records management	DC: Washington	May 1985.
Energy Information Administration		
Computer operations/ data analysis.	do	Aug. 1985.
General Counsel		
Patent docket control	do	Apr. 1985.
Law library operations	do	Do.
Office of Hearings and Appeals		
Document review and control.	do	June 1985.
Idaho Operations Office		
Dosim, env sic/anal, chem ops.	ID: Idaho Falls	Apr. 1985.
Fire prevention	do	Jan. 1986.
Assistant Secretary, Management and Administration		
Payroll operations	MD: Germantown	Jan. 1985.
ADP operations and message services.	DC: Washington	Sept. 1985.
Photo and graphics services.	do	Jan. 1986.
Morgantown Energy Technology Center		
Lab mech, instr fab and assembly.	WV: Morgantown	May 1985.
Lab services (mech/ elec/test).	do	Do.
Oak Ridge Operations Office		
Mail, messenger and records.	TN: Oak Ridge	Do.
Photographic services	do	Jan. 1986.
Office of Scientific and Technical Information		
Computer operations	do	Sept. 1985.
Descriptive cataloging	do	June 1986.
Pittsburgh Energy Technology Center		
Coal conv, util and lab suprt services.	PA: Pittsburgh	May 1985.
Southeastern Power Administration		
Mail and library services	GA: Elberton	July 1985.
Janitorial services	do	Oct. 1985.

Organization and activity description	Geographic location	Date of review
San Francisco Operations Office		
Supply services	CA: San Francisco.	May 1985.
Vehicle operations	do	Do
Southwestern Power Administration		
Engineering technical support.	OK: Tulsa	Apr. 1985.
Visual information support.	do	Oct. 1985.
Right-of-way management.	do	Feb. 1986.
Computer operations/ data analysis.	do	Mar. 1986
Mail and administrative support.	do	Aug. 1986.
Facility support	do	Oct. 1986.
Western Area Power Administration		
Mail and file services	MT: Billings	Jun. 1985.
Do	UT: Salt Lake City	Do
Supply management/ warehouse ops.	MT: Billings	June 1986.
Do	NV: Boulder City	Do
Facility, grounds, utility maint.	CO: Fort Collins	Jan. 1987.
Do	NV: Boulder City	Do
Do	CA: Sacramento	Do
Vehicle maintenance	NV: Boulder City	Do
Do	UT: Salt Lake City	Do
Do	MT: Billings	Do

FOR FURTHER INFORMATION CONTACT: Ray Mayfield, Chief, Management Systems Development and Evaluation, Department of Energy (MA-213.2), Room 4B-194, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585.

Issued in Washington, D.C. May 2, 1985.

William S. Heffelfinger,

Director of Administration.

[FR Doc. 85-11693 Filed 5-14-85; 8:45 am]

BILLING CODE 6450-01-M

National Petroleum Council; Refinery Survey Task Group Meeting Change

Federal Register Notice of May 1, 1985, (50 FR 18551) announcing the date of the May 16, 1985, sixth meeting of the Refinery Survey Task Group to be held in the National Petroleum Council Conference Room has been changed. The new date should read: Wednesday, May 15, 1985, starting at 9:00 am.

Issued at Washington, D.C., May 3, 1985.

William A. Vaughan,

Assistant Secretary, Fossil Energy.

[FR Doc. 85-11775 Filed 5-14-85; 8:45 am]

BILLING CODE 6450-01-M

Energy Information Administration

Request for Comments on the Annual Report for Enhanced Oil Recovery Incentive Program, Form FE-748

AGENCY: Energy Information Administration, DOE.

ACTION: Notice.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, the Department of Energy (DOE), through its Energy Information Administration (EIA), conducts a consultation program to provide the general public with an opportunity to comment on proposed and continuing reporting forms. This program helps to ensure that requested data can be provided in the desired format, reporting burden is minimized, reporting forms are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

At this time, EIA requests comments on the continuing use of the Annual Report for Enhanced Oil Recovery (EOR) Incentive Program form. The form is described in the Supplementary Information Section of this Notice. Interested persons are asked to review the form and its instructions and provide comments to the information contact described below.

EFFECTIVE DATE: Written comments must be submitted on or before June 14, 1985.

ADDRESS: Comments should be sent to Mr. James Chism at the address listed immediately below.

FOR FURTHER INFORMATION OR COPIES OF THE FORM OR INSTRUCTIONS CONTACT: Mr. James Chism, Director, Multi-Well Experiment, Bartlesville Project Office, P.O. Box 1398, Bartlesville, OK 74005.

SUPPLEMENTARY INFORMATION:

I. Background
II. Comment Procedures

I. Background

The EIA announces a proposed extension of the Form FE-748, "Annual Report for Enhanced Oil Recovery (EOR) Incentive Program." The information on Form FE-748 is requested annually from all individuals or companies that had EOR projects approved for the Incentive Program. This form provides DOE and industry with the only readily available sources of data with which to assess the performance and success of the projects in the Incentive Program. The form provides information on changes in well data and description of operation, and average monthly production and injection.

II. Comment Procedures

The EIA invites prospective respondents and users of the data from this collection to comment within 30 days of the publication of this notice. The following general guidelines are provided to assist in the responses.

(As a potential data provider:)

A. Are the instructions and definitions clear and sufficient? If not, which instructions require clarification?

B. Can the data be submitted using the definitions included in the instructions?

C. Can the data be submitted in accordance with the response time specified in the instructions?

D. How many hours, including time for computation, preparation and administrative review, will it take your organization to complete and submit the form?

E. What is the estimated cost of completing the form, including direct and indirect costs associated with the data collection? Direct costs should include all one-time and recurring costs, such as development, assembly, equipment, ADP, and other administrative costs, directly attributable to providing this information?

G. How can this form be improved?

(As a potential data user:)

A. Can your company analysts use data at the levels of detail indicated on the forms?

B. For what purpose would you use these data? (Be specific.)

C. How could the form be improved to better meet your specific data needs?

D. Are there alternative sources of data, and do you now use them? What are their deficiencies?

EIA is also interested in receiving comments from persons as to their views on the need for the collection of this information.

Comments or summaries of comments submitted in response to this notice will be included in the request for Office of Management and Budget approval of this data collection and will become a matter of public record.

Issued in Washington, DC, on May 9, 1985.

Yvonne M. Bishop,

Director, Statistical Standards, Energy Information Administration.

[FR Doc. 85-11694 Filed 5-14-85; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. RE84-3-001]

Alabama Power Co.; Application for Exemption

May 9, 1985.

Take notice that Alabama Power Company (APC) filed an application on April 26, 1985, for exemption from

certain requirements of Part 290 of the Federal Energy Regulatory Commission's (FERC) regulations concerning collection and reporting of cost of service information under Section 133 of the Public Utility Regulatory Policies Act (PURPA), Order No. 48 (44 FR 58687, October 11, 1979). Exemption is sought from the requirement to file on or prior to June 30, 1986, and biennially thereafter, information on the costs of providing electric service as specified in Subparts B, C, D, and E of Part 290.

In its application for exemption APC states, in part, that it should not be required to file the specified data for the following reasons:

> In view of the extent to which the Section 133 data filings duplicate information that is readily available from other sources, and the very limited utilization of the Section 133 data, it is apparent that the benefits, if any, of such filings do not offset the effort and costs associated with compiling the data. The value of this data collection falls far short of the burdens it imposes. It is in the best interest of APC and its customers for FERC to grant APC a permanent exemption from the filing requirements of Section 133 as requested.

Copies of the application for exemption are on file with FERC and are for public inspection. FERC's regulations require that said utility also apply to any state regulatory authority having jurisdiction over it to have the application published in any official state publication in which electric rate change applications are usually noticed, and that the utility publish a summary of the application in newspapers of general circulation in the affected jurisdiction.

Any person desiring to present written views, arguments, or other comments on the application for exemption should file such information with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, on or before 45 days following the date this notice is published in the **Federal Register**. Within that 45 day period, such person must also serve a copy of such comments on:

Mr. Elmer B. Harris, Alabama Power Company, 600 North 18th Street, P.O. Box 2641, Birmingham, Alabama 35291

and

Mr. S. Eason Balch, Jr., Balch and Bingham, P.O. Box 306, Birmingham, Alabama 35201.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-11720 Filed 5-14-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP85-144-000]

Algonquin Gas Transmission Co.; Notice of Change in Tariff Under Rate Schedule I-2

May 8, 1985.

Take notice that Algonquin Gas Transmission Company ("Algonquin Gas") on May 2, 1985 tendered for filing the following tariff sheets to its FERC Gas Tariff, Second Revised Volume No. 1:

Second Revised Sheet Nos. 323, 324, and 325—Rate Schedule I-2
Third Revised Sheet Nos. 639 and 640—General Terms and Conditions

Algonquin Gas states that the above-mentioned tariff sheets are being filed to incorporate into Algonquin Gas' FERC Gas Tariff, Second Revised Volume No. 1, the expansion of Rate Schedule I-2 to render interruptible service under Rate Schedule I-2 to include the winter period, November 16 through April 15 of each year.

Algonquin Gas, further states that the expansion of the service to include winter period deliveries may bring deliveries within the period that Algonquin Gas generally operates its compressor facilities. Accordingly, Rate Schedule I-2 is being amended to include a fuel reimbursement provision as is reflected in similar provisions of other existing rate schedules.

Algonquin Gas proposes the effective date of said tariff sheets to be June 1, 1985.

Algonquin Gas notes that a copy of this filing is being served upon each affected party and interested state commissions.

Any person desiring to be heard or to protest and filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, DC 20426, in accordance with Rule 211 and 214 of the Commission's rule of practice and procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before May 15, 1985. Protests will be considered by the Commission in determining the appropriated 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. 85-11748 Filed 5-14-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. P-8198-001 et al.]

Ball Club Associates; Surrender of Preliminary Permits

May 9, 1985.

Take notice that the following preliminary permits have been surrendered effective as described in Standard Paragraph I at the end of this notice.

1. Ball Club Associates

[Project No. 8198-001]

Take notice that Ball Club Associates, Permittee for the proposed Roxanne Nevenner Project No. 8198, has requested that its preliminary permit be terminated. The preliminary permit was issued on September 17, 1984, and would have expired on February 28, 1986. The project would have been located on the Mississippi River in Itasca County, Minnesota. The Permittee states that a preliminary study found that the project would not be economically feasible to develop at this time.

The Permittee filed the request on April 8, 1985.

2. Carter County Associates

[Project No. 8348-001]

Take notice that Carter County Associates, Permittee for the proposed Julie White Project No. 8348, has requested that its preliminary permit be terminated. The preliminary permit was issued on December 4, 1984, and would have expired on May 31, 1986. The project would have been located on Little Sandy River in Carter County, Kentucky. The Permittee states that a preliminary study found that the project would not be economically feasible to develop at this time.

The Permittee filed the request on April 8, 1985.

3. Clyde and Rubie Beverland

[Project No. 7818-001]

Take notice that Clyde and Rubie Beverland, Permittee for Lava Creek Hydroelectric Project No. 7819, has requested that its Preliminary Permit be terminated. The preliminary permit was issued on June 19, 1984, and would have expired on November 30, 1985. The project would have been located Lava Creek, near Arco, within the U.S. lands administered by BLM in Butte County, Idaho.

The Permittee filed the request on March 25, 1985.

4. Greenwich Associates

[Project No. 8008-001]

Take notice that Greenwich Associates, Permittee for the proposed

Lower Greenwich Project No. 8008, has requested that its preliminary permit be terminated. The preliminary permit was issued on November 27, 1984, and would have expired on April 30, 1986. The project would have been located on the Battenkill River in Washington County, New York. The Permittee states that a preliminary study found that the project would not be economically feasible to develop at this time.

The Permittee filed the request on April 8, 1985.

5. Hamilton Associates

[Project No. 7886-001]

Take notice that Hamilton Associates, Permittee for the Jay Snelgrove Project No. 7886, has requested that its preliminary permit be terminated. The preliminary permit for Project No. 7886 was issued on August 29, 1984, and would have expired on July 31, 1986. The project would have been located on the South Fork Nooksack River in Skagit County, Washington.

The Permittee filed the request on April 8, 1985.

6. Newhalem Associates

[Project No. 7870-001]

Take notice that Newhalem Associates, Permittee for the Kent Wallin Project No. 7870, has requested that its preliminary permit be terminated. The preliminary permit for Project No. 7870 was issued on September 24, 1984, and would have expired on August 31, 1986. The project would have been located on Illobot Creek in Skagit County, Washington, within the Mt. Baker National Forest.

The Permittee filed the request on April 8, 1985.

7. Northwest Power Company, Inc.

[Project No. 6578-003]

Take notice that Northwest Power Company, Inc., Permitte for the proposed Grouse Creek Project No. 6578, has requested that its perliminary permit be terminated. The perliminary permit was issued on May 5, 1983, amended on June 27, 1984, and would have expired April 30, 1986. The project would have been located on Grouse Creek in Humboldt County, California.

The Permitte filed the request on April 8, 1985.

8. Puget Sound Power & Light Company

[Project No. 5402-004]

Take notice that Puget Sound Power & Light Company, Permitte for the West Fork Miller River Project No. 5402, has requested that its preliminary permit be terminated. The preliminary permit for Project No. 5402 was issued on September 27, 1982, and would have expired on August 31, 1985. The project would have been located on the West Fork Miller River in King County, Washington.

The Permittee filed the request on April 4, 1985.

9. Schneider Hydropower Company/ Energenics Systems Inc.

[Project No. 8061-001]

Take notice that the Schneider Hydropower Company/Energenics Systems Inc. Permittee for the Norristown Project No. 8061 located on the Schuylkill River in Chester and Montgomery Counties, Pennsylvania has requested that its preliminary permit be terminated. The preliminary permit was issued on September 17, 1984, and would have expired on February 28, 1986. The Permittee states that analysis of the Norristown Project did not indicate feasibility for development.

The Permittee filed the request on April 18, 1985.

10. Schneider Hydropower Company/ Energenics Systems Inc.

[Project No. 8064-001]

Take notice that the Schneider Hydropower Company/Energenics Systems Inc. Permittee for the Vincent Dam Project No. 8064 located on the Schuylkill River in Chester and Montgomery Counties, Pennsylvania has requested that its preliminary permit be terminated. The preliminary permit was issued on September 18, 1984, and would have expired on February 28, 1986. The Permittee states that analysis of the Vincent Dam Project did not indicate feasibility for development.

The Permittee filed the request on April 18, 1985.

Standard Paragraphs:

I. The preliminary permit shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR § 385.2007 in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-11727 Filed 5-14-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RE 84-1-001]

Central Illinois Public Service Co.; Application for Exemption

May 9, 1985.

Take notice that Central Illinois Public Service Company (CIPS) filed an application on April 11, 1985, for exemption from certain requirements of Part 290 of the Federal Energy Regulatory Commission's (FERC) regulations concerning collection and reporting of cost of service information under Section 133 of the Public Utility Regulatory Policies Act (PURPA), Order No. 48 (44 FR 58667, October 11, 1979). Exemption is sought from the requirement to file on or prior to June 30, 1986, and biennially thereafter, information on the costs of providing electric service as specified in Subparts B, C, D, and E of Part 290.

In its application for exemption CIPS states, in part, that it should not be required to file the specified data for the following reasons:

CIPS' continued compliance with Part 290 is unlikely to serve the purposes of Section 133 of PURPA. Since the Illinois Commerce Commission has completed the consideration of ratemaking standards mandated by Title I of PURPA, and since Part 290 information is unlikely to be necessary or utilized to any significant extent by either the Illinois Commerce Commission or intervenors in any CIPS rate proceeding, CIPS submits that its incurrence of expected substantial costs in connection with future Part 290 filings would be unjustified and that the requirements imposed by Part 290 constitute an unwarranted burden on CIPS.

The Illinois Commerce Commission supports the applicant's request for a blanket exemption from the filing requirements of PURPA Section 133 and 18 CFR Part 290 for the June 30, 1986 filing and all subsequent filings.

Copies of the application for exemption are on file with FERC and are for public inspecition. FERC's regulations require that said utility also apply to any state regulatory authority having jurisdiction over it to have the application published in any official state publication in which electric rate change applications are usually noticed, and that the utility publish a summary of the application in newspapers of general circulation in the affected jurisdiction.

Any person desiring to present written views, arguments, or other comments on the application for exemption should file such information with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426., on or before 45 days following the date this notice is published in the **Federal Register.** Within that 45 day period, such person

must also serve a copy of such comments on: Mr. Carl F. Wall, Vice President, Central Illinois Public Service Company, 607 East Adams Street, Springfield, Illinois 62701.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-11721 Filed 5-14-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP83-106-001 et al.]

Colorado Interstate Gas Co. et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. Colorado Interstate Gas Company

[Docket No. CP83-106-001]

May 8, 1985.

Take notice that on April 18, 1985, Colorado Interstate Gas Company (Applicant), Post Office Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP83-106-001, pursuant to Section 7 of the Natural Gas Act, an amendment to its pending application in Docket No. CP83-106-000, reflecting revisions to the maximum daily volumes obligations (MDVO) requested by K N Energy, Inc. (K N), all as more fully set forth in the amendment which is on file with the Commission and open to public inspection.

Applicant states the amendment revises the MDVO's for the towns of Lakin, Deerfield, and Holcomb, Kansas. Applicant states that these towns are currently served by K N pursuant to a gas exchange agreement (agreement) dated March 15, 1968, as amended, between K N and Applicant, but that upon termination of the agreement as proposed in the pending application in Docket No. CP83-106-000, these towns would be added as sales delivery points under the existing service agreement between Applicant and K N. All other aspects of the original application in Docket No. CP83-106-000 remain unchanged.

Comment date: May 29, 1985, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

2. Northwest Central Pipeline Corporation

[Docket No. CP85-451-000]

May 8, 1985.

Take notice that on April 19, 1985, Northwest Central Pipeline Corporation (Northwest Central), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP85-451-000 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of compression, pipeline and appurtenant facilities, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Northwest Central requests authority to install two 600 horsepower compressors and appurtenances at the Chanute compressor station in Allen County, Kansas. Northwest Central also requests authority to construct and operate 5.1 miles of 12-inch pipeline and appurtenances in Allen County, Kansas. The proposed facilities would enable Northwest Central to transport 15,000 Mcf per day of natural gas production available from the Cambridge 16-inch pipeline north to its Humbold compressor station, it is stated. Production in the area presently is limited due to facilities and pressure conditions, it is explained.

Northwest Central states that the estimated cost of the proposed facilities is $1,904,000, which would be paid from treasury cash.

Comment date: May 29, 1985, in accordance with Standard Paragraph F at the end of this notice.

3. K N Energy, Inc.

[Docket No. CP85-460-000]

May 8, 1985.

Take notice that on April 24, 1985, K N Energy, Inc. (Applicant), P.O. Box 15265, Lakewood, Colorado 80215, filed in Docket No. CP85-460-000 a request pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct and operate on-system sales taps for delivery of gas to new or existing direct retail customers, under the certificate issued in Docket Nos. CP83-140-000 and CP83-140-001, as amended in Docket No. CP83-140-002, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Applicant proposes the construction and operation of 5 sales taps to various end-users located along its jurisdictional pipelines. Applicant has proposed sale of approximately 67 Mcf on a peak day and approximately 4,520 Mcf of natural gas on an annual basis to 5 residential end-users. It is stated that the proposed sales taps are not prohibited by any of Applicant's exisiting tariffs and that the additional taps would have no significant impact on its peak day and annual deliveries. It is further stated that the gas delivered and sold by the Applicant to the various end-users would be priced in accordance with the currently filed rate schedules authorized by the applicable state or local regulatory body having jursidciton. The name of each customer, location of taps, the quantity of gas to be sold and the end use of gas is as follows:

Customer	Location of tap	Approximate quantity to be sold (Mcf)		End use of gas
		Peak day	Annual	
Leland Potter	Franklin Co., Nebraska	30	2,400	Grain drying.
Central Contracting Corporation	Buffalo Co., Nebraska	10	600	Small commercial.
Ralph Katzberg	Adams Co., Nebraska	25	800	Irrigation.
Richard Nash	Goshen Co., Wyoming	2	120	Domestic.
McConathy Production Company, Inc	Kearny Co., Kansas	10	600	Small commercial.

Comment date: June 24, 1985, in accordance with Standard Paragraph G at the end of this notice.

4. Eastern Shore Natural Gas Company

[Docket No. CP85-89-001]

May 7, 1985.

Take notice that on April 18, 1985, Eastern Shore Natural Gas Company (Applicant), P.O. Box 615, Dover, Delaware 19903-0615, filed in Docket No. CP85-89-001 an amendment to its pending application filed on November 6, 1984, in Docket No. CP85-89-000 pursuant to Section 7(c) of the Natural Gas Act so as to reflect changes in its request for a certificate of public convenience and necessity authorizing Applicant to provide additional firm contract demand service to several of its existing customers, initiate firm storage service under two new rate schedules to several of its existing customers, construct and operate certain new pipeline and compressor facilities required to provide the additional firm sales and storage service, reduce its currently authorized firm service to Stauffer Chemical Company from 3,600 dt equivalent of gas per day to 2,800 dt equivalent of gas per day, and increase interruptible service to several of its existing customers, all as more fully set forth in the amendment which is on file with the Commission and open to public inspection.

It is indicated that in the application filed November 6, 1984, Applicant proposed to provide additional firm contract demand service to several of its

existing jurisdictional customers and to one direct sale customer totaling 4,225 dt equivalent of gas per day effective November 1, 1984, and November 1, 1985. Furthermore, Applicant proposes to render firm storage service to several of its existing customers up to 50,000 dt equivalent of storage capacity and up to 1,000 dt equivalent per day of withdrawal capability effective November 1, 1984, under a proposed Leidy storage service, and provide up to 1,300 dt equivalent per day of withdrawal capability effective November 1, 1984, and an additional 35,000 dt equivalent of storage capacity and 700 dt equivalent per day of withdrawal capability, effective November 1, 1985, under a proposed Rate Schedule CWS. Applicant indicaeted that it proposesd to construct and operate on its system 9.65 miles of 12-inch looping, 11.55 miles of 10-inch looping, and two 360 horsepower compressor units, totaling $4,949,597, for the 1984–85, 1985–86 winter seasons. Applicant also proposed to reduce Stauffer Chemical Company's daily contract demand from 3,600 dt equivalent of gas per day to 2,800 dt equivalent per day and proposed to increase the level of interruptible gas service to four of its direct sale customers by an additional 70,950 dt equivalent of gas per day.

Applicant requests authorization in Docket No. CP85–89–001, to increase the firm contract demand service to several of its existing jurisdictional customers and to one direct sale customer in the following amounts:

Customer	Additional quantity requested (dt per day)			
	Current contract demand	Nov. 1, 1984	Nov. 1, 1985	Total additional quantity
Delaware Division	6,230	780	295	1,075
Citizens Division	3,105	290	100	390
Easton Utilities Commission	1,515	30	30	60
American Hoechst Corporation	100	100	0	100
Total (dt per day)		1,200	425	1,625

It is indicated that Columbia Gas Transmission Corporation (Columbia) would amend its application in Docket No. CP85–94–000 to reflect the new firm service being proposed by Applicant.

Applicant further requests authorization to render firm storage service to the following customers which have indicated a desire to enter into service agreements under two proposed initial rate schedules, the Leidy storage service (LSS) and the Columbia winter service (CWS)

RATE SCHEDULE LSS

[Effective Nov. 1, 1984 (or such later date as the Commission may authorize)]

Customer	Storage withdrawal demand (dt per day)	Storage capacity (dt)
Delaware Division	580	29,000
Citizens Division	200	10,000

RATE SCHEDULE LSS—Continued

[Effective Nov. 1, 1984 (or such later date as the Commission may authorize)]

Customer	Storage withdrawal demand (dt per day)	Storage capacity (dt)
Cambridge Gas Co.	110	5,500
Total	890	44,500

RATE SCHEDULE CWS OR CONTRACT*

Customer	Nov. 1, 1984 (or such later date as the Commission may authorize)		Nov. 1, 1985	
	Storage withdrawal demand (dt per day)	Storage capacity (dt)	Storage withdrawal demand (dt per day)	Storage capacity (dt)
American Hoechst Corporation*	0	0	50	2,500
Formosa Plastics Corporation*	350	17,000	0	0
Delaware Division	810	40,500	380	19,000
Citizens Division	200	10,000	220	11,000
Cambridge Gas	0	0	100	5,000
Total	1,360	68,000	750	37,500

Applicant states that the LSS storage service would still be provided pursuant to an underlying storage service provided to Applicant by Transcontinental Gas Pipe Line Corporation under authority granted by the Commission on October 3, 1984, in Docket No. CP84–335–000. The terms and conditions pertaining to this service are set forth in Applicant's *pro forma* Form of Service Agreement and Rate Schedule LSS included as Exhibit P of the amendment.

It is indicated that the CWS storage service would still be provided by Applicant pursuant to an underlying storage service proposed under Columbia's Rate Schedule WS pending the Commission's action in Docket No. CP85–94–000. Applicant states that Columbia would amend its application in Docket No. CP85–94–000 to reflect the revised storage service being proposed by Applicant. The terms and conditions pertaining to this service are set forth in Applicant's *pro forma* Form of Service Agreement and Rate Schedule CWS included in Exhibit P of the amendment.

Applicant also requests authorization to construct and operate new pipeline and compressor facilities required to (1) accommodate the increased contract demand and firm storage service requested by its customers to become effective November 1, 1984 (or such later date as the Commission may authorize) and November 1, 1985, and (2) meet the new design day requirements based on a 67 degree day instead of the past 60 degree day as a design day. Applicant states that it requires the construction and installation of 8.7 miles of 12-inch loop line on its existing 8-inch Parkersburg, Pennsylvania line; 11.1 miles of 10-inch loop line on its existing 6-inch line south of Felton, Delaware, and a compressor station 0.6 mile south of Applicant's existing interconnection with Columbia, located at Dalesville, Pennsylvania, to serve new design day requirements and increased requirements. Applicant submits that the compressor station would be tied into the interconnection with 3,200 feet of 12-inch line and would include two 360-horsepower untis, one of which would be a back-up unit. Applicant states that the estimated cost of these facilities would be approximately $4,621,306 and would be financed initially by internally generated funds together with short-term notes.

To serve the additional firm contract demand and storage service requirements and new design day requirements proposed for the 1985–86 winter season, Applicant requests authorization to construct and operate 2.0 miles of 12-inch loop line on its existing 8-inch Parkersburg line and 2.20 miles of 10-inch loop line on its existing 6-inch line south of Felton, Delaware. Applicant states that the estimated costs of these facilities would be approximately $651,239 also to be financed initially by internally generated funds together with short-term notes.

Applicant still requests authorization to reduce the contract demand of Stauffer Chemical Company, a direct sales customer, from 3,600 dt equivalent of gas per day to 2,800 dt equivalent of gas per day.

Lastly, Applicant still requests authorization to increase the level of interruptible gas service for four of its direct sale customers shown below.

Customer	Current interruptible sales authority (dt per day)	Proposed additional interruptible sales authority (dt per day)	Proposed total interruptible sales authority (dt per day)
City of Dover	15,000	25,000	40,000
Getty Refining and Marketing Company (Getty)	20,000	40,000	60,000
Stauffer Chemical Company	3,050	2,950	6,000
Formosa Plastics Corporation	3,000	3,000	6,000

Applicant states that no additional facilities would be required to render the increased interruptible service at the proposed increased levels, with the exception of an additional meter at the Getty refining complex. Applicant requests authority to install and operate this additional meter as needed at an estimated cost of $10,000.

Applicant indicates that the additional interruptible sales proposed would have no impact upon Applicant's curtailment plan and include no new high-priority or essential agricultural uses, as defined in the Natural Gas Policy Act of 1978.

Comment date: May 22, 1985, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

5. Panhandle Eastern Pipe Line Company

[Docket No. CP85-440-000]

May 8, 1985.

Take notice that on April 16, 1985, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77001, filed in Docket No. CP85-440-000 a request pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18. CFR 157.205) for authorization to transport natural gas on behalf of Wagner Castings Company (Wagner) under the certificate issued in Docket No. CP83-83-000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Panhandle proposes to transport up to 2,500 Mcf of natural gas per day on an interruptible basis on behalf of Wagner pursuant to a transportation agreement dated March 12, 1985. Panhandle states it requests authorization from the date automatic authorization expires until the earlier of (1) 12 months from March 12, 1985, (2) termination of authorization as provided in Subpart F of Part 157 of the Commission's Regulations, or (3) termination of the transportation agreement by either of the parties.

Panhandle states that Wagner has entered into a natural gas purchase agreement with Grand Resources, Inc. (Grand), for the purchase of up to 1.5 billion Btu of natural gas per day. Panhandle further states it would receive the natural gas at an existing point of receipt between Panhandle and Grand in Cimarron County, Oklahoma, and would then transport and redeliver such natural gas, less a four percent reduction for fuel, to Illinois Power Company (Illinois Power) at an existing point of connection in Macon County, Illinois. It is explained that Illinois Power in turn would make ultimate delivery to Wagner for use at its facilities in Decatur, Illinois. Panhandle indicates that Illinois Power is an existing jurisdictional customer of Panhandle and Wagner is an end-use customer of Illinois Power.

Pannhandle proposes to charge Wagner a transportation rate pursuant to its Rate Schedule OST, which rate is currently 42.0 cents, plus 1.24 cents GRI surcharge, for each million Btu redelivered at the point of redelivery. Panhandle states that the Rate Schedule OST excess service rate is currently 87.0 cents, plus 1.24 cents GRI surcharge, for each million Btu redelivered at the point of redelivery.

Panhandle indicates that the natural gas would be used at Wagner's facility for heat treat furnaces, scrap heaters, ladle burners and make up air. Panhandle also indicates that no intermediary participated in the transaction between Grand and Wagner.

Panhandle also requests flexible authority to add or delete receipt/delivery points associated with sources of gas acquired by the end-user. The flexible authority requested applies only to points related to sources of gas supply, not to delivery points in the market area. Panhandle will file a report providing certain information with regard to the addition or deletion of sources of gas as further detailed in the application and any additional sources of gas would only be obtained to constitute the transportation quantities herein and not to increase those quantities.

Comment date: June 24, 1985, in accordance with Standard Paragraph G at the end of this notice.

6. Sea Robin Pipeline Company

[Docket No. CP85-432-000]

May 8, 1985.

Take notice that on April 12, 1985, Sea Robin Pipeline Company (Applicant), P.O. Box 1478, Houston, Texas 77001, filed in Docket No. CP85-432-000 an application pursuant to Section 7(C) of the Natural Gas Act for a certificate of public convenience and necessity authorizing Applicant to transport up to 500 Mcf of natural gas per day for Columbia Gas Transmission Corporation (Columbia Gas), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that it commenced the proposed transportation service on February 8, 1984, under the short-term authorization in Docket No. ST84-263-000 under Order No. 60. Applicant further states that it entered into a transportation agreement with Columbia Gas dated December 4, 1984, to provide the transportation sevice proposed herein for an initial term of five years from the certificate date and year to year thereafter.

More specifically, Applicant states that Columbia Gas would cause gas attributable to production from Eugene Island Area Block 273, offshore Louisiana, to be measured in Eugene Island Area Block 260, platform B, and delivered to Applicant at an existing subsea tap on Applicant's pipeline in Block 273, Eugene Island Area, from which point Applicant proposes to transport and redeliver the gas for the account of Columbia Gas to Columbia Gulf Transmission Company at the terminus of Applicant's system near Erath, Louisiana. Applicant proposes to charge Columbia Gas its currently effective demand charge of $3.82 as well as its currently effective commodity charge of 73.0 cents for each Mcf of natural gas transported.

Comment date: May 29, 1985, in accordance with Standard Paragraph F at the end of this notice.

7. Southern Natural Gas Company

[Docket No. CP85-464-000]

May 6, 1985.

Take notice that on April 25, 1985, Southern Natural Gas Company (Southern), P.O. Box 2563, Birmingham, Alabama 35202, filed in Docket No. CP85-464-000 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the sale of natural gas to Southern's jurisdictional customers pursuant to the terms of a Flexible Discount Rate Schedule proposed to be in effect from May 1, 1985, through October 1, 1985, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

It is stated that over the course of the last several years Southern has experienced a precipitous decline in sales on its system from an annual level of 627,000,000 Mcf in 1981 to 526,000,000 Mcf in 1982, 489,000,000 Mcf in 1983 and 469,000,000 Mcf in 1984. It is further stated that while certain of the factors which caused the sales decline in the early 1980's, for example, the economic recession and concomitant plant closings in the Southeast, have since moderated, certain other factors such as reduced purchases by Southern's pipeline customers, conversion of some industrial boilers to coal, conservation and competition from alternative fuels, continue to contribute to the downward sales spiral on Southern's system. As a result of these factors, Southern initially projected that its sales in 1985 would further decline to approximately 445,000,000 Mcf. Recent and radical changes in the market conditions in Southern's service area, however, resulting from increased competition from gas transportation services which are being used to transport gas into and displace sales to Southern's core-markets make it clear that Southern's original sales estimate for 1985 is considerably overstated.

In order to respond to the current competitive environment and with the goal of abating, if at all possible, further sales losses on Southern's system, Southern proposes herein to sell gas to all of its jurisdictional customers at a discounted rate pursuant to the terms of a proposed Flexible Discount Rate Schedule. It is asserted that the proposed rate schedule would provide an incentive for all of Southern's existing customers to maintain purchases at or near the levels at which they purchased during 1984. Southern states that thjis should not only assist Southern in preventing further erosion in its sales level, but should be beneficial to Southern's customers since purchases at the discount rate would reduce their average cost of gas from Southern.

Under the terms of Southern's discount rate schedule, which is proposed to be in effect from May 1, 1985, through October 31, 1985, any existing jurisdictional customer of Southern would be eligible to purchase volumes of gas in excess of a threshold level at a discounted rate, if the purchase is made at existing points on Southern's system. Under the terms of the proposed Flexible Discount Rate Schedule, for each month during the period from May 1, 1985, through October 31, 1985, the threshold level would be the lesser of (i) 42.5 percent of the customer's contract demand during the applicable month or (ii) 90 percent of the volume of gas purchased by that customer during the corresponding month in 1984. All volumes of gas sold to any of Southern's existing jurisdictional customers in excess of that threshold volume would be priced at the applicable discount rate, it is stated.

Southern states that there are no end-use restrictions applicable to gas purchased under the Flexible Discount Rate Schedule. Accordingly, all of a distributor's customers, industrial, commercial and residential, would through their distributor have equal access to and be benefited by the discount gas sold under the proposed rate schedule.

Since the discount sales must be made at existing delivery points on Southern's system, Southern does not seek authorization to construct any new facilities in connection with the implementation of its Flexible Discount Rate Schedule.

It is stated that because of the constantly changing competitive circumstances in Southern's service areas Southern has designed its Flexible Discount Rate Schedule to provide it with the maximum degree of flexibility to compete for sales within each of its service areas. Southern, therefore, proposes to establish a flexible discount rate which from month to month and from zone to zone may range from a specified minimum level to a specified maximum level. Specifically, Southern proposes that the minimum rate for sales made under the Flexible Discount Rate Schedule would be the commodity cost of gas supply reflected in Southern's purchased gas adjustment (PGA) filing which is in effect at the time of the sale plus variable costs and the GRI surcharge. It is explained that the maximum rate under the Flexible Discount Rate Schedule would be Southern's commodity cost of gas supply reflected in its then effective PGA plus variable costs, the GRI surcharge and all fixed costs assigned to the commodity component of Southern's rates with the exception of one-half of the return on equity and related taxes. All discount rates posted under the Flexible Discount Rate Schedule within the minimum and maximum ranges described above would be less than the jurisdictional commodity rates approved by the Commission in Docket No. RP83-58-000, it is asserted.

Southern states that on or before the first day of each month during which the Flexible Discount Rate Schedule is in effect Southern would file a revised tariff sheet to be effective on the first day of that month setting forth the discount rates to be applicable during that month. In addition, Southern requests authorization to file a revised tariff sheet once during the course of each month to reduce any of the discount rates which are in effect during that month in response to changes in market conditions. It is stated that rates established under Southern's Flexible Discount Rate Schedule would not be subject to refund as long as they fall within the minimum and maximum levels described above. Southern requests such waivers of the Commission's Regulations as may be necessary in order to permit the monthly rate changes as proposed herein. In addition, Southern requests a waiver of the normal filing fee for Section 4 rate changes since the rate changes described herein will be purely ministerial in nature.

Since Southern currently has pending before the Commission an out-of-period PGA rate decrease with a proposed effective date of May 1, 1985, which reflects a lower commodity cost of gas supply than that reflected in Southern's currently effective PGA, Southern is unable at the present time to specify the discount rates to be applicable during the month of May. Accordingly, Southern requests that it be granted such waivers of the Commission's Regulations as may be necessary in order to permit Southern to place its Flexible Discount Rate Schedule in effect on May 1, 1985, with whatever rates may be determined appropriate by Southern at that time within the range described herein, depending on the outcome of Southern's PGA filing.

It is stated that in order to ensure that sales made under the Flexible Discount Rate Schedule would not generate amounts to be charged or returned to Southern's customers through future PGA surcharges Southern would exclude from its purchased gas costs used to compute Account 191 of the Uniform System of Accounts Prescribed for Natural Gas Companies an amount computed by multiplying the percentage of Southern's total sales which are made under the Flexible Discount Rate Schedule each month the rate schedule is in effect by Southern's actual commodity cost of gas supply incurred during that month. It is explained that under this procedure Southern alone would be at risk for any underrecovery of costs as a result of sales made under its Flexible Discount Rate Schedule. Southern, therefore, proposes to retain all revenues from sales under its Flexible Discount Rate Schedule.

Southern states that the Flexible Discount Rate Schedule proposed herein

would afford Southern the flexibility to target its discount rate to meet changing market conditions in each of its zones while at the same time assuring that all customers who purchase gas under the discount rate schedule would receive at least a minimum discount. The proposal is designed, moreover, to ensure that Southern bears all costs in connection with sales under the proposed rate schedule such that the implementation of the rate schedule would not result in any shifting of costs among Southern's customers or any increase in costs to any group of customers or result in amounts to be charged or returned to Southern's customers through future PGA surcharges. It is stated that rather, to the extent that a customer takes advantage of Southern's proposed discount rate schedule, that customer would be benefited by the resulting reduction in its average cost of gas purchased from Southern.

Comment date: May 23, 1985, in accordance with Standard Paragraph F at the end of this notice.

8. Trunkline Gas Company

[Docket No. CP85-453-000]

May 8, 1985.

Take notice that on April 19, 1985, Trunkline Gas Company (Trunkline), Post Office Box 1642, Houston, Texas 77001, filed in Docket No. CP85-453-000 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing (1) increases in sales of natural gas to twenty-seven existing Small General Services (SG) customers; (2) an increase in sales of natural gas to Central Illinois Public Service Company (CIPSCO), Trunkline's only existing General Service (G) customer; and (3) a change in service classification for CIPSCO such that service would be provided under its Rate Schedule SG in place of its Rate Schedule G, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Trunkline states that the stipulation and agreement filed on March 22, 1985, in Truckline's general rate proceeding in Docket No. PR83-93 (Phase 1), *et al.*, provides for the maximum daily contract quantities under the Rate Schedule SG to be increased from 4,000 Mcf to 10,000 Mcf. It is stated that the proposed increases in sales to SG customers would thus be contingent upon Commission approval of that stipulation and agreement.

Trunkline states that twenty-seven of its SG customers have requested increases in maximum daily contract quantities totaling 38,125 Mcf for peak day protection, growth of residential usage, and potential new industrial markets. The twenty-seven customers are listed in the Attachment. Trunkline further proposes to increase sales to CIPSCO from 11,889 Mcf of gas per day to 15,390 Mcf per day in Zone 1 and from 4,900 Mcf of gas per day to 7,500 Mcf per day in Zone 2. Trunkline proposes to serve CIPSCO pursuant to multiple SG service contracts which would qualify under the revised contract demand limitation of 10,000 Mcf per day. It is stated that this change in service classification requested by CIPSCO was included in the settlement of the issues in the stipulation and agreement filed March 22, 1985, in Docket No. RP83-93 (Phase 1), *et al.* Trunkline further states that the term of the contracts have been extended to October 31, 1993.

Trunkline states that the proposed increases in contract demand would not affect service to other Trunkline customers because sufficient capacity is available to provide the additional peak service. It is further explained that the proposed increases total 44,226 Mcf of gas per day and are therefore small in relation to Truckline's total gas sales and would have no significant effect on Trunkline's gas supply.

Customer	Current (Mcfd)	Requested (Mcfd)	Increase (Mcfd)
Illinois:			
Cisne, village of	650	800	150
Cia City, village of	850	1,100	250
Fairfield, village of	4,000	6,200	2,200
Greenup, village of	2,000	4,000	2,000
Flora, city of	4,000	6,000	2,000
Jeffersonville, village of	275	400	125
Karnak, village of	365	400	35
Kaskaskia Gas Company	400	600	200
Louisville, village of	1,050	1,200	150
Milford, village of	1,450	2,000	550
Pittsburg, village of	251	300	49
Sims, village of	242	300	58
United Cities Gas Company	4,000	10,000	2,000
Vienna, city of	1,300	1,400	100
Indiana: Renesselaer, city of	4,000	6,600	2,600
Kentucky:			
Arlington, city of	524	4,000	3,476
Bardwell, city of	850	4,000	3,150
Clinton, city of	1,100	4,000	2,900
LaCenter, city of	1,400	4,000	2,600
Wickliffe, city of	950	4,000	3,050
Mississippi:			
Byhalia, town of	850	4,000	3,150
Enlex, Inc.	800	1,900	1,100
Union Gas Company	900	1,200	300
Tennessee:			
Troy, town of	500	1,000	500
Lake County Utility District	3,500	4,000	500
Newbern, town of	1,800	2,400	600
City of Somerville	1,525	1,647	122
Total	39,322	77,447	38,125

Comment date: May 29, 1985, in accordance with Standard Paragraph F at the end of this notice.

9. United Gas Pipe Line Company

[Docket No. CP85-382-000]

May 8, 1985.

Take notice that on March 22, 1985, United Gas Pipe Line Company (United), Post Office Box 1478, Houston, Texas 77001, filed in Docket No. CP85-382-000 an application, as supplemented April 25, 1985, pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon a transportation service for Southern Natural Gas Company (Southern), all as more fully set forth in the application on file with the Commission and open to public inspection.

It is explained that under the terms of a gas transportation agreement dated May 2, 1951, United has transported gas for Southern from a delivery point at or near Carthage, Panola County, Texas, to a point at Southern's Logansport receiving station near West Monroe, Ouachita Parish, Louisiana.

United states that the transportation agreement providing for the authorized service terminated by its own terms on October 31, 1984. United states that Southern has submitted a letter dated April 24, 1985, indicating that the transportation service by United is no longer needed and that Southern is now connecting the reserves previously delivered to United directly into its own system. United states that no abandonment of facilities is proposed.

Comment date: May 29, 1985, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment dater file with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, a motion to intervent or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by

Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecesary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to interven 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. 85-11728 Filed 5-14-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ST79-23-004 et al.]

Louisiana Intrastate Gas, a Division of CELERON Corp.; Application for Approval of Rates and Charges

May 10, 1985.

Take notice that on March 4, 1985, Louisiana Intrastate Gas, a Division of CELERON Corporation, (LIG) tendered for filing in Docket No. ST79-23-004, *et al.*, an application pursuant to section 284.123(b)(2) and section 284.144 of the Commission's regulations for approval of the rates and charges for transporting natural gas pursuant to section 311(a)(2) of the Natural Gas Policy Act of 1978 (NGPA) and sales under section 311(b) of the NGPA, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

LIG is requesting that the Commission determine that the rates of 29.8¢ per MMBtu for "regular transactions" and 36.8¢ per MMBtu for certain "incremental transactions" represent fair and equitable rates for performing such services. LIG is requesting that this new rate be effective May 1, 1985.

LIG states that it has been rendering services for a fee of 20¢ per MMBtu to each of the following companies pursuant to Petitions For Rate Approval filed in the indicated dockets (Regular Transactions):

Company name	FERC docket No.
ANR Pipeline Co	CP84-378-000
Arkla Energy Resources, a Division of Arkla, Inc.	CP81-400-000
Colfax, town of (the)	ST84-294-000
Columbia Gas Transmission Corp	ST81-165-002
Faustina Pipe Line Co	ST84-896-000
Florida Gas Transmission Co	ST84-441-000
Mid Louisiana Gas Co	ST82-229-001
Do	CP84-389-000
Do	ST79-023-003
Southern Natural Gas Co	ST81-256-001
Tennessee Gas Pipeline Co., a division of Tenneco, Inc.	ST82-479-000
Do	ST84-953-000
Do	ST81-240-002
Texas Eastern Transmission Corp	ST83-57-001
Do	ST83-242-001
Do	ST80-273
Texas Gas Transmission Corp	ST84-924-000
Do	CP81-333-000
Do	ST79-25-002
United Gas Pipe Line Co	ST82-24-001
Do	ST79-24-001

and a fee of 27¢ per MMBtu to each of the following companies pursuant to Petitions For Rate Approval filed in the indicated dockets (Incremental Transactions):

Columbia Gas Transmission Corp.	CP81-416-000
Southern Natural Gas Co	ST81-381-000
Texas Eastern Transmission Corp	ST82-433-002

LIG is requesting that effective with deliveries on or after May 1, 1985, the Commission determine that the fair and equitable rate for the regular transactions is 29.8¢ per MMBtu and for the incremental transactions is 36.8¢ per MMBtu with the MMBtu's determined on a saturated basis. As to the transportation transaction for Tennessee Gas Pipeline Company, Docket No. ST82-479-000, the proposed rate of 29.8¢ per MMBtu shall apply only to certain excess volumes.

Any person desiring to be heard or to protest said application should file a motion to intervene or a 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 May 30, 1985. 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. 85-11722 Filed 5-14-85; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 8451-002]

Mega Renewables; Withdrawal of Request To Surrender Preliminary Permit

May 7, 1985.

Take notice that Mega Renewables, Permittee for the Upper Power Project, FERC No. 8451, has requested to withdraw its request of surrender of preliminary permit for Project No. 8451. The notice of surrender of preliminary permit for Project No. 8451 was issued on April 10, 1985, and would have become effective on May 10, 1985. The project would be located on Slate Creek, in Shasta County, California.

Mega Renewables states that the surrender request was made in error. The notice of surrender of preliminary permit for Project No. 8451 is hereby considered withdrawn and the preliminary permit in effect.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-11749 Filed 5-14-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP85-132-001]

Michigan Gas Storage Co.; Notice of Filing

May 9, 1985.

Take notice that on April 30, 1985, Michigan Gas Storage Company (Storage Company) tendered for filing the following substitute revised tariff sheets to its FERC Gas Tariff, Original Volume No. 1, which amend its filing of April 15, 1985:

Eighth Revised Sheet No. 4
Substitute Eighth Revised Sheet No. 5
Substitute Second Revised Sheet No. 24E

Storage Company states that these substitute tariff sheets reduce its proposed overall rate of return from 11.65 percent to 11.25 percent.

Storage Company also submitted with this filing a revised Statement N-10, page 1 of 3. This Statement now shows that the substitute tariff sheets would

result in a reduction of $791,305 in Storage Company's cost of service.

Storage Company indicates that copies have been sent to the Michigan Public Service Commission and Consumer Power Company, Storage Company's parent and only sales customer.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a 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 May 16, 1985. 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. 85-11723 Filed 5-14-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF85-367-000 et al.]

Morton Rimer et al.; Applications for Commission Certification of Qualifying Status of Small Power Production Facilities

May 10, 1985.

On May 2, 1985, Morton Rimer, *et al.* (Applicants [1]) submitted for filing 115 applications for certification of facilities as qualifying small power production facilities pursuant to § 292.207 of the Commission's regulations. Correspondence and communications regarding these applications should be directed to the common agent of the applicants, TaxVest Wind Farms, Inc., 5950 Canoga Avenue, Suite 600, Woodland Hills, California 91367. No determination has been made that the submittal constitutes a complete filing.

Each small power production facility is located in an unincorporated section of Alamada County, California. A facility consists of one or more Micon Viking 60/13 wind turbine generators which each produce 66 kilowatts at 1,200 rpm and use wind as their energy source. The total power production capacity for the 115 applicants is about 10,164 kilowatts.

[1] Each applicant's name and assigned docket number is shown on the attached list.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition 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. All such petitions of protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. 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 petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

List of Applicants

85-367-000, Morton Rimer
85-368-000, Dante Marinelli/Walter D. Greer
85-369-000, Howard Marylander/James R. Drake
85-370-000, Gerald Blume/Peter Bryan
85-371-000, M. Stephen Davis/Altamont Wind Turbines
85-372-000, John E. Lindsey/Gerald & Sue Fisher
85-373-000, Patrict & Virginia Lawrence
85-374-000, Bruce Arnold/Ray E. Vogt
85-375-000, Ted M. Saltzman
85-376-000, Altamont Wind Turbines—c/o McGinity & Nodar
85-377-000, Michael H. Spivak/Lauri Hendler
85-378-000, Howard B. & Lois A. Wiggins
85-379-000, Robert B. Stone, MD
85-380-000, John E. & Shirley Ostheimer
85-381-000, Larry R. Mintun & Bernardita E. Mintun, Melinda A. Smith & Sidney R. Adleman
85-382-000, Joseph T. & Mary W. Bunch
85-383-000, Roger & Jacqueline Hay
85-384-000, C.J. & Telmagene Hash
85-385-000, John B. Maylord
85-386-000, Walter Bills
85-387-000, Tom S. Home
85-388-000, Jayar Investors, II
85-389-000, Jayar Investors, I
85-390-000, Drake C. Kennedy
85-391-000, Center Turbine Partnership—c/o Allen Clark
85-392-000, Terry A. Rigsby
85-393-000, Thomas Family Trust of 6-27-75 as Restated on 2-3-84
85-394-000, Martin Wenger
85-395-000, Gary R. Nelson
85-396-000, John C. & Catherine E. DeMartini
85-397-000, Seldon M. Mittleman
85-398-000, Poul & Betty Jorgenson
85-399-000, Wenger Furniture and Appliance Company
85-400-000, Benjamin D. & Lillie Templeton, Philip J. & Claire L. Storm—c/o Richard Brickman
85-400-000, Benjamin D. & Lillie Templeton, Philip J. & Claire L. Storm, c/o Richard Brickman
85-401-000, Dennis May & Don McComas Tenants in Common c/o Richard Brickman
85-402-000, George E. Brownell
85-403-000, Zelman Weingarten
85-404-000, Herbert H. Halperin and T. McAusland
85-405-000, Steven H. & Sharma Stern
85-406-000, Alex Wegner
85-407-000, Murry I. Kaufman & Richard S. Smith
85-408-000, Richard W. & Carol A. Riley
85-409-000, Melvin Goodman
85-410-000, Sarabjit & Bimaljit Singh
85-411-000, Gerald L. Miles
85-412-000, Murry Sporn
85-413-000, Melville I. & Beverly F. Singer
85-414-000, Fred Knight
85-415-000, TaxVest Altamont Wind Park Partners, I
85-416-000, Douglas K. & Kathryn A. Sauter
85-417-000, Carl S. Smetko, D.D.S./Garth G. Gardner
85-418-000, Vladimir Lange and Marilyn Lange
85-419-000, Thomas E. Sullivan
85-420-000, John P. Brunn
85-421-000, Hilton A. Green
85-422-000, Joseph E. Mueth
85-423-000, Angelo J. Minardi
85-424-000, Ernest & Lenie Rennie
85-425-000, Garber, Sokloff & VanDyke and Barry S. Sporn
85-426-000, Julie Kemper Gilliam
85-427-000, Stanley J. Goldberg, M.D.
85-428-000, Garber, Sokloff and VanDyke
85-429-000, Gilbert E. Haakh
85-430-000, Jack C. Bush
85-431-000, Richard R. Davidson & Donald L. Thornburg as Tenants in Common c/o Meridian Parts Corp.
85-432-000, J. David Rutherford
85-433-000, Buckland, Davis, *et al.* c/o Brickmand
85-434-000, Don Thorson
85-435-000, Ruben Garcia
85-436-000, Ruben Garcia/Theodore Johnson
85-437-000, Theodore M. Johnson
85-438-000, Gilbert Greene/Tom Nolce
85-439-000, Robert Sherman/J. Bradshaw, Cindy Jo Bradshaw
85-440-000, Michael B. Sherman
85-441-000, Richard C. Rue/Ed Smith c/o Hanessian & Clarke
85-442-000, Merwin & Robert Lichtenstein
85-443-000, Robert Lichtenstein
85-444-000, Robert L. Hiller
85-445-000, C.C. Poon
85-446-000, Joe Meng
85-447-000, Michael H. and Cheryl L. Spivak
85-448-000, John & Nancy L. MacDonald
85-449-000, Jayar Construction
85-450-000, Altamont Wind Systems, General Partnership
85-451-000, Robert T. Hood, Jr., M.D./Wayne R. Fukuhara
85-452-000, Charles D. Hanks
85-453-000, Lawrence H. Fuller
85-454-000, Vern L. Hightower
85-455-000, Daniel E. Moore & Craig Cudlip
85-456-000, Donald C. Leonard & Liam Carmody
85-457-000, Marco Sprintis, M.D.
85-458-000, Beach Turbine Partnership
85-459-000, Leland & Marian Zeidler
85-460-000, B.L. Hill

85-461-000, Fredrick C. and Donna R. Heitman
85-462-000, Eugene A. Petrasy & John H. Woodfin
85-463-000, Perry Potkin, *et al.*
85-464-000, Perry Potkin, *et al.*, II
85-465-000, Ted M. Saltzman
85-466-000, Sid Kamrava
85-467-000, Joseph Gerson
85-468-000, William N. Thibault
85-469-000, Vern A. Jensen
85-470-000, Natural Country Foods, Inc.
85-471-000, Fred S. Fiedler
85-472-000, Malladi & Pravina Reddy
85-473-000, Kenneth J. Lehman
85-474-000, Eddy Family Trust
85-475-000, Gerald J. Chazan
85-476-000, The Lance Family Revocable Trust, Dated August 14, 1981
85-477-000, K-W Properties
85-478-000, Nino J. Cefalu and Dwight E. Clark
85-479-000, Richard & Ruth Isabelle Fergus
85-480-000, Edwin S. Norma Altschuler/Alan & Rebecca Isarel
85-481-000, Jerry Pollen

[FR Doc. 85-11719 Filed 5-14-85; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. TA85-2-55-000 and TA85-2-55-001]

Mountain Fuel Resources, Inc.; Rate Change

May 8, 1985.

Take notice that Mountain Fuel Resources, Inc. (Mountain Fuel) on May 1, 1985, tendered for filing and acceptance Second Revised Sheet Nos. 13 and 14 to its FERC Gas Tariff, First Revised Volume No. 1, for rates applicable to service rendered under its Rate Schedule CD-1 affected by and subject to Mountain Fuel's Purchased Gas Cost Adjustment Provision (PGCA). Mountain Fuel states that in compliance with the Commission's Opinion No. 266, it has also submitted First Revised Sheet No. 70 to its FERC Gas Tariff, First Revised Volume No. 1, which reflects the 15-day remittance period for monies received by virtue of Mountain Fuel's GRI charge.

Further, Mountain Fuel has proposed to revise its PGCA so that deferred purchased gas costs would be accrued over a twelve-month period rather than a six-month period and so that such accrued deferrals would be amortized over a twelve-month period rather than a six-month period. In order to effect this revision, Mountain Fuel tendered for filing and acceptance Second Revised Sheet Nos. 58 through 60 and 62; and First Revised Sheet Nos. 61 and 63 to its FERC Gas Tariff, First Revised Volume No. 1, to be effective June 1, 1985. Mountain Fuel has requested waiver of Section 154.38(d)(4)(iv)(*d*) of the Commission's Regulations, which provides that deferred purchased gas costs be accumulated and amortized over a six month period.

Mountain Fuel states that Second Revised Sheet No. 13 reflects a decrease in both the Commodity Base Cost of Purchase Gas and the Unrecovered Purchase Gas Cost Adjustment, resulting in a net change of $(0.17214)/Dth. Mountain Fuel states the monthly commodity charge will be reduced to $2.87339/Dth, which is a $(0.01349)/Dth change from its currently effective rate of $2.88688/Dth. Mountain Fuel proposes an amortization rate of $(0.03394)/Dth, which is a $0.15865/Dth reduction to its currently effective amortization rate of $0.12471/Dth.

Mountain Fuel states that it has not reflected any change in the demand charges it incurs from its major pipeline suppliers. Mountain Fuel further states that Second Revised Sheet No. 14 reflects $0.00 projected incremental pricing for the June through November 1985 PGCA period since Mountain Fuel Supply Company, Mountain Fuel's sole sale-for-resale customer has reported $0.00 Maximum Surcharge Absorption Capability (MSAC) for its non-exempt customers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a 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 May 15, 1985. 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 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. 85-11750 Filed 5-14-85; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. TA85-3-59-000 and TA85-3-59-001]

Northern Natural Gas Co.; Purchased Gas Cost Adjustment Rate Change

May 8, 1985.

Take notice that on May 1, 1985, Northern Natural Gas Company (Northern) tendered for filing, as part of Northern's F.E.R.C. Gas Tariff, Third Revised Volume No. 1 and Original Volume No. 2, the following tariff sheets:

Third Revised Volume No. 1

Substitute Twenty-Eighth Revised Sheet No. 4b

Original Volume No. 2

Substitute Thirty-Seventh Revised Sheet No. 1c

Such substitute tariff sheets are filed to reflect certain changes in gas production mix effective in April, 1985 and pricing changes for Canadian gas which have resulted in lower gas costs which can be passed on to Northern's customers at this time.

Northern requests that the Commission grant any waivers of its regulations as may be required to permit the above substitute tariff sheets to be accepted for filing and made effective on May 1, 1985.

Also enclosed for filing with the Federal Energy Regulation Commission are six copies of the following tariff sheets to change the pagination of the tariff sheets filed on April 26, 1985 to be effective June 27, 1985 and to reflect the rate adjustments of the instant filing:

Third Revised Volume No. 1

Twenty-Ninth Revised Sheet No. 4b

Original Volume No. 2

Thirty-Eight Revised Sheet No. 1c

The Company states that copies of the filing have been mailed to each of the Gas Utility customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a 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 May 15, 1985. 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. 85-11751 Filed 5-14-85; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. RP85-13-002]

Northwest Pipeline Corp.; Notice of Filing

May 9, 1985.

Take notice that on May 1, 1985, Northwest Pipeline Corporation (Northwest) tendered for filing the following revised tariff sheets which amend its filing of Apirl 15, 1985:

First Revised Volume No. 1

Substitute Nineteenth Revised Sheet No. 10
Substitute Thirteenth Revised Sheet No. 10-A

Original Volume No. 2

Substitute Twelfth Revised Sheet No. 2
First Amended Substitute Original Sheet No. 2.1
Substitute Sixth Revised Sheet No. 2-A
Substitute Seventh Revised Sheet No. 2-B

According to Section 381.103(b)(2)(iii) of the Commission's regulations (18 CFR § 381.103(b)(2)(iii)), the date of filing is the date on which the Commission receives the appropriate filing fee, which in the instant case was not until May 3, 1985.

Northwest states the above-revised tariff sheets fulfill the requirement of the Commission's November 30, 1984, suspension order in Docket No. RP85-13-000, by eliminating all costs associated with facilities not in service as of March 31, 1985.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a 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 May 16, 1985. 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. 85-11724 Filed 5-14-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA85-2-28-000 and TA85-2-28-001]

Panhandle Eastern Pipe Line Co.; Change in Tariff

May 8, 1985.

Take notice that on May 2, 1985 Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing the following revised sheets to its FERC Gas Tariff, Original Volume No. 1:

Fifty-First Revised Sheet No. 3-A
Twenty-Eighth Revised Sheet No. 3-B

The proposed effective date of these revised tariff sheets is June 1, 1985.

Panhandle states that these revised tariff sheets reflecting modifications to Panhandle's March 1, 1985 rates, would if approved, result in a 19.96 cents per dekatherm reduction in the gas-cost portion of Panhandle's commodity rates for the remainder of the current PGA effective period through August 31, 1985, as further explained below, for those customers who elect to participate in the reduction.

Panhandle states that in compliance with Ordering Paragraph (B)(3) of the Commission's order dated February 28, 1985 in Docket Nos. TA85-1-28-000 and TA85-1-28-001, Panhandle has reflected in the revised tariff sheets submitted herewith the resultant changes in its demand and commodity rates to reflect the interim settlement rates filed by its primary pipeline supplier, Trunkline Gas Company (Trunkline). On March 25, 1985 Trunkline filed revised tariff sheets to implement interim reduced rates which rates were approved by the Commission's letter order dated April 10, 1985 in Docket No. RP83-93-006, subject to restoration of the amount of the reduction if the Stipulation and Agreement in Docket No. RP83-93 (Phase I), *et al.* is disapproved or is not acted upon by the Commission by June 20, 1985. The interim rate reduction applicable to Trunkline's Rate Schedule No. P-1, which is the rate schedule under which Panhandle purchases its gas supplies from Trunkline, became effective March 1, 1985, as conditioned by the April 10, 1985 letter order. Accordingly, the 5.96 cents interim reduction in Panhandle's rates is dependent upon and coextensive with the duration of the interim Trunkline rate reduction.

Panhandle also states that for the period from March 1, 1985 through May 31, 1985, the cost effect of the differences between the effective Trunkline rates included in Panhandle's original March 1, 1985 PGA and these reduced Trunkline rates will be reflected in the appropriate Account No. 191 deferred purchased gas cost account, as provided for in Section 18 of the General Terms and Conditions of Panhandle's FERC Gas Tariff, Original Volume No. 1 and will be included in Panhandle's next regularly scheduled PGA filing for rates effective September 1, 1985.

In addition to the above-referenced compliance adjustment, Panhandle has included in the revised tariff sheets submitted herewith a mechanism whereby any Panhandle customer who, during the period from June 1, 1985 through August 31, 1985, elects for such month or months not to participate in the 10% contractual entitlement option provided for by the Commission's omnibus SMP order of September 26, 1985 in Docket Nos. CI83-269-000, *et al.*, will receive a 14 cents per dekatherm reduction in the gas cost portion of the applicable commodity and annual contracted volume charges for *all* volumes sold by Panhandle to that customer for that month.

Specifically, Panhandle has included the following language on each of the revised tariff sheets submitted herewith:

> The gas-cost portion of the above-referenced commodity charges and annual contracted volume charge will be reduced 14 cents per dekatherm for all volumes sold and delivered pursuant to these applicable rate schedules during any month for the period from June 1, 1985 through August 31, 1985, with respect to those customers who, for such month, elect to participate in the interim reduction by not nominating or participating in the 10% contractual entitlement option provided for in Ordering Paragraph (M)(a) of the Commission's order of September 26, 1984 in Docket Nos. CI83-269-000, *et al.*

Panhandle is offering this discounted rate to its customers for the upcoming summer period in order to alleviate potentially serious operating and contractual problems on its system. Panhandle will absorb, by a charge to net income each month, the effect of this discount on the revenues collected from those customers who participate. Thus the stockholders of Panhandle will absorb this rate discount. Panhandle is hereby assuring the Commission that it will not attempt, either in this period, nor in any subsequent period, to collect from any of its customers this 14 cents per dekatherm short fall in revenues. The currently effective PGA deferred account surcharges will not in any way be impacted by this 14 cents reduction; the accounting and rate treatment for the PGA surcharges will be governed by the March 1, 1985 PGA.

Panhandle is undertaking this voluntary rate action in order to increase the anticipated sales on its system thereby overcoming the diminution of its gas purchases, in an

effort to avoid breaching certain of its gas purchase contracts with its producer-suppliers, including contracts covering the purchase of casinghead gas. This would avoid the curtailment of casinghead gas purchases, and the resulting curtailment of related oil production. Additionally, this action will permit Panhandle to achieve a lower overall system average cost of purchased gas than it would have otherwise experienced. The requirements of our customers currently being served by the 10% option will be returned to Panhandle's system supply, which currently equates to approximately 20% of our customer's total requirements.

Thus, all of Panhandle's customers are able to benefit from this proposed 14 cents reduction during the June 1, 1985 through August 31, 1985 period, as well as subsequent benefits by virtue of a lower overall cost of purchased gas during this period. Moreover, by increasing the level of sales during this period and recovering a greater portion of deferred account amounts, subsequent PGA deferred account surcharges are expected to be lower than they would have been absent this reduction and the resulting increase in sales during this period.

Panhandle respectfully requests waiver of the Commission's Regulations to permit the revised rate proposed herein to become effective June 1, 1985, and such other waivers as may be necessary to implement this filing.

Supporting computations sheets are enclosed and copies of this letter and enclosures are being served on all jurisdictional customers and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, 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 and 385.214). All such motions or protests should be filed on or before May 15, 1985. 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. 85-11752 Filed 5-14-85; 8:45 am]

BILLING CODE 6717-01-M

[Project Nos. 3856-002, 6876-002, 7182-000, 8824-000, 8828-000]

Reed Hydro-Electric Corp. et al.; Availability of Environmental Assessment and Finding of No Significant Impact

May 9, 1985.

In accordance with the National Environmental Policy Act of 1969, the Office of Hydropower Licensing, Federal Energy Regulatory Commission (Commission), has reviewed the applications for exemptions listed below and has assessed the environmental impacts of the proposed developments.

Project No.	Project name	State	Water body	Nearest town	Applicant
3856-002	Savage River	MD	Savage River	Luke	Reed Hydro-electric Corporation.
6876-002	Chalk Creek	UT	Chalk Creek	Fillmore	Fillmore City Corporation.
7182-000	Davis Creek	WA	Davis Creek	Silver Brook	Gerald L. and Lois R. Simms.
8824-000	Little Anderson	CA	Anderson-Cottonwood Irrigation District's Main Canal and Lateral No. 21 Canal.	Anderson	Mutual Energy Company, Inc.
8828-000	Valley View	CA	East Orange County Feeder No. 1.	Yorba Linda	The Metropolitan Water District of Southern California.

Environmental assessment (EA's) were prepared for the above proposed projects. Based on independent analyses of the above actions as set forth in the EA's, the Commission's staff concludes that these projects would not have significant effects on the quality of the human environment. Therefore, environmental impact statements will not be prepared.

Copies of the EA's are available for review in the Commission's Division of Public Information, Room 1000, 825 North Capitol Street, N.E., Washington, D.C. 20426.

Kenneth F. Plumb,

Secretary

[FR Doc. 85-11753 Filed 5-14-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP82-125-014 et al.]

Tennessee Gas Pipeline Company et al.; Filing of Pipeline Refund Reports and Refund Plans

May 9, 1985.

Take notice that the pipelines listed in the Appendix hereto have submitted to the Commission for filing proposed refund reports or refund plans. The date of filing, docket number, and type of filing are also shown on the Appendix.

Any person wishing to do so may submit comments in writing concerning the subject refund reports and plans. All such comments should be filed with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington D.C. 20426, on or before May 20, 1985. Copies of the respective filings are on file with the Commisson and available for public inspection.

Kenneth F. Plumb,

Secretary.

APPENDIX

Filing date	Company	Docket No.	Type filing
4/10/85	Tennessee Gas Pipeline Co.	RP82-125-014	Report
4/10/85	Eastern Shore Natural Gas Co.	RP84-72-005	Do.
4/15/85	Distrigas of Massachusetts Corp.	RP83-136-003	Do.
4/17/85	Michigan Consolidated Gas Co.	RP84-13-002	Do.
9/17/84	Transcontinental Gas Pipe Line Corp.	RP72-99-023	Do.
4/19/85	MIGC, Inc.	RP85-137-000	Do.
4/24/85	Arkla Energy Resources.	RP82-75-006	Do.
4/24/85	Consolidated Gas Transmission Corp. & Consolidated Systems LNG Co.	TA80-2-21-014 & TA80-2-21-015	Do.
4/29/85	Trunkline Gas Co.	RP85-77-001	Report[1]
4/29/85	Southern Energy Co.	RP80-136-007	Report
4/29/85	Southern Natural Gas Co.	RP80-136-006	Do.

[1] Btu Measurement Refund—Each Company will retain the same assigned Docket No. and future related filings will receive new Sub-Docket Nos.

[FR Doc. 85-11725 Filed 5-14-85; 8:45 am]

BILLING CODE 6717-01

[Docket No. RP85-143-000]

Texas Eastern Transmission Corp.; Proposed Changes in FERC Gas Tariff

May 8, 1985.

Take notice that Texas Eastern Transmission Corporation (Texas Eastern) on May 2, 1985, tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the following sheets:

Second Revised Sheet No. 33
Second Revised Sheet No. 34
First Revised Sheet No. 43
First Revised Sheet No. 44
First Revised Sheet No. 45

These tariff sheets are being filed in order to permit Texas Eastern to reduce its rates from time to time under its Rate Schedule WS with respect to excess gas and its Rate Schedule I in order, *inter alia*, to meet competion. Texas Eastern requests that it be permitted to place such revised tariff sheets into effect June 3, 1985.

Copies of the filing were served on Texas Eastern's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a 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 May 15, 1985. 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. 85-11754 Filed 5-14-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No RP85-145-000]

Texas Eastern Transmission Corp.; Proposed Changes in FERC Gas Tariff

May 8, 1985.

Take notice that Texas Eastern Transmission Corporation (Texas Eastern) on May 2, 1985, tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the following primary revised tariff sheets:

Third Revised Sheet No. 28
Second Revised Sheet No. 54
Second Revised Sheet No. 56
Second Revised Sheet No. 57
First Revised Sheet No. 57A
Seventy-third Revised Sheet No. 14 (p. 1 of 3)
Seventy-third Revised Sheet No. 14 (p. 2 of 3)
Seventy-third Revised Sheet No. 14 (p. 3 of 3)
Seventy-third Revised Sheet No. 14A
Seventy-third Revised Sheet No. 14B
Seventy-third Revised Sheet No. 14C
Seventy-third Revised Sheet No. 14D
Twelfth Revised Sheet No. 14 E
Original Sheet No. 14F

Texas Eastern also tendered for filing in the alternative, the following alternative revised tariff sheets in lieu of the corresponding revised tariff sheets listed above:

Alternate Seventy-third Revised Sheet No. 14 (p. 1 of 3)
Alternate Seventy-third Revised Sheet No. 14 (p. 2 of 3)
Alternate Seventy-third Revised Sheet No. 14 (p. 3 of 3)
Alternate Seventy-third Revised Sheet No. 14A
Alternate Seventy-third Revised Sheet No. 14B
Alternate Seventy-third Revised Sheet No. 14C
Alternate Seventy-third Revised Sheet No. 14D
Alternate Twelfth Revised Sheet No. 14E
Alternate Original Sheet No. 14 F

The filed revised sheets are proposed to effect a change in Texas Eastern's transportation program under its Rate Schedule TS-1 applicable to customers. Such revised tariff sheets would establish three tiers of rates with the effectiveness of such rates dependant upon the level of certain firm sales rate schedule takes by customers of Texas Eastern. Texas Eastern has filed primary and alternate revised sheets in order to reflect rates based on an Offer of Settlement filed in Docket No. RP84-108 and rates based on its motion rates in Docket No. RP84-108, respectively. Texas Eastern will request that the primary set of revised tariff sheets be placed into effect when and in the event the Offer of Settlement has been approved. It will move to place into effect alternate revised tariff sheets if such Offer of Settlement has not yet been approved, subject to an adjustment in the event the Offer of Settlement is finally approved.

The proposed effective date of this filing is June 3, 1985. Copies of the filing were served on Texas Eastern's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a 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 May 15, 1985. 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. 85-11755 Filed 5-14-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA85-2-42-003]

Transwestern Pipeline Co.; Proposed Changes in FERC Gas Tariff

May 9, 1985

Take notice that Transwestern Pipeline Company (Transwestern) on April 29, 1985, tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets:

Substitute Twenty-eighth Revised Sheet No. 5
Substitute Twenty-sixth Revised Sheet No. 6

According to § 381.103(b)(2)(iii) of the Commission's regulations (18 CFR § 381.103(b)(2)(iii)), the date of filing is the date on which the Commission receives the appropriate filing fee, which in the instant case was not until May 3, 1985.

Transwestern states that these tariff sheets are being filed pursuant to the Commission's Order Accepting For Filing and Suspending Proposed Tariff Sheets Subject To Refund And Conditions And Scheduling Informal Technical Conference, issued March 29, 1985. The sheets contain adjustments to Transwestern's Surcharge Adjustment. The adjustment which decreases the Surcharge Adjustment by 1.33¢/dth, relates to the elimination of estimated purchase gas costs which were inadvertently included in Transwestern's March 1, 1985, filing. The proposed effective date for the tariff sheets is April 1, 1985.

Transwestern indicates that copies of the filing were served on its jurisdictional customers and interested state Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a 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 May 16,

1985. 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. 85-11726 Filed 5-14-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA85-2-56-000 and TA85-2-56-001]

Valero Interstate Transmission Co.; Change in Rates Pursuant to Purchased Gas Cost Adjustment Provisions

May 8, 1985.

Take notice that on May 1, 1985, Valero Interstate Transmission Company ("Vitco") tendered the following tariff sheets for filing containing changes in rates pursuant to purchased gas cost adjustment provisions:

First Revised Sheet No. 6 Superseding Original Sheet No. 6 to FEPC Gas Tariff, Original Volume No. 2

7th Revised Sheet No. 14 Superseding Substitute 6th Revised Sheet No. 14 to FERC Gas Tariff, Original Volume No. 1

Vitco states that the rates stated on First Revised Sheet No. 6 and 7th Revised Sheet No. 14 reflects the change in purchased gas costs based on the six months ended February 28, 1985.

The change in rate to Rate Schedule S-1 FERC Gas Tariff, Original Volume No. 2 includes a decrease in purchased gas cost of 3.67¢ per Mcf and a negative surcharge of 18.36¢ per Mcf. The change in rate of Rate Schedule S-2, FERC Gas Tariff, Original Volume No. 2 includes a decrease in purchased gas cost of 16.49¢ per Mcf. The change in rate to Rate Schedule S-3 includes a decrease in purchased gas cost of 18.82¢ per Mcf and a surcharge of 12.22¢ per Mcf. The change in rate to Rate Schedule T-1, FERC Gas Tariff Original Volume No. 1 includes a decrease in purchased gas cost of 0.80¢ resulting from changes in gas costs charged for lost and unaccounted for gas and a surcharge of 5.80¢ per Mcf. The surcharge in each Rate Schedule is designed to eliminate the balance in the deferred purchased gas cost account.

The proposed effective date for the above filings is June 1, 1985. Vitco requests a waiver of any Commission regulations or orders which would prohibit implementation by June 1, 1985.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a 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 May 15, 1985. 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. 85-11756 Filed 5-14-85; 8:45 am]

BILLING CODE 6717-01-M

Agreement Regarding Liquefied Natural Gas

May 9, 1985.

Take notice that the attached Memorandum of Understanding has been signed by the Chairman of the Federal Energy Regulatory Commission and the Secretary of Transportation.

Kenneth F. Plumb,

Secretary.

Memorandum of Understanding Between the Department of Transportation and the Federal Energy Regulatory Commission Regarding Liquefied Natural Gas Facilities

Introduction

The Department of Transportation (DOT), through the Materials Transportation Bureau (MTB) of the Research and Special Programs Administration (RSPA) and the United States Coast Guard (USCG), exercises the authority to promulgate and enforce safety regulations and standards for the transportation and storage of liquefied natural gas (LNG) in or affecting interstate or foreign commerce. RSPA exercises its authority over LNG facilities under the Natural Gas Pipeline Safety Act of 1968 as amended (NGPSA) (49 U.S.C. 1671, *et seq.*) and the Hazardous Materials Transportation Act (HMTA) (49 U.S.C. 1801, *et seq.*) and the USCG, under E.O. 10173, the Magnuson Act (50 U.S.C. 191), the Ports and Waterways Safety Act of 1972, as amended (PWSA) (33 U.S.C. 1221 *et seq.*), exercises supplementary safety regulatory authority over LNG facilities which affect the safety of port areas and navigable waterways.

The regulations and standards promulgated under these authorities extend, *inter alia*, to the siting, design, installation, construction, initial inspection, initial testing, operation and maintenance of facilities used in the transportation of LNG by any mode and associated storage of LNG. DOT enforces compliance with these regulations and standards through an inspection program and, when appropriate, the imposition of civil, criminal, or equitable remedies. Under criteria established by the NGPSA, states are eligible to assume these regulatory and enforcement functions as they apply to intrastate pipeline transportation and associated LNG facilities. Although these intrastate facilities are not subject to this memoradum, the regulations and standards promulgated by DOT governing pipeline transportation and associated LNG facilities generally apply to both interstate and intrastate facilities.

The Federal Energy Regulatory Commission (FERC), under Section 7 of the Natural Gas Act (15 U.S.C. 717 *et seq.*), issues certificates of public convenience and necessary with terms and conditions for facilities proposed for use in the sale for resale or transportation of natural gas, including LNG, in interstate commerce. As required by the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), the FERC prepares environmental impact statements for proposed LNG facilities in conjunction with the issuance of certificates. The FERC also conducts a cryogenic design and technical review of the operational aspects of jurisdictional LNG facilities both during the certificate process and biennially thereafter. Particular emphasis is placed on operational reliability and assurance of continued service to the public.

In addition, the Secretary of Energy under Section 3 of the Natural Gas Act (15 U.S.C. 717 *et seq.*) has approval authority for the import and export of natural gas, including LNG. The Secretary of Energy has delegated and assigned to the FERC Section 3 authority to approve gas import and export facilities and their siting.

Purpose

This agreement acknowledges DOT's exclusive authority to promulgate Federal safety standards for LNG facilities used in the transportation and associated storage of LNG in or affecting interstate or foreign commerce. However, under the Natural Gas Act, the FERC exercises the authority to impose more stringent safety

requirements than DOT's standards when warranted by special circumstances at any LNG facility within the FERC's jurisdiction. The FERC also exercises its authority to impose requirements which would ensure or enhance operational reliability of its jurisdictional LNG facilities. Such operational reliability requirements are not subject to this Memorandum of Understanding.

The FERC and DOT agree that this Memorandum of Understanding provides guidance and policy for their respective technical staffs and the regulated pipeline industry regarding the execution of their respective statutory responsibilities to assure the safe siting, design, construction, operation and maintenance of fixed LNG facilities.

Therefore, the FERC and DOT agree to the following program:

1. The FERC shall:

a. Invite DOT to participate in FERC sponsored LNG facility inspections and related technical conferences with facility operators.

b. Except as provided by paragraph 1(e), refer to DOT for its review and comment any FERC proposed corrective action addressing LNG facility safety matters, whether or not in the form of certificate conditions, that differ from or are more stringent than DOT's safety regulations and standards. Proposed corrective actions subject to DOT review under this paragraph may result from FERC review of LNG facility certificate applications, inspection of existing LNG facilities, or otherwise.

c. Take final action on a matter referred under paragraph 1(b) only after receipt and consideration of comments provided by DOT in accordance with paragraph 2(c).

d. Provide the following information in writing to DOT when a referral is made to DOT under paragraph 1(b):

(i) The nature of the hazard, design deficiency, or operational practice to which the proposed corrective action is addressed;

(ii) The extent to which the LNG safety matter appears to be covered by DOT regulations and standards or industry codes;

(iii) The corrective action recommended and its estimated cost-benefit impact upon the operator;

(iv) Whether the recommended corrective action appears to differ from or exceed DOT's LNG safety regulations and standards; and

(v) Any discussion pertinent to items (i)-(iv) contained in a Final Environmental Impact Statement (FEIS) for the concerned LNG facility.

e. In those instances when an applicant for an LNG facility certificate or an operator of an existing LNG facility voluntarily agrees to take corrective action on a hazard, design deficiency or operational practice in accord with recommendations of the FERC staff, the procedures for referral to DOT contained in paragraphs 1(b) through 1(d) do not apply. When such voluntary agreements are reached, the FERC staff will promptly notify DOT of the agreements and provide appropriate background material.

f. Advise the certificate applicant or facility operator of the details of each matter which has been referred to DOT for review under paragraph 1(b), with notice that the applicant or operator may submit written comments on the matter to DOT and the FERC within a period not to exceed 30 days from receipt of the notice. This time period may be extended only by agreement between DOT and the FERC.

g. When a FEIS is required as part of the FERC decision-making process on the siting, construction and operation of LNG facilities, the FERC staff shall, to the extent possible, describe in the FEIS any LNG safety matters and their impact on the environment or facility operations that are considered by the staff to warrant corrective action or further analysis.

2. The DOT shall:

a. Evaluate each matter referred to it by the FERC, under paragraph 1, along with any related comments received from an applicant or operator.

b. Take whatever action DOT considers appropriate in the discharge of its responsibilities in the matter referred by the FERC, including issuing a hazardous facility order or imposing other enforcement remedies as authorized by the NGPSA (see paragraph 2(d)) or the PWSA, instituting rulemaking of either general or particular applicability, issuing an interpretation of an existing safety standard, enforcing an existing DOT safety standard, commenting on the appropriateness of a particular safety standard proposed by the FERC with regard to a particular LNG facility or particular circumstances, or deciding that no action is necessary or that the matter is outside DOT jurisdiction.

c. Advise the certificate applicant or facility operator and the FERC of the action contemplated by DOT in each matter referred by the FERC, and the approximate time schedule within which final action will be completed, or advise that the matter is outside the scope of DOT jurisdiction, within a period of 60 days from the date of referral. This time period may be extended only when the time period in paragraph 1(f) is also extended. The date of referral shall be the date when DOT receives an official request for review and comment in writing from the FERC under paragraph 1(b).

d. Exercise NGPSA or PWSA enforcement authority to effect corrective actions recommended and adopted by the FERC and previously concurred with by DOT.

e. Advise the FERC when DOT is going to inspect an LNG facility under FERC jurisdiction and notify the FERC of its findings.

3. Working arrangements.

The DOT and the FERC will designate appropriate staff representatives and will establish joint working arrangements from time to time to administer this Memorandum of Understanding.

4. Effect.

This agreement shall take effect upon signing by authorized representatives of DOT and the FERC and will apply to LNG facility certificate applications filed after the effective date and to LNG facilities in operation on and after that date.

5. Nothing in this Memorandum of Understanding is intended to restrict the statutory authority of DOT or the FERC.

6. DOT and the FERC each reserve the option of suspending, modifying, or terminating their respective commitments contained in this Memorandum of Understanding if any of their respective statutory responsibilities stated herein is altered or abolished in the future. Such action must be preceded by written notice to the other party at least 30 days before exercising this option.

Dated: March 29, 1985.

Elizabeth H. Dole,

Secretary, Department of Transportation.

Dated: April 17, 1985.

Raymond J. O'Connor,

Chairman, Federal Energy Regulatory Commission.

[FR Doc. 85-11709 Filed 5-14-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP85-487-000]

Distrigas of Massachusetts Corp.; Application

May 8, 1985.

Take Notice that on May 6, 1985, Distrigas of Massachusetts Corporation (Applicant), 125 High Street, Boston, Massachusetts 02110, filed in Docket No. CP85-487-000 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the sale of natural gas for resale, all as more fully set forth

in the application which is on file with the Commission and open to public inspection.

Applicant proposes to transport and sell natural gas in interstate commerce for the purpose of making interruptible sales for resale using existing liquefied natural gas (LNG) facilities. Applicant further requests authority for the transportation or exchange of natural gas by any able and willing interstate pipeline, Hinshaw pipeline, intrastate pipeline or local distribution company, as necessary, to enable the gas to be sold to customers.

Applicant asserts that this application is a result of certain of its customers' refusal, as the result of the Commission's Order No. 380, to make their contractual purchases of LNG scheduled for deliver between April 1 and September 30 of this year. It is contended that such refusal has put Applicant and its affiliate, Distrigas Corporation (Distrigas), in a position where sales to Applicant's customers of summer deliveries would generate insufficient revenues to pay the Algerian supplier of the gas in full under the take-or-pay provisions of the supply contract. Applicant states it proposes to make these sales of gas for resale so it can continue to meet the current needs of customers who desire their contractual summer supplies, to avoid precipitating a suspension of summer deliveries and the loss of needed supplies next winter, and to mitigate the amount of underrecovery of purchased gas costs arising from the application of Order No. 380. Applicant has limited this request for authorization to the five deliveries of LNG scheduled between April 1 and September 30, but makes such request without prejudice to its right to seek renewal or extension of such certification with respect to deliveries made after October 1, 185.

It is claimed that the sales for which authorization is sought would be limited to volumes that Applicant first tenders to its existing distribution company customers and that, if the existing customers decline to take tendered volumes, Applicant would offer the gas for sale pursuant to the requested authorization. It is said that in making the sales Applicant would use existing facilities at its Everett, Massachusetts, terminal.

Two types of service are proposed: (1) Sales of LNG as liquid and (2) sales of LNG in vapor form. It is contended that sales in both liquid and vapor form would permit the maximum recovery of gas costs. Applicant asserts that the excess gas would be offered under a new interruptible Rate Schedule I–1 to both existing customers and to off-system customers for resale in interstate commerce. Consistent with the objective of maximizing revenues Applicant claims that to the extent possible priority in purchasing this gas would go to those existing customers who have agreed to take their *pro rata* share of summer deliveries under Rate Schedules GS–1 and TS–1. It is asserted that the rate to be charged would be a negotiated contract rate and that it is not anticipated that such rate would exceed the effective rate under Rate Schedule GS–1.

Applicant asserts that the concept of the sales for which authorization is sought is expressed in its present FERC Gas Tariff which provides that when an existing customer declines to take its contract volumes Applicant would dispose of the gas to other markets and credit the revenues, less costs of sale, to the customer refusing to take the LNG. Consistent with this principle of disposal the rate for the sale of excess gas would be geared toward a market clearing price intended to minimize the unrecovered gas costs, it is claimed.

It is stated that as a result of Commission Order No. 380, two of Applicant's 11 customers have refused to make their *pro rata* contractual purchases of gas from five cargoes of LNG from Algeria scheduled for delivery between April 1 and September 30, 1985. It is stated that this has created an excess supply of LNG which Applicant is presently holding in its storage facilities. It is indicated that under the requested authorization Applicant would be authorized to transport and sell LNG for resale as necessary to eliminate the present and any further excess supplies created by customers' unwillingness to purchase their share of these summer cargoes under their present contracts.

It is claimed that in seeking this authorization Applicant is pursuing a course of action which is consistent with its tariff as well as with the Commission's own express recommendation as to how Applicant might ease any immediate threat to its gas supply enterprise posed by the Commission's Order No. 380.

It is asserted that since the issuance of Order No. 380 Distrigas has made diligent efforts to renegotiate its supply contract wifh Sonatrach, the Algerian national oil company, but that all efforts to obtain a reduction of prices or volumes or a substantial deferral of scheduled deliveries have proven unsuccessful. It is stated Distrigas would continue to pursue renegotiation of the contract but has no reason to believe, based on Sonatrach's reaction thus far, that it would be able to accomplish such renegotiation in the near future, if at all.

It is claimed that the Applicant/Distrigas enterprise does not have the flexibility open to many pipeline companies that have annual take-or-pay contracts with some of their producer suppliers because under the supply contract with Sonatrach Distrigas connot defer payment for LNG until the end of a contract year nor can it subsequently make up such gas. It is further asserted that because it has only one supplier, the Applicant/Distrigas enterprise cannot shut in its gas supply and rely upon other sources to fill the continuing requirements of its customers. It is argued that these restrictions, combined with the limitations imposed by the physical realities of shipment and terminalling of LNG in shipploads lots, make it imperative that immediate relief be provided in the form of authorization to make the proposed sales.

Applicant proposes to deliver the LNG using existing facilities. It is claimed that authorization to terminal and make sales for resale on an interruptible basis is necessay to avoid the delay inherent in obtaining certificates for each individual sale for resale. It is further stated that the requested authorization would permit Applicant to continue to provide an essential service and to mitigate the potential losses otherwise resulting from rejection of LNG shipments.

Any person desiring to be heard or to make any protest with reference to said application should on or before May 16, 1985, 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 protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the National 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 a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-11717 Filed 5-14-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP85-488-000]

Distrigas of Massachusetts Corp.; Application

May 9, 1985.

Take notice that on May 6, 1985, Distrigas of Massachusetts Corporation (Applicant), 125 High Street, Boston, Massachusetts 02110, filed in Docket No. CP85-488-000 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing Applicant to operate its liquefied natural gas (LNG) terminal in order to make direct interruptible sales of natural gas to industrial end-users, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant requests authorization to transport natural gas in interstate commerce in order to make direct interruptible sales of excess natural gas directly to end-users through its existing LNG facilities. Applicant further requests authority for the transportation or exchange of natural gas by any able and willing interstate pipeline, Hinshaw pipeline, intrastate pipeline or local distribution company, as necessary, to enable the gas to be sold to direct customers pursuant to the requested authorization.

Applicant states it has filed this application as a result of certain of its customers' refusal, as a result of the Commission's Order No. 380, to make their contracted purchases of LNG scheduled for delivery between April 1 and September 30 of this year. It is claimed that such refusal has put Applicant and its affiliate, Distrigas Corporation (Distrigas), in a position where sales to Applicant's customers of summer deliveries would generate insufficient revenues to pay the Algerian supplier of Applicant and Distrigas in full under the take-or-pay provisions of the supply contract. Applicant states that it proposes to make direct interruptible sales so that it can continue to meet the current needs of customers who desire their contractual summer supplies, to avoid precipitating a suspension of summer deliveries and the loss of needed supplies next winter, and to mitigate the amount of underrecovery of purchased gas costs arising from the application of Order No. 380. Applicant states it is limiting this request for authorization to the five deliveries of LNG scheduled between April 1 and September 30, but makes this request without prejudice to its right to seek renewal or extension of such certification with respect to deliveries made after October 1, 1985.

Applicant states that certain of its customers have refused to make their *pro rata* contractual purchases of gas from five cargoes of LNG scheduled for delivery from Algeria between April 1 and September 30, 1985. It is contended that such refusal has created an excess supply of LNG which Applicant is presently holding in its storage facilities. Applicant therefore proposes to transport LNG for direct interruptible sales to industrial end-users as necessary to eliminate the present and any further excess supplies created by its customers' unwillingness to purchase their share of these summer cargoes under their present contracts.

Applicant states that in seeking such authorization it is pursuing a course of action which is consistent with its FERC Gas Tariff as well as with the Commission's own express recommendation as to how it might ease any immediate threat to its gas supply enterprise posed by Order No. 380.

It is asserted that since the issuance of Order No. 380 Distrigas has made diligent efforts to renegotiate its supply contract with Sonatrach, the Algerian national oil company. It is claimed that all efforts to obtain a reduction of prices or volumes or a substantial deferral of scheduled deliveries have proven unsuccessful. It is indicated that Distrigas would continue to pursue renegotiation of the contract but has no reason to believe that it would be able to accomplish such renegotiation in the near future, if at all. It is stated that the Applicant/Distrigas enterprise does not have the flexibility open to many pipeline companies that have annual take-or-pay contracts with some of their producer suppliers. It is averred that under the supply contract with Sonatrach Distrigas cannot defer payment for LNG not taken until the end of the contract year nor can it subsequently make up such gas. It is further stated that because it has only one supplier the Applicant/Distrigas enterprise cannot shut in its gas supply and rely upon other sources to fill the continuing requirements of its customers. It is claimed that these restrictions, combined with the limitations imposed by the physical realities of shipment and terminalling of LNG in shipload lots, make it imperative that immediate relief be provided in the form of authorization to make the requested sales.

Applicant asserts that authorization to make direct sales would enable it to avoid rejection of the next and subsequently scheduled summer cargoes to the extent this is reasonably possible. It is claimed that based upon communications and meetings with Sonatrach officials as recently as April 23, 1985, Distrigas expects that rejection of any of these cargoes would cause the suspension, pending lengthy arbitration proceedings, of all future deliveries of LNG including those scheduled for next winter. It is contended that suspension of deliveries in the summer can cause harsh consequences to many of Applicant's customers because they purchase LNG for storage in order to provide essential winter service. Suspension of deliveries beyond the summer intensifies these customers' problems and deprive parts of the northeastern United States of the critically needed supplementary supply of winter gas furnished by the Applicant/Distrigas enterprise, it is stated.

Applicant states it is not seeking authorization to construct any additional facilities but would deliver excess LNG using existing facilities. It is claimed that authorization to terminal LNG on an interruptible basis is necessary to avoid the delays inherent in obtaining cetificates for each individual sale. Applicant states it expects to arrange sales whereby third-party transportation may be non-jurisdictional or self-implementing, and that to the extent required, the gas would be transported through exchange or otherwise by other entities to the end-user customers. In addition, to the extent that such transportation or exchange would require additional Commission authorization, Applicant requests that such authorization be granted.

Applicant asserts that the requested authorization is in the public interest because it would permit Applicant to

continue to provide an essential service and to mitigate the potential losses otherwise resulting from rejection of LNG shipments. It is claimed Applicant would serve the needs of industrial end-users through interruptible direct sales with no reduction in volumes available to meet the requirements of existing distribution company customers. It is further stated that the LNG would be available only if both gas supplies and capacity are available after meeting all current firm requirements of Applicant's customers and would not reduce the contract volumes available to any customers.

Any person desiring to be heard or to make any protest with reference to said application should on or before May 16, 1985, 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 protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission or its designee on this 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 a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-11710 Filed 5-14-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ID-2169-000,et al.]

John B. Bernhart et al.; Interlocking Directorate Applications

Take notice that the following filings have been made with the Commission:

1. John B. Bernhart

[Docket No. ID-2169-000]

May 9, 1985.

Take notice that on April 30, 1985, John B. Bernhart (applicant) filed an application pursuant to Section 305(b) of the Federal Power Act to hold the following positions:

Director, Virginia Electric and Power Company
Vice Chairman of the Board and Director, Sovran Financial Corporation
Vice Chairman of the Board and Director, Sovran Bank, N.A.

Comment date: May 31, 1985, in accordance with Standard Paragraph E at the end of this notice.

2. William W. Berry

[Docket No. ID-2170-000]

May 9, 1985.

Take notice that on April 30, 1985, William W. Berry (applicant) filed an application pursuant to Section 305(b) of the Federal Power Act to hold the following positions:

Officer and Director, Virginia Electric and Power Company
Director, Sovran Financial Corporation

Comment date: May 31, 1985, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragaphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, 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 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-11711 Filed 5-14-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ER85-464-000 et al.]

Idaho Power Co. et al.; Electric Rate and Corporate Regulation Filings

Take notice that the following filings have been made with the Commission:

1. Idaho Power Company

[Docket No. ER85-464-000]

May 8, 1985.

Take notice that on April 29, 1985, Idaho Power Company (Idaho) tendered for filing a Service Agreement between it and the California Department of Water Resources, covering the sale of nonfirm energy under Idaho Power Company's 1st Revised FERC Electric Tariff, Volume No. 1.

Idaho requests an effective date of January 1, 1985, and therefore requests waiver of the Commission's notice requirements.

Comment date: May 20, 1985, in accordance with Standard Paragraph E at the end of this notice.

2. Central Vermont Public Service Corporation

[Docket No. ER85-462-000]

May 8, 1985.

Take notice that on April 29, 1985, Central Vermont Public Service Corporation (Central Vermont) tendered for filing a notice of termination of its Rate Schedule FPC No. 51 which is a transmission contract between Central Vermont and the Vermont Electric Power Company, Inc. (VELCO). Rate Schedule FPC No. 51 is scheduled to expire on June 30, 1985.

Central Vermont also tendered rate schedule supplements to its transmission agreements with several utilities who are the actual recipients of service pursuant to Rate Schedule FPC No. 51. The supplements provide that the transmission service which was rendered pursuant to Rate Schedule FPC No. 51 will be provided pursuant to the rates and terms and conditions in the transmission agreements.

The Company proposes that the notice of cancellation and the transmission agreement supplements take effect July 1, 1985. According to Central Vermont, it is making these changes because of the expiration of Rate Schedule FPC No. 51 and because that rate schedule is not compensatory.

The customers and the rate schedule numbers of their transmission agreements are:

Customer	Rate schedule No.
Vermont Electric Cooperative, Inc.	89
Lyndonville Electric Department	93

Customer	Rate schedule No.
Village of Ludlow Electric Light Department	97
Allied Power and Light Company	101
Rochester Electric Light and Power Company	102
Village of Johnson Water and Light Department	107
Village of Hyde Park Water and Light Department	110

The rate schedule supplements also contain letters to the customers stating that the Company is terminating the above transmission agreements as of November 1, 1985 and that superseding transmission rate schedules will be filed prior to that date.

Central Vermont states that a copy of the filing has been mailed to each of the customers affected by the proposed changes and the Vermont Public Service Board.

Comment date: May 20, 1985, in accordance with Standard Paragraph E at the end of this notice.

3. Florida Power & Light Company

[Docket No. ER85-465-000]

May 8, 1985.

Take notice that on April 29, 1985, Florida Power & Light Company (FP&L) tendered for filing seven revised Exhibits A which provide for the contract demands for Florida Keys Electric Cooperative Association, Inc.; Fort Pierce Utilities Authority; City of Homestead; Lake Worth Utilities Authority; Utilities Commission; City of New Smyrna Beach; City of Starke; and City of Vero Beach. The proposed effective date for the contract demands for Fort Pierce Utilities Authority; City of Homestead; Lake Worth Utilities Authority; and City of Vero Beach is March 29, 1985. The proposed effective date for the contract demands for Florida Keys Electric Cooperative Association, Inc.; Utilities Commission, City of New Smyrna Beach; and City of Starke is May 29, 1985, therefore it is respectfully requested that the Commission waive its regulations to permit these revised Exhibits A to become effective as specified herein.

Comment date: May 20, 1985, in accordance with Standard Paragraph E at the end of this notice.

4. Florida Power & Light Company

[Docket No. ER85-466-000]

May 8, 1985.

Take notice that on April 29, 1985, Florida Power & Light Company (FP&L) tendered for filing an executed "Agreement for the Provision of Alternative Electric Service Among FP&L, Seminole Electric Cooperative, Inc. and Lee County Electric Cooperative" ("Agreement"). Under this Agreement FP&L has agreed, for a limited period of time, to provide "Alternative Service". Alternative Service is described in the Agreement as the delivery, during a planned outage or emergency condition affecting service through the Calusa delivery point, of electric power and energy by FP&L to the Seminole Electric Cooperative, Inc. (Seminole) through alternate existing FP&L transmission facilities to replace power and energy that FP&L has the obligation to deliver to Seminole through the Calusa delivery point under the ABPRSA and the FP&L—Seminole Transmission Service Agreement. Alternative Service will be provided for a limited period of time to enable the Lee County Electric Cooperative (A Seminole member cooperative) to complete construction of its own (second) 230 KV transmission facilities to improve the reliability of its own transmission system.

FP&L states that the charge for Alternative Service will be $4,000.00 per month, which results in annual revenues to FP&L of $48,000.00.

FP&L requests an effective date of February 1, 1985, and therefore requests waiver of the Commission's notice requirements.

Copies of this filing were served upon Seminole and the Lee County Electric Cooperative.

Comment date: May 20, 1985, in accordance with Standard Paragraph E at the end of this notice.

5. Interstate Power Company

[Docket No. ER85-463-000]

May 8, 1985.

Take notice that on April 29, 1985, Interstate Power Company (Interstate) tendered for filing a set of revised exhibits to the Agreement for Integrated Transmission Area between Central Iowa Power Cooperative and Interstate (FERC No. 125, Supplements 7, 8, 9, 11 and 12).

Interstate requests an effective date of January 1, 1985, and therefore requests waiver of the Commission's notice requirements.

Comment date: May 20, 1985, in accordance with Standard Paragraph E at the end of this notice.

6. Kansas Gas and Electric Company

[Docket No. ER85-461-000]

May 8, 1985.

Take notice that on April 29, 1984, Kansas Gas and Electric Company (KG&E) tendered for filing proposed changes in its FERC Electric Service Tariff Nos. 87, 89, 93, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 128, 134, 135, 144, 149, 151, 152, 153, 154, 155, 156, 157 and 159. KG&E also proposes a new service schedule to the partial requirements municipals, proposes to cancel an unused service schedule to one partial requirements municipal, and proposes four new service schedules to FERC Rate Schedule No. 151. The proposed changes would increase revenues from Applicant's jurisdictional customers' sales under existing service schedules by $459,033, and under new service schedules by $7,073,542 based on the twelve month period ended December 31, 1985.

KG&E states that it needs additional wholesale revenues because present wholesale rates do not reflect expenses and capital costs related to Wolf Creek Generating Station.

KG&E requests an effective date of June 30, 1985, and therefore requests waiver of the Commission's notice requirements.

Copies of this filing were served upon KG&E's jurisdictional customers and the State Corporation Commission of Kansas.

Comment date: May 20, 1985, in accordance with Standard Paragraph E at the end of this notice.

7. Portland General Electric Company

[Docket No. ER85-467-000]

May 8, 1985.

Take notice that on April 29, 1985, Portland General Electric Company (PGE) tendered for filing a Summary of Sales made under the Company's first revised Electric Service Tariff, Volume No. 1, during March of 1985, along with a cost justification for the rates charged.

Copies of this filing were served upon parties having service agreements with PGE, parties to the Intercompany Pool Agreement (revised), intervenors in Docket No. ER77-131 and the Oregon Public Utility Commission.

Comment date: May 20, 1985, in accordance with Standard Paragraph E at the end of this notice.

8. Public Service Company of New Mexico

[Docket No. ER85-469-000]

May 8, 1985.

Take notice that on April 30, 1985, Public Service Company of New Mexico (PNM) tendered for filing Service Schedule G (Transmission Service for El Paso Electric) to the Interconnection Agreement (Rate Schedule FERC No. 9) between PNM and El Paso Electric Company (EPE).

PNM under this agreement shall make available to EPE various levels of firm transmission capacity which EPE may schedule as needed for the delivery of EPE generation entitlements in the

Arizona Nuclear Power Project. Service is scheduled to commence on May 1, 1985, and to continue until May 1, 1995, or the completion of the Four Corners-Ambrosia-Pajarito Transmission Line Project.

PNM requests an effective date of May 1, 1985, and therefore requests waiver of the Commission's notice requirements.

Copies of this filing were served upon EPA and the New Mexico Public Service Commission.

Comment date: May 20, 1985, in accordance with Standard Paragraph E at the end of this notice.

9. The City of Provo, Utah

[Docket No. EL85-28-000]

May 9, 1985.

Take notice that on April 29, 1985, The City of Provo, Utah (Provo) submitted for filing an initial rate schedule for transmission service and interconnection with the Utah Power & Light Company (UP&L). Provo is submitting this rate schedule to ensure that service can be authorized to commence on or before May 30, 1985 and requests a waiver of the Commission's notice requirement.

Comment date: May 31, 1985, in accordance with Standard Paragraph E at the end of this notice.

10. Southern California Edison Company

[Docket No. ER85-460-000]

May 7, 1985

Take notice that on April 26, 1985, Southern California Edison Company (Edison) tendered for filing a notice of change of rates for transmission serviced as embodied in Edison's agreements with the following entities:

	Rate Schedules FERC No.
City of Los Angeles	102, 118, 140, 141
Pacific Gas and Electric Company	117, 147
Western Area Power Administration	120
Arizona Power Pooling Association	93
Arizona Electric Power Cooperative	132, 161
California Department of Water Resources	38, 112, 169
City of Burbank	135, 166, 177
City of Glendale	136, 143, 176
M-S-P Public Power Company	153
City of Pasadena	137, 158, 175
San Diego Gas & Electric Company	151
Imperial Irrigation District	138

Edison requests an effective date of January 1, 1985, and therefore requests waiver of the Commission's notice requirements.

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comment date: May 15, 1985, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-11712 Filed 5-14-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket EL85-19-102]

Owens River Basin, CA.; Geographic Scoping Meetings for Cluster Impact Assessment Procedure

May 10, 1985.

On April 24, 1985, the Federal Energy Regulatory Commission (Commission) directed its staff (Staff) to implement the Cluster Impact Assessment Procedure (CIAP) in the Owens River Basin in order to examine the potential cumulative impacts related to multiple hydropower development. The CIAP was outlined in the Commission's Notice of Request for Comments, Docket EL85-19-000, which was issued on January 18, 1985.

As outlined in the Commission's April 24, 1985, directive, the geographic scope of the assessment and the target resources to be assessed will be based on pending applications for license, pending exemption applications (only insofar as they affect target resources other than fish and wildlife), and pending amendments of license. Any additional applications for license, for exemption, or for amendment of license that are filed on or before June 17, 1985, will be considered for inclusion in the CIAP analysis for the Owens River Basin.

In the initial phase of the CIAP, the Staff will use geographic scoping meetings to identify the geographic extent of the CIAP analysis and the target resources to be assessed. At the meetings, the Staff will describe and take comments on the CIAP process and will explain the schedule for completion of the CIAP in the Owens River Basin. Further, the Staff intends to inspect the project sites and to meet informally with resource managers in the basin during the week of June 17, 1985, to gather information and to continue to define the scope of the CIAP.

Two scoping meetings will be held by the Staff for the public's convenience. The first geographic scoping meeting will be held at 9:00 a.m. on June 20, 1985, in the Inyo National Forest Conference Room at 873 North Main Street in Bishop, California. The second geographic scoping meeting will be held by the Staff at 7:00 p.m. on June 20, 1985, in the City Hall Auditorium at 377 West Line Street in Bishop, California.

All interested resource agencies, developers, tribal representatives, and other interested parties are invited to attend the geographic scoping meetings. Those wishing to reserve time in which to speak at the meetings or to obtain information about informal technical meetings should contact the FERC Project Manager, Ron McKitrick, at (202) 376-9065. Any written comments regarding the geographic scope and the target resources of the CIAP will be accepted during the scoping meeting, or may be filed on or before July 15, 1985. Comments filed with the Commission must be addressed to the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. The following caption should be affixed to all comments: Owens River Basin, California, Docket EL85-19-102.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-11713 Filed 5-14-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket EL85-19-103]

Salmon River Basin, ID; Geographic Scoping Meetings for Cluster Impact Assessment Procedure

May 10, 1985.

On April 24, 1985, the Federal Energy Regulatory Commission (Commission) directed its staff (Staff) to implement the Cluster Impact Assessment Procedure (CIAP) in the Salmon River Basin in order to examine the potential cumulative impacts related to multiple hydropower development. The CIAP was outlined in the Commission's Notice of Request for Comments, Docket EL85-

19–000, which was issued on January 18, 1985.

As outlined in the Commission's April 24, 1985, directive, the geographic scope of the assessment and the target resources to be assessed will be based on pending applications for license, pending exemption applications (only insofar as they affect target resources other than fish and wildlife), and pending amendments of license. Any additional applications for license, for exemption, or for amendment of license that are filed on or before June 24, 1985, will be considered for inclusion in the CIAP analysis for the Salmon River Basin.

In the initial phase of the CIAP, the Staff will use geographic scoping meetings to identify the geographic extent of the CIAP analysis and the target resources to be assessed. At the meetings, the Staff will describe and take comments on the CIAP process and will explain the schedule for completion of the CIAP in the Salmon River Basin. Further, the Staff intends to inspect the project sites and to meet informally with resource managers in the basin during the week of June 24, 1985, to gather information and to continue to define the scope of the CIAP.

Two scoping meetings will be held by the Staff for the public's convenience. The first geographic scoping meeting will be held at 10 a.m. on June 27, 1985, in the Boise City Council Chambers at 150 North Capitol Boulevard in Boise, Idaho. The second geographic scoping meeting will be held by the Staff at 7 p.m. on June 27, 1985, also in the Boise City Council Chambers.

All interested resource agencies, developers, tribal representatives, and other interested parties are invited to attend the geographic scoping meetings. Those wishing to reserve time in which to speak at the meetings or to obtain information about informal technical meetings should contact the FERC Project Manager, Thomas Russo, at (202) 376–1976. Any written comments regarding the geographic scope and the target resources of the CIAP will be accepted during the scoping meeting, or may be filed on or before July 22, 1985. Comments filed with the Commission must be addressed to the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. The following caption should be affixed to all comments: Salmon River Basin, Idaho, Docket EL85–19–103.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85–11714 Filed 5–14–85; 8:45 am]

BILLING CODE 6717-01-M

[Docket EL85–19–101]

Snohomish River Basin, WA; Geographic Scoping Meetings for Cluster Impact Assessment Procedure

May 10, 1985.

On April 24, 1985, the Federal Energy Regulatory Commission (Commission) directed its staff (Staff) to implement the Cluster Impact Assessment Procedure (CIAP) in the Snohomish River Basin in order to examine the potential cumulative impacts related to multiple hydropower development. The CIAP was outlined in the Commission's Notice of Request for Comments, Docket EL85–19–000, which was issued on January 18, 1985.

As outlined in the Commission's April 24, 1985, directive, the geographic scope of the assessment and the target resources to be assessed will be based on pending applications for license, pending exemption applications (only insofar as they affect target resources other than fish and wildlife), and pending amendments of license. Any additional applications for license, for exemption, or for amendment of license that are filed on or before June 10, 1985, will be considered for inclusion in the CIAP analysis for the Snohomish River Basin.

In the initial phase of the CIAP, the Staff will use geographic scoping meetings to identify the geographic extent of the CIAP analysis and the target resources to be assessed. At the meetings, the Staff will describe and take comments on the CIAP process and will explain the schedule for completion of the CIAP in the Snohomish River Basin. Further, the Staff intends to inspect the project sites and to meet informally with resource managers in the basin during the week of June 10, 1985, to gather information and to continue to define the scope of the CIAP.

Two scoping meetings will be held by the Staff for the public's convenience. The first geographic scoping meeting will be held at 10 a.m. on June 12, 1985, in the Ginni Stevens Hearing Room (1st floor) of the Snohomish County Administration Building at 3000 Rockefeller in Everett, Washington. The second geographic scoping meeting will be held by the Staff at 7 p.m. on June 12, 1985, in the Commission Meeting Room in the Electric Building (Public Utility District No. 1 of Snohomish County) at 2320 California Street in Everett, Washington.

All interested resource agencies, developers, tribal representatives, and other interested parties are invited to attend the geographic scoping meetings. Those wishing to reserve time in which to speak at the meeting or to obtain information about informal technical meetings should contact the FERC Project Manager, Frank Karwoski, at (202) 376–1761. Any written comments regarding the geographic scope and the target resources of the CIAP will be accepted during the scoping meeting, or may be filed on or before July 5, 1985. Comments filed with the Commission must be addressed to the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. The following caption should be affixed to all comments: Snohomish River Basin, Washington, Docket EL85–19–101.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85–11715 Filed 5–14–85; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. QF85–360–000 et al.]

Delta Energy Project—Phase III et al.; Small Power Production and Cogeneration Facilities; Qualifying Status; Certificate Applications, Etc.

May 9, 1985.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

Take notice that the following filings have been made with the Commission.

1. Delta Energy Project—Phase III

[Docket No. QF85–360–000]

On April 30, 1985, Delta Energy Project—Phase III (Applicant), of 177 Bovet Road, Suite 520, San Mateo, California 94402 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The facility is located in the Altamont Pass near Tracy, California on land leased from the State of California Department of Water Resources. The facility consists, in part, of the leased land and forty-five wind turbine/generators, each having a maximum power output of 75 kW. The maximum power production capacity of the facility is 3.375 kW with a prevailing wind of 30 miles per hour. The primary source of energy is wind.

2. Nalco Chemical Company

[Docket No. QF85–365–000]

On April 30, 1985, Nalco Chemical Company (Applicant) of 2901 Butterfield Road, Oakbrook, Illinois 60521

submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The proposed topping-cycle cogeneration facility will be located at Diehl Road, Naperville, Illinois. The facility will consist of an Allison 501–KB5 gas turbine/generator, a Coppus RLHA–24 steam turbine/generator and a heat recovery steam generator. The primary source of energy will be natural gas. Installation of the facility will begin December 1, 1985.

3. Western Energy Engineers, Inc. (Klondike I(a))

[Docket No. QF85–366–000]

On April 30, 1985, Paul R. Gerst, Managing Director, Western Energy Engineers, Inc. (Applicant) of Box 474 Newport Beach, California 92662 submitted for filing an application for certification of a facility known as Klondike I(a) as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The proposed topping-cycle Klondike I(a) cogeneration facility is located at Foussat and Industrial Streets in Oceanside, California. The facility will contain a combustion turbine-generator, a two pressure level heat recovery boiler (HRB) and an extraction steam turbine-generator. The extracted steam together with low pressure steam from the HRB will be supplied to the absorption refrigeration equipment and heating needs at the Athlete facility. The net electric power production of the facility will be 15,605 kW. The primary energy source will be natural gas. The facility is scheduled to start commercial operation in winter of 1986.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 383.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85–11710 Filed 5–14–85; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. QF85–358–000]

Don Jenni; Application for Commission Certification of Qualifying Status of a Small Power Production Facility

May 10, 1985.

On April 25, 1985, Don Jenni (Applicant), of Handover Hydro, Route 2, Box 2228, Lewiston, Montana 59457 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The 240 kilowatt hydroelectric facility will be located near Big Spring Creek, in Fergus County, Montana.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition 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. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. 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 petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

A separate application is required for a hydroelectric propect license, preliminary permit or exemption from licensing. Comments on such applications are requested by separate public notice. Qualifying Status serves only to establish eligibility for benefits provided by PURPA, as implemented by the Commission's regulations, 18 CFR Part 292. It does not relieve a facility of any other requirements of local, State or Federal law, including those regarding siting, construction, operation, licensing and pollution abatement.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85–11716 Filed 5–14–85; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[OPP–00202; PH–FRL 2833–2]

Open Meetings of State-FIFRA Issues Research and Evaluation Group (SFIREG) Working Committees

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: There will be a 2-day meeting of the Working Committee on Registration and Classification of the State FIFRA Issues Research and Evaluation Group (SFIREG) and a 2-day meeting of the SFIREG Working Committee on Enforcement and Certification to discuss various aspects of pesticides. The meetings will be open to the public.

DATE: The Working Committee on Registration and Classification will meet on Tuesday and Wednesday, June 4 and 5, 1985. The Working Committee on Enforcement and Certification will meet on Thursday and Friday, June 6 and 7, 1985. The meetings of both committees will start at 8:30 a.m. each day.

ADDRESS: The meetings will be held at: Holiday Inn Crowne Plaza, Sixth and Seneca, Seattle, WA 98101, (206–464–1980).

FOR FURTHER INFORMATION CONTACT:

By mail, Philip H. Gray, Jr., Office of Pesticide Programs (TS–766C), Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460

Office of location and telephone number: Rm. 1115, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA, (703–557–7096).

SUPPLEMENTARY INFORMATION: The meeting of the Working Committee on Registration and Classification will be concerned with the following topics:

1. Registration of chlorine gas for swimming pools.
2. Development of a policy to strengthen EPA's oversight of advertising of pesticide registrations and land uses.
3. Use of vegetable oil as a diluent: status of EPA policy document.
4. Unenforceable label language.
5. Classification of granular formulations of certain agricultural pesticides.
6. Audit of section 24(c) registrations.
7. Labeling utility project.
8. Section 18 proposed regulations.
9. Regulatory status of termiticides.
10. Status of grain fumigants including revised Label Improvement Program (LIP) notice.

11. Results of SFIREG survey regarding State needs for chemical fact sheets/registration standards.

12. Time requirements for generating studies under Data Call-In program.

13. Proposed EPA policy statement on chemigation

14. Procedures for transmitting Experimental Use Permit information to the States.

15. Other topics as appropriate.

The meeting of the Working Committee on Enforcement and Certification will be concerned with the following topics:

1. Wood preservatives national training program.

2. Status of National Pesticide Monitoring Plan.

3. Impact of proposed restricted use classification on State programs: granulars, wood preservatives, 1080, etc.

4. Use of section 7 information for State producer establishment inspections.

5. Chemigation matters, including the planned EPA policy statement and the proposed training manual.

6. Federal facilities policy.

7. Draft Office of Compliance Monitoring strategy for section 3(c)(2)(B) suspensions.

8. Uniform reporting format.

9. Changes in grant negotiation mechanisms.

10. Status of Task Force on FIFRA-State Programs Oversight activities.

11. Federal court decision concerning FDA's establishment of action levels.

12. Report of Working Committee on Groundwater Protection and Pesticide Disposal.

13. Other topics as appropriate.

Dated: May 2, 1985.

Steven Schatzow,

Director, Office of Pesticide Programs.

[FR Doc. 85-11259 Filed 5-14-85; 8:45 am]

BILLING CODE 6560-50-M

[OPP-240063; PH-FRL 2834-9]

State Registration of Pesticides; Arkansas et al.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received notices of registration of pesticides to meet special local needs under section 24(c) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, from 15 States. A registration issued under this section of FIFRA shall not be effective for more than 90 days if the Administrator disapproves the registration or finds it to be invalid within that period. If the Administrator disapproves a registration or finds it to be invalid after 90 days, a notice giving that information will be published in the Federal Register.

DATE: The last entry for each item is the date the State registration of that product became effective.

FOR FURTHER INFORMATION CONTACT:

Sandra English, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C.

Office location and telephone number: Rm. 728, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-7716)

SUPPLEMENTARY INFORMATION: All of the registration listed below were received by the EPA in March 1985. Receipts of State registrations will be published periodically. Of the following registrations, seven involve a changed-use pattern (CUP). The term "changed-use pattern" is defined in 40 CFR 162.3(k) as a significant change from a use pattern approved in connection with the registration of a pesticide product. Examples of significant changes include, but are not limited to, changes from a nonfood to food use, outdoor to indoor use, ground to aerial application, terrestrial to aquatic use, and nondomestic to domestic use.

Arkansas

EPA SLN No. AR 85 0001. Universal Cooperatives, Inc. Registration is for Paraquat + Plus to be used on soybeans, red rice, sicklepod, barnyardgrass, broadleaf signalgrass, crabgrass, purslane, pigweed, cutleaf groundcherry, and common ragweed to control grasses and broadleaves. (CUP) March 12, 1985.

EPA SLN NO. AR 85 0002. Universal Cooperatives, Inc. Registration is for Paraquat + Plus to be used on soybeans to control cockleburs, morninglories, grasses, and pigweeds. (CUP) March 12, 1985.

California

SPA SLN No. CA 85 0026. Gustafson, Inc. Registration is for Gustafson Pro-Gro Dust Seed Protectant to be used on onion seed destined for export to Canada to control onion must (*Utocystis magica*). March 1, 1985.

SPA SLN No. CA 85 0027. Solano County Agriculture Commissioner. Registration is for Poast to be used on Zorro fescue, Blando brome, and Harding grasses to control annual rye grass. March 18, 1985.

SPA SLN No. CA 85 0028. Calif. Dept. of Food and Agriculture. Registration is for Commercial Rodent Bait Bromadiolone Treated Grain (0.005%) to be used on burrows and runways to control rats and house mice. March 13, 1985.

SPA SLN No. CA 85 0030. Kern County Agricultural Commissioner. Registration is for Pocket Gopher Bait Strychnine Treated Grain (2.63%) to be used on fields to control pocket gophers. March 13, 1985.

EPA SLN No. CA 85 0031. Kern County Agricultural Commissioner. Registration is for Pocket Gopher Bait Strychnine Treated Grain (0.29%) to be used on runways to control pocket gophers. March 13, 1985.

EPA SLN No. CA 85 0032. Kern County Agricultural Commissioner. Registration is for Pocket Gopher Bait Strychnine Treated Grain (0.50%) to be used on runways to control pocket gophers. March 13, 1985.

EPA SLN No. CA 85 0033 Kern County Agercultural Commissioner. Registration is for Pocket Gopher Bait Strychnine Treated Grain (1.77%) to be used on burrows to control pocket gophers. March 13, 1985.

EPA SLN No. CA 85 0034. Yolo County Dept. of Agriculture. Registration is for Monuron 80 WP Weed Killer to be used on dichondra grown for seed to control black medic and similar clovers. March 27, 1985.

Florida

EPA SLN No. FL 85 0003. Rhone-Poulenc, Inc. Registration is for Aliette to be used on nonbearing citrus trees to control phytophthoro foot and root rot. March 15, 1985.

Louisiana

EPA SLN No. LA 85 0001. Pfizer, Inc. Registration is for Floguard 1015 to be used on enhanced oil recovery systems to control bacteria. March 6, 1985.

Michigan

EPA SLN No. MI 85 0001. Universal Cooperatives, Inc. Registration is for Paraquat + Plus to be used on alfalfa to control weeds. (CUP) March 13, 1985.

Montana

EPA SLN No. MT 85 0001. FMC Corp. Registration is for Furadan CR-10 to be used on rape to control fleas and beetles. March 13, 1985.

Nevada

EPA SLN No. NV 85 0001. Nevada Dept. of Agriculture. Registration is for Poast to be used on garlic grown for seed to control annual and perennial grass weeds. March 13, 1985.

EPA SLN No. NV 85 0002. Nevada Dept. of Agriculture. Registration is for Abate 4–E to be used on the Humboldt River and the Little Humboldt River to control black fly larvae. March 19, 1985.

Ohio

EPA SLN No. OH 85 0001. Bell Laboratories, Inc. Registration is for ZP Rodent Bait AG to be used on no-till and minimum-tillage operations in cornfields to control voles (prairie, meadow, and house mouse). (CUP) March 8, 1985.

EPA SLN No. OH 85 0002. Universal Cooperatives, Inc. Registration is for Paraquat + Plus to be used on no-till sunflowers (full season or double crop) for preplant or preemergence treatment for emerged annual broadleaf weeds and grasses. (CUP) March 8, 1985.

EPA SLN No. OH 85 0003. Universal Cooperatives, Inc. Registration is for Paraquat + Plus to be used on alfalfa to control weeds between cuttings. (CUP) March 8, 1985.

Pennsylvania

EPA SLN No. PA 85 0002. Universal Cooperatives, Inc. Registration is for Paraquat + Plus to be used on oats (preplant and preemergence) to control weeds and grasses. March 25, 1985.

South Carolina

EPA SLN No. SC 85 0001. Union Carbide Agricultural Products Co., Inc. Registration is for Paraquat + Plus to be used on tomatoes (staked tomatoes grown in plastic mulch covered row culture only) to be used to prevent destruction of the crop. March 8, 1985.

EPA SLN No. SC 85 0002. Universal Cooperatives, Inc. Registration is for Paraquat + Plus to be used on corn and fallow land to control witchweed and grassy weeds. March 18, 1985.

EPA SLN No. SC 85 0003. PBI Gordon Corp. Registration is for Quadmec to be used on bluegrass and Bermudagrass turfs to control broadleaves, grass weeds, and nutsedge. March 27, 1985.

EPA SLN No. SC 85 0004. Union Carbide Agricultural Products Co., Inc. Registration is for Sevin 4 Oil to be used on soybeans to control beetles, worms, caterpillars, hoppers, and thrips. March 27, 1985.

Tennessee

EPA SLN No. TN 85 0001. Universal Cooperatives, Inc. Registration is for Paraquat + Plus to be used on alfalfa to control weeds between cuttings. March 5, 1985.

Texas

EPA SLN No. TX 85 0002. Pennwalt Corp. Registration is for Agclor to be used on applies, asparagus, cabbage, carrots, cauliflower, celery, cherries, cucumbers, lettuce, mushrooms, nectarines, onions, peaches, pears, peppers, potatoes, prunes, quinces, and radishes after harvest to control organisms causing decay. March 2, 1985.

EPA SLN No. TX 85 0003. American Cyanamid Co. Registration is for Cythion Insecticide RTU (The Premium Grade Malathion) to be used on cotton to control aphids, boll weevils, grasshoppers, fleahoppers, leafhoppers, lygus bugs, and thrips. March 22, 1985.

Virginia

EPA SLN No. VA 85 0001. Universal Cooperatives, Inc. Registration is for Paraquat Plus to be used on alfalfa to control annual grasses and broadleaves. (CUP) March 12, 1985.

Washington

EPA SLN No. WA 85 0001. Mobay Chemical Corp. Registration is for Sencor 4 Flowable to be used on dry field peas to control chickweed, dog fennel, henbit, lambsquarters, wild mustard, field pennycress (fanweed), and shepherdspurse weeds. March 6, 1985.

EPA SLN No. WA 85 0002. Mobay Chemical Corp. Registration is for Sencor DF 75% Dry Flowable to be used on dry field peas to control chickweed, dog fennel, henbit, lambsquarters, wild mustard, field pennycress (fanweed), and shepherdspurse weeds. March 6, 1985.

EPA SLN No. WA 85 0003. Mobay Chemical Corp. Registration is for Metasystox-R Spray Concentrate to be used on strawberries (prebloom and postharvest) to control strawberry aphids. March 6, 1985.

EPA SLN No. WA 85 0004. E.I. du Pont de Nemours and Co. Registration is for Du Pont Benlated Fungicide and Du Pont Manzated 200 Flowable Fungicide to be used on wheat to control septoria leaf and glume blotch. March 13, 1985.

EPA SLN No. WA 85 0005. Mobay Chemical Corp. Registration is for Sencor DR 75% Dry Flowable Herbicide to be used on alfalfa to control grasses and broadleaves. March 22, 1985.

EPA SLN No. WA 85 0006. Mobay Chemical Corp. Registration is for Sencor 4 Flowable Herbicide to be used on alfalfa to control weeds (grasses and broadleaves). March 22, 1985.

West Virginia

EPA SLN No. WV 85 0001. Universal Cooperatives, Inc. Registration is for Paraquat + Plus to be used on alfalfa (between cuttings) to control annual grasses and broadleaves. March 28, 1985.

(7 U.S.C. 136)

Dated: May 3, 1985.

Steven Schatzow,

Director, Office of Pesticide Programs.

[FR Doc. 85–11593 Filed 5–14–85; 8:45 am]

BILLING CODE 6560–50–M

[[PP 4G3152/T493] PH-FRL 2835–1]

E.I. du Pont de Nemours and Co., Inc.; Establishment of Temporary Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has established a temporary tolerance for residues of the miticide (trans-5-(4-chlorophenyl)-N-cyclohexyl-4-methyl-2-oxothiazoledine-3-carboxamide) in or on the raw agricultural commodity fresh market apples. This temporary tolerance was requested by E.I. du Pont de Nemours and Co., Inc.

DATE: This temporary tolerance expires May 31, 1986.

FOR FURTHER INFORMATION CONTACT:

By mail: George LaRocca, Product Manager (PM) 15, Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460

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

SUPPLEMENTARY INFORMATION: E.I. du Pont de Nemours and Co., Inc., Legal Department, D–7113, Wilmington, DE 19898, has requested in pesticide petition PP 4G3152 the establishment of a temporary tolerance for residues of the miticide (trans-5-(4-chlorophenyl)-N-cyclohexyl-4-methyl-2-oxothiazoledine-3-carboxamide) in or on the raw agricultural commodity fresh market apples at 0.05 part per million (ppm).

This temporary tolerance will permit the marketing of the above raw agricultural commodity when treated in accordance with the provisions of experimental use permit 352–EUP–122 which is being issued under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, (Pub. L. 95–396, 92 Stat. 819; 7 U.S.C. 136).

The scientific data reported and other relevant material were evaluated, and it was determined that establishment of the temporary tolerance will protect the public health. Therefore, the temporary tolerance has been established on the condition that the pesticide be used in accordance with the experimental use

permit and with the following provisions:

1. The total amount of the active ingredient to be used must not exceed the quantity authorized by the experimental use permit.

2. E.I. duPont de Nemours and Co., Inc., must immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The company must also keep records of production, distribution, and performance and on request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

This tolerance expires May 31, 1986. Residues not in excess of this amount remaining in or on the raw agricultural commodity after this expiration date will not be considered actionable if the pesticide is legally applied during the term of, and in accordance with, the provisions of the experimental use permit and temporary tolerance. This tolerance may be revoked if the experimental use permit is revoked or if any experience with or scientific data on this pesticide indicate that such revocation is necessary to protect the public health.

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

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-534, 94 Stat. 1164, 5 U.S.C. 610-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950)

Authority: 21 U.S.C. 346a(j)

Dated: May 6, 1985.

Robert V. Brown,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 85-11592 Filed 5-14-85; 8:45 am]

BILLING CODE 6560-50-M

[OPP-50632; PH-FRL 2834-8]

Issuance of an Experimental Use Permit To U.S. Department of the Interior

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has renewed an Experimental Use Permit (EUP) issued to the U.S. Department of the Interior (USDI). The permit 6704-EUP-27, allows the use of a total of 0.033 pound of sodium fluoracetate (Compound 1080) in single lethal dose baits (SDBs) on rangelands to evaluate the control of coyotes and impacts on nontarget wildlife. A maximum of 231,300 acres may be treated; the program is authorized only in the States of Montana, Idaho, and Utah.

DATE: The permit is in effect from January 8, 1985 to January 8, 1986.

FOR FURTHER INFORMATION CONTACT: William Miller, Product Manager (PM) 16, Registration Division (TS-767C), Office of Pesticide Programs, U.S. Environmental Protection Agency, Rm. 211, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703-557-2600).

SUPPLEMENTARY INFORMATION:

I. Background

In 1982 EPA issued an experimental use permit, NO. 6704-EUP-26, to the United States Department of the Interior (USDI) for research on the use of sodium fluoroacetate (commonly called "1080") in single lethal dose baits (SDBs) for predator control. Shortly after this permit was issued, EPA discovered that USDI intended to conduct the study in a manner that differed from the research authorized under the permit. Accordingly, EPA withdrew the permit without prejudice to USDI to request a new permit authorizing a different program. SDBs containing 1080 were used at only one site under the 1982 permit.

In November 1983, EPA issued a new permit, No. 6704-EUP-27, to USDI for testing with 1080 SDBs. This permit was modeled after the 1982 permit but incorporated the new features of the test program. The 1983 permit authorized use of a total of only 0.01 lb of 1080 in up to four different study areas, each 64,000 acres or less in size. Initially, two study areas were approved, and a third study area was approved a few months later, with no increase in the amount of 1080 authorized.

The research design of the 1983 permit called for evaluation of potential bait sites by use of nontoxic "placebo" baits prior to the placement of 1080 SDBs. Each placebo bait was monitored regularly to determine what species of animals visited and consumed baits. SDBs containing 1080 would be placed only at those sites where placebo baiting showed that baits would be consumed by coyotes and that consumption by nontarget animals would not pose a significant risk. Once placed, SDBs containing 1080 would also be monitored regularly, and following the disappearance of an SDB, USDI researchers would conduct a careful search of the area for any animals that might have died after consuming the missing 1080 SDBs.

USDI also planned to evaluate the impacts of using 1080 SDBs on predation by monitoring coyote predation on livestock before and after placement of SDBs. Rancher records would serve as the primary source of this information, and therefore USDI promised to screen ranchers carefully in selecting test areas. Recognizing that concurrent use of other methods of coyote control could make interpretation of results more difficult, USDI also planned to monitor predator control efforts and results while 1080 SDBs were in use.

In August 1984, USDI requested that EPA extend its experimental use permit for 1080 SDBs for another year. USDI proposed to continue the study using the experimental design, with minor modifications, that had been approved under the 1983 permit. USDI also proposed to study a new baiting strategy in which 1080 SDBs would be placed at sites where coyotes had recently killed livestock. Based on field experience, USDI expected that a predatory coyote would return to feed on the carcass of an animal it had killed and that it could be induced to consume 1080 SDBs. Thus, under the new approach to baiting, placebo baits would not be used, but in most other respects, this part of the test would follow the experimental design of the 1983 permit.

Another important change was made in the research design to deal with the difficulty of determining the species of animals taking placebo baits and 1080 SDBs. Under the 1983 permit, USDI had difficulty at several test sites identifying which species visited and consumed baits based on examination of tracks and other signs near where a missing bait was placed. In an effort to generate better information, USDI planned to use time lapse photography at some sites to aid in identifying the animals taking the baits.

EPA's review of the request for an extension included evaluation of the final report on USDI's 1982 permit and preliminary reports on the results under the 1983 permit. These reports established that placebo baiting was an effective means of determining areas in which use of 1080 SDBs would probably be ineffective due to poor consumption of baits by target species. Placebo baiting also showed promise as a means of identifying sites where use of 1080 SDBs might pose a risk to nontarget species. Depending on the number of

baits to be placed and the species consuming the baits, consumption by a nontarget species of a significant percentage of 1080 SDBs could pose a risk to local populations of nontarget wildlife.

The preliminary results from the 1983 permit also provided indications of the different conditions under which 1080 SDBs were more and less likely to be effective. Specifically, the preliminary results indicated that nontarget consumption was a greater problem in warmer seasons and in more southerly states. On the other hand, bait consumption patterns indicated more successful targeting of coyotes during the winter in northern livestock ranges.

EPA also received additional information on the toxicity and wildlife hazards from use of 1080. In addition to field research with 1080 SDBs, USDI has been conducting toxicity studies and primary and secondary poisoning tests with the 1080 toxic collar. EPA staff monitored the progress of this research and relied on oral reports from USDI scientists in evaluating the risks to nontarget wildlife from the proposed experimental use permit. EPA staff also considered and relied on an unpublished Michigan State University study of the toxicity of 1080 in the diet to different species in the weasel family.

II. Discussion of Public Comments

As authorized under EPA's regulations, 40 CFR § 172.11(a), the Agency issued a notice in the **Federal Register** of October 24, 1984, (49 FR 42790) announcing the receipt of an EUP renewal application from USDI and inviting public comments on the application. The public was given a 30-day period to comment on the USDI application.

The Agency received only two sets of comments on this EUP application. Both sets of comments objected to the renewal of the permit.

A. General

The commenters raised a number of specific objections to the design of the proposed experimental program. Before addressing these comments individually, EPA wishes to address the general comment that the program is not "adequately designed to generate scientifically reliable experimental results."

The Agency's task in deciding whether to allow USDI to conduct another year's testing under the permit is to determine whether the proposed studies would generate information useful in deciding whether to register Compound 1080 SDBs. EPA normally does not deny permit applications which fail to address all outstanding data gaps. Nor does EPA refuse to issue a permit merely because the methodological design might limit the inferences which can be drawn from the resulting data, although EPA routinely informs persons requesting experimental use permits of ways to upgrade the quality of their research.

As explained further below, EPA expects the USDI permit to generate some helpful data on the impact of SDBs on predation and nontarget species and on the best techniques for using SDBs. EPA has also concluded that the permit would not cause unreasonable adverse effects on the environment. Accordingly, EPA has approved the issuance of the USDI permit.

B. Determining Species Which Take Baits

Both commenters questioned the reliability of any data to be generated under the proposed permit because of USDI's inability to determine which species of animal have visited and consumed an SDB. In past studies, USDI has attempted to identify the species of animals visiting bait sites and consuming baits by monitoring tracks and other signs left at bait sites. In many instances, these procedures have failed to identify the species of animal taking baits. Overall, a particular type of animal has been implicated only in a minority of instances of bait removal.

These data can be interpreted at least two ways when attempting to evaluate what happens to missing baits. One could assume, as USDI apparently has, that the species pattern in the unknown take of baits would be similar to that in the known take of baits. One could also argue, however, that some species might be more likely than others to leave tracks (e.g., by virtue of habits or body weight) and, therefore, that the "known" take pattern is distorted in favor of certain types of animals. Because coyotes are among the heavier species likely to take baits, it is possible that the unknown record of takes could be distorted in their favor.

Even though the data on species taking baits do not resolve this question, the data are useful in evaluating the potential impacts of SDBs. Both commenters overlook the fact that work conducted under the 1983 permit shows that pre-treatment exposure of nontoxic baits is capable of indicating whether targeting of baits to coyotes will be poor. Even accepting the argument that coyotes are more likely than some other species to leave detectable tracks, it is clear from data generated to date that some sites (and/or time of year) provided better coyote targeting potential than others.

Based on this information, the Agency has tentatively concluded that if SDBs containing 1080 are ever registered, users should be required to evaluate bait sites with nontoxic "placebo" baits prior to use ot toxic baits. These data also suggest the usefulness of a restriction prohibiting use of SDBs if the vast majority of known takes of placebo baits could be ascribed to other species. (In such instances SDBs would not effectively control coyotes and should not be used.) EPA notes that these regulatory restrictions may not be appropriate for the new baiting strategy to be studied in Utah under the 1985 USDI permit.

Although it could be argued that there is no need for additional studies using only the tracking method for determining which species take baits, EPA thinks that the additional data will be useful. As stated earlier, there has been a wide variation in the acceptance of baits by coyotes and nontarget species at different sites under previous permits. The limited results to date suggest that SDBS might be used effectively in the dead of winter in northern regions but that targeting to coyotes in other situations would be poor. Another year's testing will generate additional information that will help to characterize the type of situations in which effective targeting of SLD baits to coyotes can and cannot be expected.

C. Frequency of Monitoring

USDI's 1985 permit proposed to abandon twice-weekly monitoring of SDBs. One commenter correctly noted that USDI did not support the move to weekly monitoring with confirmatory data. USDI based its decision on an impression relayed by its field personnel that the excess human activity resulting from the extra visit encouraged activity by nontarget animals (especially crows) and caused coyotes to shy away. The validity of this argument cannot be resolved on the basis of available information.

Determining species taking SDBs through tracking requires that the tracks endure from the time when they are "laid" until next time when the site is inspected. The quality of the tracking record can be expected to diminish over time. If precipitation occurs, tracks could be obliterated quickly. Under these conditions, it is logical to expect that more frequent monitoring would be more likely to find identifiable tracks. Accordingly, EPA has required USDI to

monitor baits twice a week, whenever possible.

If, as USDI maintains, too much human activity actually distorts the pattern of animal visits to draw stations and SDBs, researchers will need a method for determining species taking baits which does not involve frequent human visits to the baited areas. Recognizing this, EPA has discussed other methods with USDI staff.

One such method which USDI study personnel have agreed to test under the 1985 permit is time-lapse photography. Because of the intervals between pictures and the relatively short time that would be needed by an animal to approach and remove an SDA, EPA regards this method as better suited for assessing visits to draw stations than for determining species taking SDBs. Moreove, time-lapse cameras would be required to cover large areas (unless funds were available for one camera per SDB location). It is unlikely that visits by small rodents would be detected in such wide-angle shots, particularly if such approaches were made from beneath ground, snow, or ground cover.

Radio-telemetry is the only other alternative for evaluating the impact of SDBs on coyotes and nontarget wildlife. This procedure requires that many animals from many species be trapped in a bait area, equipped with radios, and tracked. While radio-telemetry would probably provide the best remote means for gauging the relative uptake of SDBs by the local animal community, the procedures are costly and time-consuming. So far, USDI has been reluctant to commit the sizable amounts of funding necessary to use radio-telemetry techniques in research on Compound 1080 SDBs, at least until the utility of the method has been demonstrated in the early years of the permit.

D. Concurrent Control Methods

One commenter questioned the reliability of any date concerning the efficacy of SDBs if USDI does not prohibit the use of other methods of coyote control while SDBs are in the field. The commenter argued that unless concurrent control efforts are eliminated, it will be impossible to tell whether any decrease in predation is the result of the use of SDBs or the result of killing coyotes by other means.

EPA recognizes that the use of concurrent control methods makes analysis of the efficacy of SDBs more difficult, and for that reason, EPA recommended that the USDI permit be conducted in areas where other coyote control methods are not being used. USDI, however, decided not to incorporate such a feature into the experimental design of its 1985 permit.

There are two practical reasons why USDI might have decided to allow concurrent control efforts. Eliminating all other control efforts would be difficult under most study conditions because coyotes move over large home ranges that cross different properties and jurisdictions. Moreover, many ranchers might agree to withhold other coyote control methods during the study only if they were indemnified for any livestock killed by predators. Meeting such demands might prove to be very expensive.

While withholding concurrent coyote control efforts would strengthen the reliability of the resulting data, EPA concludes that the study design authorized in USDI's 1985 permit may, nonetheless, yield some useful information. USDI has agreed to document the use and results of other coyote control efforts in study areas. (In some cases, USDI may even be able to select study sites where no predator control is performed during the season that SDBs are being tested. For example in Washington County, Idaho, in 1983 very little winter coyote control was practiced aside from the experimental use of SDBs.) By carefully comparing the timing of coyote kills using various methods and the response in predation livestock, it may possible to determine which control method—SDBs or some other method—was responsible for any observed decrease. EPA would consider such information showing a drop in predator kills following SDB consumption, with few or no kills using other techniques, to be circumstantial evidence of SDB eficacy.

E. Locating SDB Victims

One commenter noted that the method of searching for carcasses proposed by USDI would not be likely to find a large proportion of all victims. EPA thinks that it is impossible to guarantee that every animal dying from consuming a SDB will be located by the USDI searchers, but EPA does expect that they will recover at least some of the poisoning victims. Indeed, USDI reports that carcasses of animals have been located in searches conducted after the disappearance of 1080 SDBs, and that only a small number of these animals were thought to have died from consuming 1080. (Further laboratory analysis may confirm these suspicions.) There are no data which indicate what percentage of victims will be recovered by researchers, although due to the nature of searches, EPA expects that the caracasses of larger victims (e.g., coyotes and dogs) are more likely to be found than the bodies of smaller victims. Thus, the USDI permit will not resolve all of EPA's questions about the impact of SDBs on nontarget species, particularly smaller animals. EPA does expect the USDI permit, however, to provide some useful information on the fate of coyotes and larger nontarget species.

F. Hazards to Nontarget Animals

One commenter objected to issuance of the permit because endangered species, livestock guarding dogs, and other nontarget wildlife would be poisoned by use of SDBs. EPA has concluded that such adverse effects are not likely, in view of the restrictions imposed on use of SDBs.

EPA asked the Office of Endangered Species (OES) to consider whether the permit requested by USDI would jeopardize the continued existence of any endangered species. The OES has reviewed the proposed test sites, the amount of 1080 per bait, the number of baits, and other aspects of the experimental design and has concluded that the proposed permit would not jeopardize any endangered species. It should be noted that USDI has removed or refrained from using SDBs near draw stations which have been visited by bald eagles, an endangered species.

The Agency recognizes that 1080 SDBs can be expected to be lethal to herding and livestock guarding dogs and has concluded that baits should not be used near any operations which employ such animals during the seasons when these dogs are on the range. Accordingly, USDI has been specifically directed not to use SDBs when herding or guarding dogs are on the range. The risk to herding and guarding dogs is further reduced by placing prominent warning signs near the sites where baits will be placed, and by requiring that USDI obtain permission of landowners before placing baits on private property.

Finally, EPA staff scientists have reviewed data on the risks to nontarget species other than endangered and threatened species and have concluded that the proposed permit did not pose an unreasonable risk. This conclusion is based primarily on the numerous safeguards incorporated into the design of the USDI permit. First, SDBs will be placed only in areas where trials with placebo baits have shown that consumption of baits by nontarget species is not likely to be a significant problem. Second, baits will contain a limited dose of 1080, 5 mg, that is not expected to be lethal to most species larger or less sensitive than coyotes. Results from secondary poisoning

studies with the 1080 toxic collar indicate that the risk to scavengers feeding on coyotes and other animals dying from ingestion of approximately 5 mg of 1080 is very slight. Third, only a limited number of baits will be placed at a test site, thereby restricting the number of lethal doses available for any species.

Finally, the risk to nontarget wildlife is further limited because of USDI's plans to search the teat area immediately after determining that a bait is missing. EPA recognizes that some SDBs may be consumed by nontarget species and that some of these animals may die. The Agency, however, does not expect that such deaths would have a significant or lasting impact on local populations. While searches may not find every animal dying from eating a 1080 SDB, they should be capable of detecting widespread kills, in the unlikely event that use of SDBs does cause the death of numerous nontargets. USDI is required to inform EPA of such findings at once, and EPA would direct USDI to discontinue testing immediately.

G. Adequacy of Livestock Loss Data

One of the commenters argued that livestock loss data compiled by ranchers was unreliable and therefore that no reliable conclusions could be drawn about the impact of using 1080 SDBs on predators. EPA disagrees.

USDI has stated that one of the criteria it will use in selecting test areas is the reliability of the ranchers' records on predation. While some ranchers may not keep accurate records of predation, USDI will only include a rancher as a participant if there is reason to think his records are reliable. As a further check on the accuracy of ranchers records, USDI researchers will inspect livestock carcasses to verify whether the animal was killed by a predator or died from other causes. EPA concludes that these procedures provide adequate assurance of the reliability of predation loss data.

H. Population Reduction vs. *"Corrective" Control*

One commenter argued against issuance of the USDI permit based on conclusions contained in the Agency's Initial and Final Decisions in the proceeding to reconsider the Agency's 1972 order cancelling the registration of 1080 for predator control. In the reconsideration proceeding, EPA ruled that the proponents of 1080 use had failed to present evidence demonstrating that predation rates could be reduced through a strategy of suppressing the general coyote population in an area. Claiming that the proposed USDI permit was seeking to test the efficacy of 1080 SDBs in a program of population suppression, the commenter argued that the Agency's decisions in the reconsideration proceeding precluded issuance of a permit for that research purpose.

First, the use of 1080 SDBs proposed by USDI is quite different from the population suppression strategies considered in the reconsideration proceeding. Prior to 1972 single lethal dose baits containing strychnine were commonly used to control coyotes. These baits were often scattered by the hundreds or thousands on the open range in an attempt to kill as many coyotes as possible. Very little effort was made to target coyotes specifically by careful placement of baits or selection of bait sites. In contrast, USDI will place only a limited number of baits at each drawn station and will select each bait placement carefully. While use of 1080 SDBs may have some impact on the local population of coyotes, it does not appear that the experimental use resembles the population suppression strategies in use before 1972.

Even if the USDI experimental use were deemed a population control strategy, that conclusion would not preclude issuance of the requested permit, notwithstanding the Agency's decisions in the reconsideration proceeding. In that proceeding, EPA ruled only that the proponents of 1080 use had failed to present substantial new evidence proving that population suppression would reduce the overall rate of predation by coyotes. Because the burden of proof was not met, EPA ruled that use of 1080 in a delivery mechanism that was directed to population suppression (the 1080 large bait station) could not be considered further for registration. (Similarly, the reconsideration hearing resulted in an order authorizing further consideration of 1080 SDBs, subject to registrations in ways that precluded their use on a population control strategy.)

Proponents of 1080 are entitled, however to apply for *experimental use permits* to accumulate additional evidence to show that use of 1080 for population suppression effectively reduces predation rates. EPA has approved USDI applications because it determined that the proposed permit met the statutory standards for issuance of experimental use permits.

I. Census of Coyote Populations

One of the commenters questioned the reliability of the efficacy data to be generated under the proposed permit unless USDI collected information on the population levels of coyotes before and after the use of 1080 SDSs. The commenter indicated that predation rates can change independently of the use of any predator control methods, and that factors such as a decline in the prey base of coyotes might cause coyotes to emigrate from an area, thus leading to a decline in predation. The commenter implied that these phenomena could be evaluated only through censusing coyote populations before and after use of 1080 SDSs.

EPA recognizes that predation rates sometimes fluctuate unexpectedly for reasons unrelated to predator control efforts and that data on coyote populations would be helpful in assessing the possible causes in any observed changes in predation rates. EPA, however, does not consider such information essential to draw inferences about the efficacy of SDBs. If predation declines or stops in an area after 1080 SDBs. If predation declines or stops in an area after 1080 SDBs have been consumed by coyotes, and if there is no indication that coyotes have been killed by other methods and no other alternative explanation, EPA would treat such information as circumstantial evidence of the efficacy of 1080 SDBs in such a trial. A series of such successful trials clearly could not prove conclusively that 1080 SDBs were effective, but they would constitute strong circumstantial evidence of efficacy. It would be extremely unlikely that every apparently successful trial in a series of successful trials was the result of random variations in coyote populations rather than the use of SDBs.

In any event, USDI has agreed to collect information which may shed some light on possible causes of any observed drop in predation, other than use of 1080 SDBs or concurrent coyote controls. As part of the 1985 permit, EPA required USDI to monitor the "activity or population of carnivorous mammals," including coyotes, in one of the study areas.

J. Scavenger vs. *Killer coyotes*

Some of the commenters objected to the new baiting technique proposed for study in Utah. The commenters argued that the baiting strategy would likely kill coyotes that scavenge livestock carcasses, but that these coyotes were not necessarily the same animals that had killed the livestock. In fact, the commenters argued that scavenging coyotes actually help farmers by removing carrion from the range and by controlling unwanted rabbits and rodents. The commenters implied therefore that the proposed method of

using 1080 SDBs, if successful, would be more harmful than helpful.

The theory that predation on livestock is practiced only by a minority of coyotes has never been demonstrated empirically. Although it has sometimes been observed that sheep have existed unharmed in the presence of coyotes, it is also true that coyotes are opportunistic carnivores and that lambs and kids are relatively easy prey. Therefore, it is believed by many that most coyotes, on occasion, kill livestock.

Because there is an issue about the impact of the proposed testing, EPA concludes that it is appropriate to allow the use of 1080 SDBs so that USDI can collect information which may begin to resolve the dispute. EPA would consider data showing that predation declined or stopped in areas near the Utah test sites—following the consumption of 1080 SDBs, and absent other explanations for the decrease—as an indication that predatory coyotes also scavenge.

K. Size of program

Both commenters objected to the issuance of the USDI permits for an expanded area, from 256,000 acres under the 1983 permit to 291,300 acres in 1985. Their objections rested both on grounds that the tests were incapable of producing useful data and that the larger area would only increase the risks.

EPA does not believe that the modest expansion in the total size of the test areas studied increases the risks, and the Agency expects that by expanding the size of the test area, USDI may obtain better data under the new permit. The risks posed by the proposed permit do not change substantially since USDI has not requested any increase in the number of baits to be used in an area. (As a practical matter, USDI has used only a small portion of the baits which were authorized in the previous 2 years of the permit and probably will not use all of the baits authorized under the 1985 permit.)

Moreover, the acreages requested in Montana and Idaho are not excessive in terms of the coyote-sheep situation and the research objectives. The much larger acreages requested for Utah are based on the trouble-shooting nature of the proposed studies. The entire extended range was requested for the Utah trials because it is not possible to determine in advance where the most appropriate kill sites will be found. Only a small portion of the entire area will actually be treated with 1080.

III. Conclusion

On January 8, 1985, EPA approved the requested renewal and issued the experimental use permit to USDI. The permit was issued under the authority of FIFRA sections 5(g) and 5(a). Under section 5(g), the Agency determined that USDI is a public agricultural research agency which is engaged in *bona fide* research on 1080 SDBs for predator control. EPA has also determined under section 5(a) that the proposed permit will not cause unreasonable adverse effects on the environment and is likely to generate information useful in determining whether to register 1080 SDBs. Specifically, the Agency has concluded that the 1985 permit should provide information on the following: (1) The efficacy and hazards of a new baiting strategy for use of 1080 SDBs; (2) the conditions under which 1080 SDBs are and are not likely to be an effective means of predator control; (3) the impact of use of SDBs on populations of nontarget wildlife; and (4) the usefulness of time-lapse photography as a technique for determining what species visit and consume 1080 SDBs. Moreover, in light of available data and field experience with 1080, EPA concludes that the risk to nontarget species is not significant because of the nature of the delivery mechanism, the limited number of baits involved, and the particular areas chosen for testing and the numerous precautions incorporated in the experimental design.

Dated: May 7, 1985.

Robert V. Brown,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 85-11594 Filed 4-14-85; 8:45 am]

BILLING CODE 6560-50-M

[SAB-FRL-2836-3]

Science Advisory Board; Environmental Health Committee; Open Meeting

Under Pub. L. 92-463, notice is hereby given that a one-day meeting of the Metals Subcommittee of the Environmental Health Committee of the Science Advisory Board will be held on June 4, 1985, in the Peter Cooper Suite, of the Cooper Union School for the Advancement of Science and Art, Cooper Square, 7 East 7th Street, 8th Floor, New York City, New York, 10003. The meeting will start at 10:00 a.m. and adjourn no later than 4:00 p.m.

The principal purpose of the meeting will be to review the scientific adequacy of a draft Health Assessment Document for Beryllium prepared by the Office of Research and Development (ORD) and dated December 1984 (EPA-600/8-84-026A), and to discuss upcoming issues of current interest to the Subcommittee.

For information on how to obtain copies of the draft Health Assessment Document for Beryllium, please write the ORD Publications Office, Center for Environmental Research Information, U.S. EPA, Cincinnati, Ohio 45268 or call (513) 684-7562.

The meeting will be open to the public. Any member of the public wishing to attend or present information, or desiring further information, should contact either Dr. Daniel Byrd, Executive Secretary to the Committee, or Mrs. Patti Howard, by telephone at (202) 382-2552 or by mail to: Science Advisory Board (A-101F), 401 M Street, SW., Washington, D.C. 20460, no later than c.o.b. May 28, 1985.

Dated: May 9, 1985.

Terry F. Yosie,

Staff Director, Science Advisory Board.

[FR Doc. 85-11687 Filed 5-14-85; 8:45 am]

BILLING CODE 6560-50-M

[FRL-2836-1]

Organic Chemicals Manufacturing, Plastics and Synthetic Fibers; Pesticide Chemicals Manufacturing; Intent To Transfer Confidential Information to a Contractor

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of intent to transfer confidential information to a contractor.

SUMMARY: The Environmental Protection Agency (EPA) intends to transfer or to grant access to confidential information collected under Section 308 of the Clean Water Act to selected EPA contractors. This information will assist the contractors in analyzing, revising, and reviewing the technical and economic data base which supports effluent limitations and standards and NPDES permits required by the Clean Water Act.

DATES: Comments on the notice of transfer are due ten days after date of publication..

FOR FURTHER INFORMATION CONTACT: Renee Rico, Economic Analysis Branch, Analysis and Evaluation Division (WH-586), Office of Water Regulations and Standards, U.S. Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460, (202)382-5386.

SUPPLEMENTARY INFORMATION: The Clean Water Act of 1977 requires the Environmental Protection Agency to develop, revise, and review effluent limitations and standards for industrial point sources. The Office of Water Regulations and Standards is responsible for the industrial point

source categories. EPA will be transferring confidential files for the Plastics and Synthetic Fibers and Organic Chemicals Manufacturing Point Source Category and the Pesticides Chemicals Manufacturing Point Source Category. The SIC codes contained in these Point Source Categories are:

SIC 2821 Plastic Materials, synthetic resins and nonvulcanizable elastomers
SIC 2823 Cellulosic man-made fibers
SIC 2824 Synthetic organic fibers, except cellulosic
SIC 2865 Cyclic (coal tar) crudes and cyclic intermediates, dyes and organic pigments (lakes and tones)
SIC 2869 Industrial organic chemicals, NEC
SIC 2879 Pesticides and Agricultural Chemicals, NEC.

The confidential files for Pesticides Chemicals will remain at the same contractor under a different contract. The files are located at Meta Systems, Inc., Cambridge, MA under Contract No. 68-01-6426 and will remain at Meta Systems, Inc. under Contract No. 68-01-6774.

The confidential files for Plastics and Synthetic Fibers and Organic Chemicals are currently located at Meta Systems, Inc., Cambridge, MA under Contract No. 68-01-6426 and will continue to hold them under Contract No. 68-01-6774. Subsequently, the files shall be moved to Abt Associates of Cambridge, MA. (Contract No. 68-01-7074, including Eastern Research Group, Cambridge, MA, Charles River Associates, Inc., Boston, MA, Industrial Economics, Inc., Cambridge, MA, and Marshall Bartlett, Lexington, MA).

EPA has determined that it is necessary to transfer this information or grant access to the designated contractor in order that it may carry out the work required by their contract. The contracts and subcontracts contain all confidentiality provisions required by EPA's confidentiality regulations (40 CFR 2.302(h)(2-3).

In accordance with those regulations, sampled facilities and questionnaire respondents who have submitted confidential information have ten days from the date of this notice to comment on EPA's proposed transfer of this information to these contractors for the purposes outlined above (40 CFR 2.303(h)(2-3)).

Dated: May 7, 1985.

Henry Longest II,

Acting Assistant Administrator, Office of Water (WH-556).

[FR Doc. 85-11889 Filed 5-14-85; 8:45 am]

BILLING CODE 6560-50-M

[FR-2835-9]

Final Determination Concerning the Jack Maybank Site Pursuant to Section 404(c) of the Clean Water Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of decision to restrict the use of disposal site at Jehossee Island, South Carolina.

SUMMARY: This is notice of EPA's Final Determination under section 404(c) of the Clean Water Act to restrict the use of a 900 acre wetland site (hereafter referred to as the Maybank Site) at Jehossee Island, South Carolina, as a disposal site, based on a finding by the Assistant Administrator for External Affairs that the discharge of dredged or fill material for the purpose or effect of impounding all or part of the Maybank Site would have unacceptable adverse effects on fishery areas (including spawning and breeding grounds) and recreation areas in the South Edisto River and St. Helena Sound.

EFFECTIVE DATE: The effective date of the Final Determination is April 5, 1985.

FOR FURTHER INFORMATION CONTACT: Gregory E. Peck, Aquatic Resource Division, Office of Federal Activities (A-104), U.S. Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460, (202) 475-8794.

Copies of the Final Determination are available for inspection in the Public Information Reference Unit, EPA Library, Room M 2904, 401 M Street SW., Washington, D.C. 20460, and at the EPA Region IV Library, 345 Courtland Street, Atlanta, Georgia 30308.

SUPPLEMENTARY INFORMATION: Under section 404(c) of the Clean Water Act, the Assistant Administrator for External Affairs has the authority to prohibit or restrict the use of a defined area in the waters of the United States as a disposal site for dredged or fill material, after notice and opportunity for public hearing, whenever he determines that such disposal will have an unacceptable adverse effect on municipal water supplies, shellfish beds and fishery areas (including spawning and breeding areas), wildlife, or recreation areas.

In accordance with the section 404(c) regulations (40 CFR Part 231), EPA's Region IV Administrator, Mr. Charles Jeter, initiated section 404(c) proceedings with regard to a 900 acre wetland site (the Maybank Site), on Jehossee Island, Charleston County, South Carolina. His action was in response to a Section 404 permit application by Mr. Maybank to construct earthen dikes to create two duck hunting/mariculture impoundments. The background of this action is summarized in the Region's notice of proposed determination and public hearing (published at 49 FR 30112, July 26, 1984).

On January 18, 1985, Mr. Jeter forwarded his recommended determination and the administrative record for the Maybank proceeding to the Assistant Administrator for External Affairs for her review in preparation of a final determination. His recommendation to prohibit the use of the Maybank Site for use for specification as a disposal site was based on anticipated unacceptable adverse effects to wildlife, fishery and recreation areas. Mr. Jeter also expressed his opinion that these direct impacts associated with the proposed project would be further magnified by the previous alteration of wetlands in the estuary of which the Maybank Site is a part.

After careful consideration of the record in this case, including extensive public comments, hearing record, comments for the Director of Civil Works (U.S. Army Corps of Engineers), and after consultation with the applicant, the Assistant Administrator for External Affairs determined that the use of the 900 acre wetland site as a disposal site would result in unacceptable adverse effects to fishery and recreation areas in the South Edisto River and St. Helena Sound. Specifically, the proposed project would result in the direct loss of approximately 30 acres of wetlands from the placement of fill material to construct impoundment dikes at the Maybank Site. Moreover, the impoundment of 900 acres of tidal marshes at Maybank Sites is likely to result in a significant decrease in the production and export of plant biomass (primarily in the form of detritus) and severely restrict access to tidal creeks and marsh surface at the Maybank Site by numerous species of fish and shellfish. It is anticipated that these changes will adversely impact the fishery resources of the South Edisto River and St. Helena Sound by reducing nutrient input to the estuarine food web and limiting the use of the Maybank Site as breeding, feeding and nursery habitat by dependent estuarine organisms. These impacts take on added significance when considered in the context of cumulative wetland loses in the area of the Maybank Site. The South Edisto estuary is part of the St. Helena Sound system which has already experienced the impoundment of 26,000 acres (22 percent) of its tidal marshes; 12,000 acres of impoundments are

located within a three mile radius of the proposed project.

On these bases, EPA has concluded that use of the Maybank Site as a disposal site for the discharge of dredged or fill material should restricted. This decision prohibits placement of dredged or fill material in the form of dikes or other structures which would have the purpose or effect of impounding the project marsh site or parts thereof.

Dated: May 6, 1985.

Josephine S. Cooper,

Assistant Administrator for External Affairs.

[FR Doc. 85-11690 Filed 5-14-85; 8:45 am]

BILLING CODE 6560-50-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.: 224-004124-002.
Title: Tacoma Terminal Agreement.
Parties:
The Port of Tacoma
International Transportation Service, Inc.

Synopsis: Agreement No. 224-004124-002 amends the basic agreement by expanding the leased premises at Terminal 7-D in Tacoma as described in Exhibit "C" contained in the agreement. The amendment will also increase the monthly rental for the premises.

Agreement No.: 224-004139-002.
Title: Palm Beach Terminal Agreement.
Parties:
The Port of Palm Beach District (Port)
Seaboard Marine, Ltd. (Seaboard)

Synopsis: Agreement No. 224-004139-002 amends the basic agreement by adding 1,025 sq. ft. of office space in the Port of Palm Beach Maritime Office Building located in Riviera Beach, Florida for the use of Seaboard, relative to its import and export business.

Agreement No.: 224-010754.
Title: New Orleans Terminal Agreement.
Parties:
Baton Rouge Marine Contractors, Inc. (BRMIC)
Machinery Rentals, Inc. (MRI)
Kerr Steamship Co., Inc. (Kerr)
Cooper/T. Smith Corporation (Cooper/T. Smith)
Strachan Shipping Company (Strachan)
ITO Corporation (ITO)

Synopsis: BRMCI is the operator of a container terminal in the Port of New Orleans. There are five shareholders in BRMIC, namely; MRI, KERR, COOPER/T. SMITH, STRACHAN and ITO. The agreement provides that the shareholders agree they will not operate a container terminal in the area of the Port of New Orleans, as defined in the agreement, in competition with the container terminal operated by BRMCI, while participating in it as shareholders. The agreement will become effective upon the date designated by the Commission.

Agreement No.: 224-010755.
Title: San Francisco Terminal Agreement.
Parties:
San Francisco Port Commission (Port)
Naviera Interamericana Navicana S.A. (Navicana)

Synopsis: Agreement No. 224-010755 provides that Navicana agrees that it will utilize the Port of San Francisco as its published regularly scheduled Northern California port of call for its liner vessel service. As consideration to Navicana for such promise they will pay to the Port sixty percent of all revenue from dockage and wharfage generated under the agreement in lieu of one hundred percent of Port tariff charges. The term of the agreement will be for five years commencing on the first day of the month following determination of the effective date of the agreement by the Commission.

Agreement No.: 224-010756.
Title: New Orleans Terminal Agreement.
Parties:
J. Young & Company, Inc. (J. Young)
Oceanic Shipping Company (Oceanic)

Synopsis: J. Young is a Louisiana corporation and Oceanic is a Georgia corporation which is a wholly owned subsidiary of Strachan. Agreement No. 224-010756 provides for the formation of a joint venture to conduct all terminal operator/stevedoring functions of the two parties at the Port of New Orleans. The joint venture will be conducted under the name Transocean Terminal Operators. The parties have requested a shortened review period for the agreement.

By Order of the Federal Maritime Commission.

Dated: May 10, 1985.

Bruce A. Dombrowski,

Acting Secretary.

[FR Doc. 85-11701 Filed 5-14-85; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Farmers & Merchants Bancorp, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval 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 acquire 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 June 6, 1985.

A. Federal Reserve Bank of Cleveland (Lee S. Adams, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Farmers & Merchants Bancorp, Inc.*, Archbold, Ohio: to become a bank holding company by acquiring 100 percent of the voting shares of The Farmers & Merchants State Bank, Archbold, Ohio.

B. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Pan American Banks, Inc.*, Miami, Florida; to acquire 100 percent of the voting shares of Pan American Bank of Broward, N.A., Oakland Park, Florida.

2. *Southwest Banc Shares, Inc.*, Chatom, Alabama; to become a bank holding company by acquiring 100 percent of the voting shares of Chatom State Bank, Chatom, Alabama.

C. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Town & Country Bancorp, Inc.*, Springfield, Illinois; to acquire at least 80 percent of the voting shares of Logan County Bank, Lincoln, Illinois.

D. **Federal Reserve Bank of St. Louis** (Delmer P. Weisz, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Headquarters Holding Company*, Ava, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of First National Bank of Ava, Ava, Illinois. Comments on this application must be received not later than May 29, 1985.

2. *Peoples of Indianola, Inc.*, Indianola, Mississippi; to acquire at least 5 percent of the voting shares of First Mississippi National Corporation, Hattiesburg, Mississippi, thereby indirectly acquiring First Mississippi National Bank, Hattiesburg, Mississippi.

3. *River Bend Bancshares, Inc.*, Wood River, Illinois; to become a bank holding company by acquiring 80 percent of the voting shares of Illinois State Bank of East Alton, East Alton, Illinois.

E. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *First Crockett Bancshares, Inc.*, Crockett, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of Allied First National Bank of Crockett, Crockett, Texas.

F. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Independent Community Bancorp*, Sunnymead, California; to become a bank holding company by acquiring 48.16 percent of the voting shares of Cal-West National Bank, Sunnymead, California.

Board of Governors of the Federal Reserve System, May 9, 1985.

William W. Wiles,

Secretary of the Board.

[FR Doc. 85-11643 Filed 5-14-85; 8:45 am]

BILLING CODE 6210-01-M

Midsouth Bancorp, Inc., et al.; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 3, 1985.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President), 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *MidSouth Bancorp, Inc.*, Lafayette, Louisiana; to engage *de novo* through its subsidiary, MidSouth Financial Services, Lafayette, Louisiana, in consumer finance activities throughout the State of Louisiana.

B. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President), 101 Market Street, San Francisco, California 94105:

1. *San Diego Financial Corporation*, San Diego, California; to engage *de novo* through its subsidiary, San Diego Life Insurance Company, Phoenix, Arizona, in the activity of underwriting as reinsurer credit life and disability insurance which is directly related to extensions of credit. This activity would be conducted in the State of California.

Board of Governors of the Federal Reserve System, May 9, 1985.

William W. Wiles,

Secretary of the Board.

[FR Doc. 85-11642 Filed 5-14-85; 8:45 am]

BILLING CODE 6210-01-M

Newport Pacific Bancorp; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party

commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 6, 1985.

A. Federal Reserve Bank of San Francisco (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Newport Pacific Bancorp*, Anaheim, California; to become a bank holding company by acquiring 100 percent of the voting shares of Citizens National Bank, Hanford, California. Newport Pacific Bancorp has also applied to acquire the following nonbank companies: American Guarantee Mortgage Corporation (mortgage banking activities including the origination of first and second trust deeds sold to institutional lenders, from offices in Anaheim, Brea, Hesperia, Palm Springs, Diamond Bar, Santa Barbara, Oxnard and Lompoc, California, serving the State of California); Enterprise Financial Services, Anaheim, California (mortgage banking activities including brokering of trust deed loans from an office in Anaheim, California, serving the State of California); NPB Loan Service, Anaheim, California (loan servicing activities including the servicing of first, second and third trust deed mortgages on California real property held by institutional lenders from an office in Anaheim, California, serving the State of California); and Tiffany Escrow Bancorp, Anaheim, California (neutral third party escrow activities from an office in Anaheim, California, serving the State of California.

Board of Governors of the Federal Reserve System, May 9, 1985.

William W. Wiles,

Secretary of the Board.

[FR Doc. 85-11641 Filed 5-14-85; 8:45 am]

BILLING CODE 6210-01-M

GENERAL SERVICES ADMINISTRATION

Report on Revised System of Records Under the Privacy Act of 1974

AGENCY: General Services Administration.

ACTION: Notification of new system of records.

SUMMARY: The purpose of this document is to give notice, under the provisions of the Privacy Act of 1974, 5 U.S.C. 552a, of intent to establish a new system of records that will be maintained by GSA. The system of records, Contracted Travel Services Program, GSA/GOVT-4, is being established to allow Government agencies to provide travel agents under contract to the Federal government information for the arrangement of travel services to authorized individuals. A new system report is being filed with the President of the Senate, the Speaker of the House, and the Office of Management and Budget. A waiver of the 60-day advance notice requirements of OMB Circular A-108 is being requested from the Office of Management and Budget.

DATES: Any interested party may submit written comments about this revised system. Comments must be received on or before the 30th day following publication of this notice. The routine use will become effective without further notice on the 30th day following publication of this notice unless comments are received that would result in a contrary decision.

ADDRESS: Address comments to General Services Administration (ATRAI), Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Mr. William Hiebert, GSA Privacy Act Officer, telephone (202) 535-7647.

Background

The purpose of this system is to assemble information to enable travel agents who are under contract to the Federal government to issue and account for travel provided to individuals. Under the system, travel agents will collect and maintain information on individuals authorized by a Federal agency to travel and make travel arrangements for such individuals.

The proposed new system of records is as follows:

GSA/GOVT-4

SYSTEM NAME:

Contracted Travel Services Program.

SYSTEM LOCATION:

This system of records is located in the travel agencies under contract with a Federal agency and in the administrative offices of Federal agencies.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals covered by the system are current Federal employees on travel and individuals being provided travel by the Government.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records include traveler's profile which contains name of individual, social security number, home and office telephones, agency's name, address, and telephone number, air travel preference, rental car identification number and preference of car, hotel preference, current passport and/or visa number, personal credit card numbers, and additional information; travel authorization; and monthly reports from travel agent(s) showing charges to individuals, balances, and other types of account analyses.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

31 U.S.C. 711; interpret or apply 31 U.S.C. 3511, 3512, and 3523.

PURPOSE:

To assemble in one system information to enable travel agents who are under contract to the Federal Government to issue and account for travel provided to individuals.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USE:

a. To disclose information to a Federal, State, local, or foreign agency responsible for investigating, prosecuting, enforcing, or carrying out a statute, rule, regulation, or order, where the agencies become aware of a violation or potential violation of civil or criminal law or regulation.

b. To disclose information to another Federal agency or a court when the Government is party to a judicial proceeding.

c. To disclose information to a Member of Congress or a congressional staff member in response to an inquiry from that congressional office made at the request of that individual.

d. To disclose information to an expert, a consultant, or contractor of the agency in performing a Federal duty.

e. To disclose information to a credit card company for billing purposes.

f. To disclose information to a Federal agency for accumulating reporting data and monitoring the system.

g. To disclose information to the agency by the contractor in the form of itemized statements or invoices, and reports of all transactions including refunds and adjustments to enable audits of charges to the Government.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file cabinets. Computer records within a computer and attached equipment.

RETRIEVABILITY:

Filed by name and/or social security number at each location.

SAFEGUARDS:

Records stored in lockable file cabinets or secured rooms. Computerized records protected by password system. Information released only to authorized officials on a need-to-know basis.

RETENTION AND DISPOSAL:

Records kept by the Federal agency are held for 3 years and then destroyed. Records kept by the travel agency are held and destroyed according to their needs.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Transportation, Office of Federal Supply and Services, General Services Administration (FT), Crystal Mall Building 4, 1941 Jefferson Davis Highway, Arlington, VA 22202.

NOTIFICATION PROCEDURE:

Inquiries from individuals should be addressed to the appropriate agency's adminstrative office for which they traveled.

RECORD ACCESS PROCEDURES:

Requests from individuals should be addressed to the appropriate agency's administrative office for which they traveled. Individuals must furnish their full name and the authorizing department or agency and components for their records to be located and identified.

CONTESTING RECORD PROCEDURES:

Individuals wishing to request amendment of their records should contact the appropriate agency's adminstrative office for which they traveled. Individuals must furnish their full name and the name of the authorizing agency, including duty station where they were employed when traveling if applicable.

RECORD SOURCE CATEGORIES:

Individuals, employees, travel authorization, credit card companies.

Dated: May 7, 1985.

Johnny T. Young,

Acting Director, Information Management Division.

[FR Doc. 85-11676 Filed 5-14-85; 8:45 am]

BILLING CODE 6820-24-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Mixer-Mate "Plus" T-1600; Withdrawal of Approval of New Animal Drug Application

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of that part of a new animal drug application (NADA) sponsored by Protein Blenders, Inc., covering use of Mixer-Mate "Plus" T-1600 (tylosin phosphate) premix intended for use in swine feed for increased rate of weight gain and improved feed efficiency. The sponsor requested the withdrawal of approval.

EFFECTIVE DATE: May 28, 1985.

FOR FURTHER INFORMATION CONTACT: David N. Scarr, Center for Veterinary Medicine (HFV-214), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1846.

SUPPLEMENTARY INFORMATION: Protein Blenders, Inc., Box 631, Highway 218 South, Iowa City, IA 52240, is sponsor of NADA 96-273 for use of Mixer-Mate "Plus" T-1600 (tylosin phosphate) premix intended for use in swine feed for increased rate of weight gain and improved feed efficiency.

The application was originally approved on November 4, 1974. In a letter dated October 16, 1984, the firm requested withdrawal of approval of that part of the NADA covering use of Mixer-Mate "Plus" T-1600 because the premix is no longer being marketed. Other products presently approved under NADA 96-273 are not affected by this notice.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(e), 82 Stat. 345-347 (21 U.S.C. 360b(e))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Veterinary Medicine (21 CFR 5.84), and in accordance with § 514.115 *Withdrawal of approval of applications* (21 CFR 514.115), notice is given that approval of NADA 96-273 for Mixer-Mate "Plus" T-1600 (tylosin phosphate) premix is hereby withdrawn, effective May 28, 1985.

In a final rule published elsewhere in this issue of the **Federal Register**, the regulation reflecting this approval is removed.

Dated: May 6, 1985.

Gerald B. Guest,

Acting Director, Center for Veterinary Medicine.

[FR Doc. 85-11653 Filed 5-14-85; 8:45 am]

BILLING CODE 4160-01-M

Advisory Committees; Meetings

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This notice announces forthcoming meetings of public advisory committees of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meetings and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

Meetings: The following advisory committee meetings are announced:

Gastrointestinal Drugs Advisory Committee

Date, time, and place. June 10, 9 a.m., Auditorium, Lister Hill Center, National Library of Medicine, 8600 Rockville Pike, Bethesda, MD.

Type of meeting and contact person. Open public hearing, 9 a.m. to 10 a.m., open committee discussion, 10 a.m. to 5 p.m.; Joan C. Standaert, Center for Drugs and Biologics (HFN-110), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD. 20857, 301-443-4730.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of marketed and investigational prescription drugs for use in the treatment of gastrointestinal disorders.

Agenda—Open public hearing. Interested persons requesting to present data, information, or views, orally or in writing, on issues pending before the committee should communicate with the committee contact person.

Open committee discussion. The committee will discuss Cytotec (misoprostil) for therapy of duodenal ulcer: NDA19-268, G.D. searle & Co.; Moctanin (monooctanoin) for solubilizing cholesterol gall stones retained in the biliary tract of patients following cholecystectomy.

Dermatologic Drugs Advisory Committee

Date, time, and place. June 24, 8:30 a.m., Conference Rm. E, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD.

Type of meeting and contact person. Open public hearing, 8:30 a.m. to 9:30 a.m., open committee discussion, 9:30 a.m. to 5 p.m.; Thomas E. Nightingale, Center for Drugs and Biologics (HFN-32), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4695.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of marketed and investigational prescription drugs for use in dermatologic disorders.

Agenda—Open public hearing. Interested persons requesting to present

data, information, or views, orally or in writing, on issues pending before the committee should communicate with the committee contact person.

Open committee discussion. The committee will discuss: (1) Etretinate (Hoffmann-La Roche, Inc.); (2) requirements to prove the efficacy of topical drugs to promote wound healing; (3) prescription topical antibiotics for the treatment of skin infections, pseudomonic acid (Beecham Labs); and (4) Lindane (Reed & Carnrick).

Endocrinologic and Metabolic Drugs Advisory Committee

Date, time, and place. June 24 and 25, 9 a.m., Parklawn Bldg., Conference Rms. I and J (June 24) and Conference Rms. G and H (June 25), 5600 Fishers Lane, Rockville, Md.

Type of meeting and contact person. Open public hearing June 24, 9 a.m. to 10 a.m.; open committee discussion, June 24, 10 a.m. to 5 p.m.; June 25, 9 a.m. to 12 m.; A. T. Gregoire, Center for Drugs and Biologics (HFN-810), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1869.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of marketed and investigational prescription drugs for use in metabolic and endocrine disorders.

Agneda—Open public hearing. Interested persons requresting to present data, information, or views, orally or in writing, on issues pending before the committee should communicate with the committee contact person.

Open committee discussion. On June 24, the committee will discuss: (1) The medical management of cryptorchidism, and (2) Vitamin E for treatment of retinopathy of prematurity. On June 25, the committee will discuss revision of guidelines for clinical evaluation of drugs used in the treatment of osteoporosis.

Oncologic Drugs Advisory Committee

Date, time, and place. June 28, 8:30 a.m., Conference Rm. D, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD.

Type of meeting and contact person. Open committee discussion, 8:45 a.m. to 3:45 p.m.; open public hearing, 3:45 p.m. to 4:45 p.m.; David F. Hersey, Center for Drugs and Biologics (HFN-32), Food and Drug Administration, 5600 Fishers Lane, Rockville MD 20857, 301-443-4695.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of marketed and investigational prescription drugs for use in cancer therapy.

Agenda—Open public hearing. Interested persons requesting to present data, information, or views, orally or in writing, on issues pending before the committee should communicate with the committee contact person.

Open committee discussion. The committee will discuss: (1) Supplemental NDA for Tamoxifen in combination with cytotoxic drugs in adjuvant chemotherapy for breast cancer; (2) safe handling of cancer drugs; (3) discussion on statistics—power considerations and prerandomization in clinical trials; (4) quality of life evaluation in cancer clinical trials.

FDA public advisory committee meetings may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. There are no closed portions for the meetings announced in this notice. The dates and times reserved for the open portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairman determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings. This guideline was published in the Federal Register of April 13, 1984 (49 FR 14723). These procedures are primarily intended to expedite media access to FDA's public proceedings, including hearings before a public advisory committee conducted pursuant to Part 14 of the agency's regulations. Under this guideline, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including the presentation of participants at a public hearing. Accordingly, all interested persons are directed to the guideline, as well as the Federal Register notice announcing issuance of the guideline, for a more complete explanation of the guideline's effect on public hearings.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in the Federal Register notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairman's discretion.

Persons interested in specific agenda items to be discussed in open session may ascertain from the contact person the approximate time of discussion.

A list of committee members and summary minutes of meetings may be requested from the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, between the hours of 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under section 10(a) (1) and (2) of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770-776 (5 U.S.C. App. 1)), and FDA's regulations (21 CFR Part 14) on advisory committees.

Dated: May 9, 1985.

John R. Wessel,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 85-11656 Filed 5-14-85; 8:45 am]

BILLING CODE 4160-01-M

Consumer Participation; Open Meeting

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the following consumer exchange meeting: Orlando District Office, chaired by Adam J. Trujillo, District Director. The topic to be discussed is Switching of Prescription Drugs to Over-the-Counter Drugs.

DATE: Friday, May 24, 1985, 8:45 a.m. to 11:15 a.m.

ADDRESS: Sacred Heart Hospital, Children's Auditorium, 5151 North Ninth Avenue, Pensacola, FL 32504.

FOR FURTHER INFORMATION CONTACT: Lynne C. Isaacs, Consumer Affairs Officer, Food and Drug Administration, 7200 Lake Ellenor Drive, Suite 120, Orlando, FL 32809, 305–855–0900.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to encourage dialogue between consumers and FDA officials, to identify and set priorities for current and future health concerns, to enhance relationships between local consumers and FDA's District Offices, and to contribute to the agency's policymaking decisions on vital issues.

Dated: May 9, 1985.

John R. Wessel,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 85–11655 Filed 5–14–85; 8:45 am]

BILLING CODE 4160–01–M

Social Security Administration

Statement of Organization, Functions and Delegations of Authority

Part S of the Statement of Organization, Functions and Delegations of Authority for the Department of Health and Human Services (DHHS) covers the Social Security Administration (SSA). Sections SJ. 10 and SJ. 20 of the SSA statement, as published in the **Federal Register** on July 18, 1984 (49 FR 29153–55), and amended on October 29, 1984, is being amended to reflect the organizational and functional realignments of the Office of Disability (OD).

Accordingly, sections of SJ which describe the mission, organization and function of OD have been revised to include new organization and functional requirements.

The OD material is amended as follows:

Section SJ.00 *The Office of Disability*—(Mission)

In line 4, after ". . . issues the operational . . ." add "and administrative appeals process . . . ."

Section SJ. 10 *The Office of Disability*—(Organization)

Delete:

F. The Division of Technical Policy ( ).

Add:

F. The Division of Program Analysis and Technical Policy ( ).

Section SJ.20 *The Office of Disability*—(Functions)

Delete:

F. The Division of Technical Policy ( ) in its entirety.

Add:

F. The Division of Program Analysis and Technical Policy ( ):

1. Is responsible for developing and issuing the policies, procedures and instructions relating to the development of nonmedical evidence, the processing of claims, the development of policy guidelines and technical procedures for the Continuing Disability Review (CDR) process.

2. Is responsible for developing the procedures and instructions which define the administrative appeals process; the development of notice policy and issuing language and forms for use in disability claims and notices including foreign language and braille notices.

3. Is responsible for coordinating, with the Office of the General Counsel and the Office of Policy, recommendations concerning which court decisions should be appealed; the development of responses to interrogatories and court orders; and will ensure that policies and procedures are changed to reflect legal precedents and comply with specific court orders.

4. Is responsible for: (a) coordination of disability program management information needs; (b) coordination of OD action to develop DDS hardware, software needs, office automation requirements, linkages and interfaces, and data bases and (c) detection and definition of policy application inconsistencies and program trends through analysis of all disability program data, end-of-line program case review across all levels of adjudication, assessment of review component findings and monitoring of DDS rebuttal returns.

5. Is responsible for: (a) Format, structure and organization of disability-related POMS issuances; (b) uniformity review of the Office of Assessment, the Office of Hearings and Appeals, the Office of Central Operations and regional office disability-related programmatic issuances; (c) coordination of development and implementation of disability training; (d) managing the policy review tracking and reporting system; (e) startup of disability program initiatives and pilot projects and (f) serving as OD liaison for field office concerns.

6. Is responsible for establishing due process hearing procedural, operational (including spending and staffing levels) and regional oversight policy; establishing quality, quantity and time standards for hearing officer performance; and collection and analysis of hearing data to assess performance and to detect policy application inconsistencies or program trends; design, conduct and analysis of studies on the hearing process.

7. Is responsible for regulatory review of State and Federal hearing officer decisions, preparation of decisions of foreign claims or reversal of hearing determinations in cases of clear decisional error; participation in hearing process studies and preparation of statistical and narrative reports and recommendations for training and policy and procedural changes based on case review and analysis or study findings.

Dated: April 17, 1985.

Nelson J. Sabatini,

Acting Deputy Commissioner for Management and Assessment.

[FR Doc. 85–11684 Filed 5–14–85; 8:45 am]

BILLING CODE 4910–11–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Availability of Public Lands in Lake County, OR

Correction

In the issue of Thursday, April 25, 1985, on page 16354 a correction to FR Doc. 85–8359 appeared. The correction was inaccurate and should be corrected as follows:

In the table, Parcel #11, a comma (,) should appear between "SE¼" and "SW¼"; in Parcel #14, a comma (,) should appear between "NE¼" and "S½", and the second line should end in a period (.) (remove the dots).

BILLING CODE 1505–01–M

[A–20347; 5–00261–GP5–007]

Realty Action; Safford District Office, Designation of Public Lands To Be Included in State Exchange in Cochise, Graham, and Greenlee Counties, AZ; Correction

In FR Doc. 85–10046 appearing on pages 16357 and 16358 in the issue of Thursday, April 25, 1985 the following correction is made:

On page 16358, second column, the W½NE¼, Sec. 1, T. 15 S., R. 30 E. should be changed to the W½SE¼.

Dated: May 7, 1985.

Vernon L. Saline,

Acting District Manager.

[FR Doc. 85-11665 Filed 5-14-85; 8:45 am]

BILLING CODE 4310-32-M

[W-68745]

Wyoming; Proposed Reinstatement of Terminated Oil and Gas Lease

Pursuant to the provisions of Pub. L. 31-245 and Title 43 Code of Federal Regulations, § 3108.2-1(c), and Pub. L. 97-451, a petition for reinstatement of oil and gas lease W-68745 for lands in Fremont County, Wyoming was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of $5.00 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

The lessee has paid the required $500.00 administrative fee and $106.25 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease W-67845 effective September 1, 1984, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Andrew L. Tarshis,

Chief, Leasing Section.

[FR Doc. 85-11733 Filed 5-14-85; 8:45 am]

BILLING CODE 4310-22-M

[M 64885 (ND)]; 4-20703-ILM]

North Dakota; Invitation; Coal Exploration License Application

Correction

In FR Doc. 85-10707 appearing on page 18752 in the issue of Thursday, May 2, 1985, make the following correction: In the first column, the land description should read:

T. 145 N., R. 87 W., 5th P.M.,
Sec. 6: SE¼;
Sec. 20: NW¼.
T. 144 N., R. 88 W., 5th P.M.,
Sec. 2: Lots 3, 4, S½NW¼.
T. 145 N., R. 88 W., 5th P.M.,
Sec. 2: Lot 1, SE¼NE¼.
562.51 acres.

BILLING CODE 1505-01-M

Minerals Management Service

Oil and Gas and Sulphur Operations in the Outer Continental Shelf

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document.

SUMMARY: This Notice announces that Conoco Inc., Unit Operator of the West Delta/Grand Isle Federal Unit Agreement No. 14-08-001-2454, submitted on April 30, 1985, a proposed Development Operations Coordination Document describing the activities it proposes to conduct on the West Delta/Grand Isle Federal unit.

The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the plan and that it is available for public review at the offices of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 3301 N. Causeway Blvd., Room 147, Metairie, Louisiana 70002.

FOR FURTHER INFORMATION CONTACT: Minerals Management Service, Records Management Section, Room 143, open weekdays 9:00 a.m. to 3:30 p.m., 3301 N. Causeway Blvd., Metairie, Louisiana 70002, phone (504) 838-0519.

SUPPLEMENTARY INFORMATION: Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in the proposed development operations coordination document available to affected States, executives of affected local governments, and other interested parties became effective on December 13, 1979 (44 FR 53685). The practices and procedures are set out in a revised §250.34 of Title 30 of the Code of Federal Regulations.

Dated: May 6, 1985.

John L. Rankin,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 85-11664 Filed 5-14-85; 8:45 am]

BILLING CODE 4310-MR-M

National Park Service

Mining Plan of Operations at Denali National Park and Preserve; Availability

Notice is hereby given that pursuant to the provisions of Section 2 of the Act of September 28, 1976, 16 U.S.C. 1901 et seq., and in accordance with the provisions of § 9.17 of 36 CFR Part 9A, T. J. Koppenberg/T.J. Mining has filed a plan of operations in support of proposed mining operations on lands embracing the MOOSE #1 & 2, BUENO, TABO #3 & 4 Mining Claims within the Denali National Park and Preserve. This plan is available for inspection during normal business hours at the Alaska Regional Office, National Park Service, 2525 Gambell Street, Anchorage, Alaska.

Robert Peterson,

Acting Regional Director, Alaska Region.

[FR Doc. 85-11758 Filed 5-14-85; 8:45 am]

BILLING CODE 4310-70-M

Mining Plan of Operations at Kenai Fjords National Park; Availability

Notice is hereby given that pursuant to the provisions of Section 2 of the Act of September 28, 1976, 16 U.S.C. 1901 et seq., and in accordance with the provisions of § 9.17 of 36 CFR Part 9A, Henry W. Waterfield has filed a plan of operations in support of proposed mining operations on lands embracing the SURPRISE BAY #1 Mining Claims within the Kenai Fjords National Park. This plan is available for inspection during normal business hours at the Alaska Regional Office, National Park Service, 2525 Gambell Street, Anchorage, Alaska.

Robert Peterson,

Acting Regional Director, Alaska Region.

[FR Doc. 85-11757 Filed 5-14-85; 8:45 am]

BILLING CODE 4310-70-M

Gates of the Arctic National Park Subsistence Resource Commission; Meeting

AGENCY: National Park Service, Alaska Region, Interior.

ACTION: Subsistence Resource Commission Meeting.

SUMMARY: The Alaska Region of the National Park Service announces a forthcoming meeting of the Gates of the Arctic National Park Subsistence Resource Commission.

DATE: The meeting will be held starting at 9:00 A.M. on Wednesday, June 12, 1985, and ending Thursday afternoon, June 13, 1985.

Location: F.A.A. Recreation Hall, Bettles Field, Alaska.

Agenda

The following agenda items will be undertaken:

1. Call to order.
2. Roll call.
3. Introduction of visitors and guests.
4. Minutes.

5. Old business.
a. Agency reports.
b. Committee reports and work sessions.
6. New business.
a. Village concerns.
b. Review of draft park General Management Plan.
7. Other business.
8. Adjournment.

Written comments and recommendations received prior to May 29, 1985, will be considered at the meeting. All comments should be addressed to: Chairman, Gates of the Arctic National Park, Subsistence Resource Commission, c/o Box 74680, Fairbanks, Alaska 99707.

FOR FURTHER INFORMATION CONTACT: Richard G. Ring, Superintendent, Gates of the Artic National Park and Preserve, P.O. Box 74680, Fairbanks, Alaska 99707, Phone (907) 456–0281..

SUPPLEMENTARY INFORMATION: The Subsistence Resource Commissions are authorized under Title VIII, section 808, of the Alaska National Interest Lands Conservation Act Pub. L. 96–487.

Dated: May 8, 1985.

Robert L. Peterson,

Regional Director, Alaska Region.

[FR Doc. 85–11759 Filed 5–14–85; 8:45 am]

BILLING CODE 4310-70-M

Delaware Water Gap National Recreation Area; Revision of Park Boundaries

AGENCY: National Park Service, Interior.

ACTION: Notice of revision of park boundaries.

SUMMARY: With this notice, the National Park Service is notifying the public of adjustments to the boundaries of the Recreation Area to exclude certain lands within the boundaries as proposed by the Land Protection Plan for the Recreation Area, which was approved December 10, 1984.

ADDRESSES: The revised boundary map is on file and available for inspection in the administrative office of the Delaware Water Gap National Recreation Area, Bushkill, Pennsylvania 18324; in the office of the Mid-Atlantic Region, 143 South Third Street, Philadelphia, Pennsylvania 19106; and in the office of the Natioal Park Service, Department of the Interior, National Park Service, P.O. Box 37127, Washington, DC 20013–7127.

FOR FURTHER INFORMATION CONTACT: Superintendent Albert A. Hawkins, Delaware Water Gap National Recreation Area, telephone 717–588–6637.

SUPPLEMENTARY INFORMATION: Section 3(b) of Public Law 89–158 of the 89th Congress enacted September 1, 1965 (79 Stat. 612), as amended, authorized adjustments of the boundaries of the Delaware Water Gap National Recreation Area by publication of the amended description thereof in the **Federal Register.**

These boundaries are specified in Section 2(a) of the Act as "lands and interests therein within the boundaries of the area, as generally depicted on the drawing entitled 'Proposed Tocks Island National Recreation Area' dated and numbered September 1962, NRA–TI–7100."

In a subsequent Notice of Establishment published in the **Federal Register,** Vol. 42, No. 109, Tuesday, June 7, 1977, the Secretary of the Interior gave notice of the establishment of the Recreation Area. In this notice, he stated that "adjustments may be subsequently made in the boundaries of the area by publication of the amendments to the boundary description thereof in the **Federal Register**" as provided in the authorizing act.

In a further Notice of Revision of Park Boundaries published in the **Federal Register,** Vol. 46, No. 72, Wednesday, April 15, 1981, 46 FR 22044, the Regional Director, Mid-Atlantic Region, gave notice of a boundary revision as provided in the authorizing act.

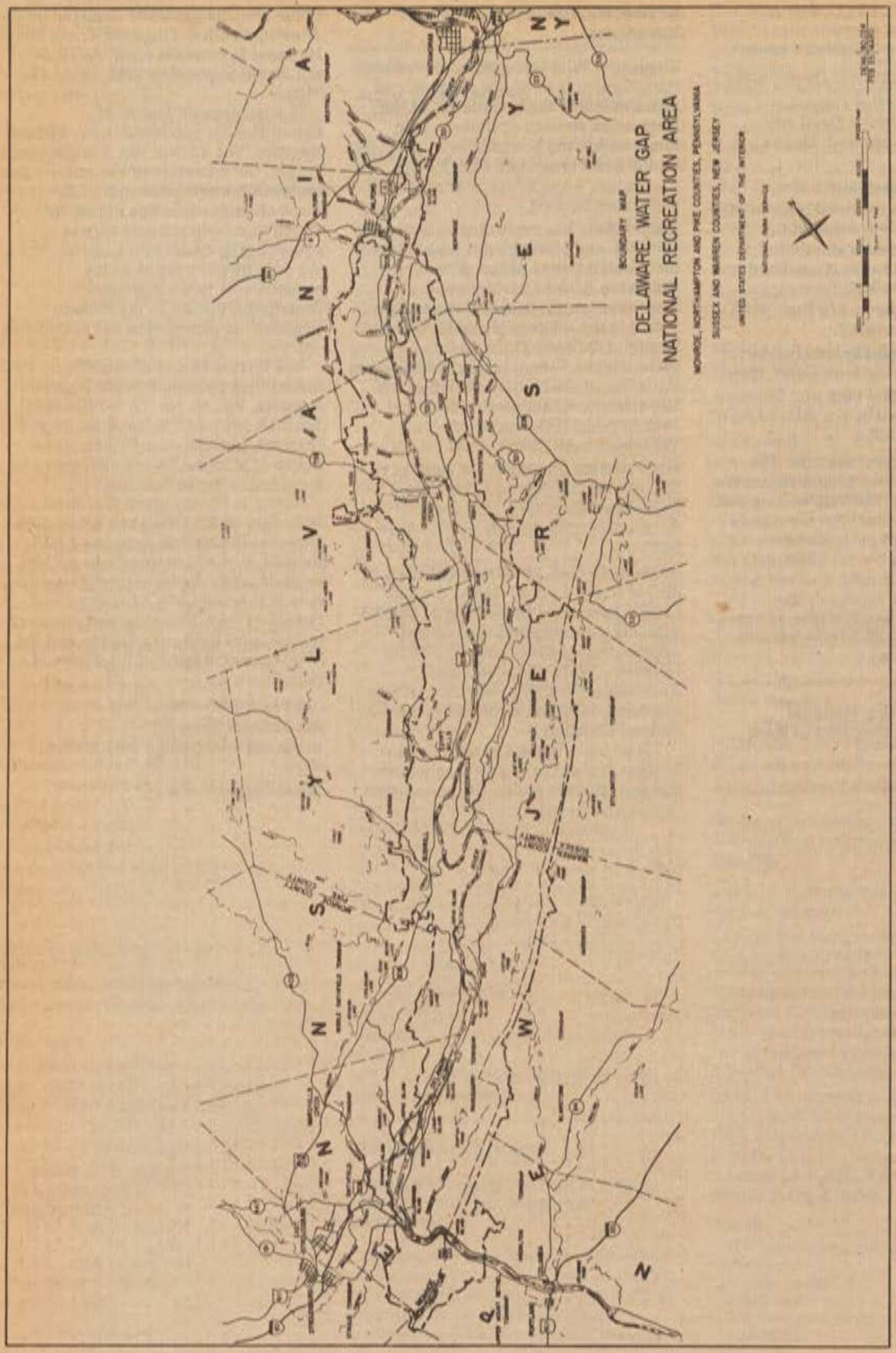
Notice is hereby given that the boundary of the Delaware Water Gap National Recreation Area has been revised pursuant to the above act, to exclude lands depicted on the boundary map numbered DEWA/80,024 dated February 1985. This map was prepared by the Land Resources Division of the Mid-Atlantic Region of the National Park Service.

Dated: April 9, 1985.

Don H. Castleberry,

Acting Regional Director, Mid-Atlantic Region

BILLING CODE 4310-70-M



[FR Doc. 85-11583 Filed 5-14-85; 8:45 am]
BILLING CODE 4310-70-C

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

Board for International Food and Agricultural Development; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act, notice is hereby given of the seventieth meeting of the Board for International Food and Agricultural Development (BIFAD) on June 6, 1985.

The purpose of the meeting is to: consider action on a proposed AID agricultural research strategy for Africa; receive a report of the Joint Committee on Agricultural Research and Development (JCARD); and discuss "forestry in the Developing World: Issues, Problems, and Opportunities", with participation by representatives of A.I.D., the U.S. Department of Agriculture Forest Service, U.S. universities, and the private sector.

The meeting will begin at 9:00 a.m. and adjourn at 12:30 p.m., and will be held in Conference Room B, Pan American Health Organization, 525 23rd Street NW., Washington, D.C. The meeting is open to the public. Any interested person attend, may file written statements with the Board before or after the meeting, or may present oral statements in accordance with procedures established by the Board, and to the extent the time available for the meeting permits.

Dr. Erven J. Long, Director, Research and University Relations, Bureau for Science and Technology, Agency for International Development, is designated as A.I.D. Advisory Committee Representative at this meeting. It is suggested that those desiring further information write to him in care of the Agency for International Development, International Development Cooperation Agency, Washington, D.C. 20523, or telephone him at (703) 235–8929.

Dated: May 9, 1985.

Erven J. Long,

A.I.D. Advisory Committee Representative, Board for International Food and Agricultural Development.

[FR Doc. 85–11746 Filed 5–14–85; 8:45 am]

BILLING CODE 6116–01–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–211]

Certain Electrical Connectors; Initial Determination Terminating Respondent on the Basis of Settlement Agreement

AGENCY: International Trade Commission.

ACTION: Notice is hereby given that the Commission has received an initial determination from the presiding officer in the above-captioned investigation terminating the following respondent on the basis of a settlement agreement: Allied Corporation.

SUPPLEMENTARY INFORMATION: This investigation is being conducted pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). Under the Commission's rules, the presiding officer's initial determination will become the determination of the Commission thirty (30) days after the date of its service upon the parties, unless the Commission orders review of the initial determination. The initial determination in this matter was served upon the parties on May 8, 1985.

Copies of the initial determination, the settlement agreement, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202–523–0161.

Written Comments

Interested persons may file written comments with the Commission concerning termination of the aforementioned respondent. The original and 14 copies of all such comments must be filed with the Secretary to the Commission, 701 E Street, NW., Washington, D.C. 20436, no later than 10 days after publication of this notice in the **Federal Register.** Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment. Such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why confidential treatment should be granted. The Commission will either accept the submission in confidence or return it.

FOR FURTHER INFORMATION CONTACT: Ruby J. Dionne, Office of the Secretary, U.S. International Trade Commission, telephone 202–523–0176.

Issued: May 8, 1985.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 85–11777 Filed 5–14–85; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 731–TA–261 (Preliminary)]

12-Volt Lead-Acid Type Automotive Storage Batteries From Korea

AGENCY: International Trade Commission.

ACTION: Institution of a preliminary antidumping investigation and scheduling of a conference to be held in connection with the investigation.

SUMMARY: The Commission hereby gives notice of the institution of preliminary antidumping investigation No. 731–TA–261 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Korea of 12-volt lead-acid type automotive storage batteries, provided for in item 683.05 of the Tariff Schedules of the United States, which are alleged to be sold in the United States at less than fair value. As provided in section 733(a), the Commission must complete preliminary antidumping investigations in 45 days, or in this case by June 24, 1985.

For further information concerning the conduct of this investigation and rules of general application, consult the Commission's Rules of Practice and Procedure, Part 207, Subparts A and B (19 CFR Part 207), and Part 201, Subparts A through E (19 CFR Part 201, as amended by 49 FR 32569, August 15, 1984).

EFFECTIVE DATE: May 8, 1985.

FOR FURTHER INFORMATION CONTACT: Judith C. Zeck (202–523–0300), Office of Investigations, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436.

SUPPLEMENTARY INFORMATION:

Background

This investigation is being instituted in response to a petition filed on May 8, 1985, by General Battery International Corporation, of Puerto Rico.

Participation in the Investigation

Persons wishing to participate in this investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules (19 CFR 201.11), not later than seven (7) days after publication of this notice in the **Federal Register.** Any entry of appearance filed after this date will be referred to the Chairwoman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Service List

Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance. In accordance with § 201.16(c) of the rules (19 CFR 201.16(c), as amended by 49 FR 32569, August 15, 1984), each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Conference

The Director of Operations of the Commission has scheduled a conference in connection with this investigation for 9:30 a.m. on May 30, 1985 at the U.S. International Trade Commission Building, 701 E Street NW., Washington, DC. Parties wishing to participate in the conference should contact Judith C. Zeck (202–523–0300) not later than May 28, 1985 to arrange for their appearance. Parties in support of the imposition of antidumping duties in this investigation and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference.

Written Submissions

Any person may submit to the Commission on or before June 3, 1985 a written statement of information pertinent to the subject of the investigation, as provided in § 207.15 of the Commission's rules (19 CFR 207.15). A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the rules (19 CFR 201.8, as amended by 49 FR 32569, August 15, 1984). All written submissions except for confidential business data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any business information for which confidential treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Confidential Business Information." Confidential submissions and requests for confidential treatment must conform with the requirements of § 201.6 of the Commission's rules (19 CFR 201.6, as amended by 49 FR 32569, August 15, 1984).

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.12 of the Commission's rules (19 CFR 207.12).

Issued: May 10, 1985.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 85–11780 Filed 5–14–85; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337–TA–206]

Certain Surgical Implants for Fixation of Bone Fragments; Receipt of Initial Determination Terminating Respondent on the Basis of Consent Order Agreement

AGENCY: International Trade Commission.

ACTION: Notice is hereby given that the Commission has received an initial determination from the presiding officer in the above-captioned investigation terminating the following respondent on the basis of a consent order agreement: DePuy, Inc.

SUPPLEMENTARY INFORMATION: This investigation is being conducted pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). Under the Commission's rules, the presiding officer's initial determination will become the determination of the Commission thirty (30) days after the date of its service upon the parties, unless the Commission orders review of the initial determination. The initial determination in this matter was served upon the parties on May 8, 1985.

Copies of the initial determination, the consent order agreement, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E. Street, NW., Washington, D.C. 20436, telephone 202–523–0161.

Written Comments

Interested persons may file written comments with the Commission concerning termination of the aforementioned respondent. The original and 14 copies of all such comments must be filed with the Secretary to the Commission, 701 E Street, NW., Washington, D.C. 20436, no later than 10 days after publication of this notice in the **Federal Register.** Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment. Such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why confidential treatment should be granted. The Commission will either accept the submission in confidence or return it.

FOR FURTHER INFORMATION CONTACT: Ruby J. Dionne, Office of the Secretary, U.S. International Trade Commission, telephone 202–523–0176.

Issued: May 8, 1985.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 85–11776 Filed 5–14–85; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 731–TA–254 (Preliminary)]

Heavy-Walled Rectangular Welded Carbon Steel Pipes and Tubes From Canada

Determination

On the basis of the record[1] developed in the subject investigation, the Commission determines,[2] pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673(a)), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from Canada of heavy-walled rectangular welded carbon steel pipes and tubes, provided for in item 610.39 of the Tariff Schedules of the United States, which are alleged to be sold in the United States at less than fair value (LTFV).

Background

On March 25, 1985, a petition alleging that an industry in the United States is

[1] The record is defined in § 207.2(i) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(i))

[2] Commissioner Lodwick not participating.

materially injured or threatened with material injury by reason of LTFV imports of heavy-walled rectangular welded carbon steel pipes and tubes from Canada was filed with the Commission and the Department of Commerce by:

Bull Moose Tube Co., St. Louis, MO;
Copperweld Tubing Group, Pittsburgh, PA;
Kaiser Steel Corp., Los Angeles, CA;
Maruichi American Corp., Santa Fe Springs, CA;
UNR-Leavitt, Chicago, IL; and
Welded Tube Co. of America, Chicago, IL.

Accordingly, effective March 15, 1985, the Commission instituted preliminary antidumping investigation No. 731-TA-254 (Preliminary).

Notice of the institution of the Commission's investigation and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the Federal Register of April 2, 1985 (50 FR 13089). The conference was held in Washington, DC, on April 16, 1985, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on May 9, 1985. The views of the Commission are contained in USITC Publication 1691 (May 1985), entitled "Heavy-Walled Rectangular Welded Carbon Steel Pipes and Tubes From Canada: Determination of the Commission in Investigation No. 731-TA-254 (Preliminary) Under the Tariff Act of 1930, Together With the Informaiton Obtained in the Investigation."

Issued: May 9, 1985.

By Order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 85-11779 Filed 5-14-85; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-174]

Certain Woodworking Machines; Termination of Respondent and Issuance of Consent Order

AGENCY: International Trade Commission.

ACTION: Termination of a respondent and the issuance of a consent order directed to that repondent.

SUMMARY: The Commission has granted a motion for termination of respondent Equipment Importers, Inc., d/b/a/ "jet Equipment and Tools" (Jet). The consent order requested by the parties has been issued.

FOR FURTHER INFORMATION CONTACT: P.N. Smithey, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-523-0350.

SUPPLEMENTARY INFORMATION:

Background

Investigation No. 337-TA-174 is being conducted to determine whether there is a violation of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation or sale of certain woodworking machines by reason of alleged unfair acts and practices by Taiwanese and U.S. companies. (See 48 FR 55786 (December 15, 1983); 49 FR 20767, May 31, 1984.) The complainant is Delta International Machinery Corp. (See 49 FR 23483, June 6, 1984.)

On December 3, 1984, a joint motion (Motion No. 174-71"C") was filed by Delta and U.S. respondent jet, which requested termination of the investigation as to jet and entry of the consent order incorporated into the parties' settlement agreement. The Commission investigative attorney supported the motion.

On January 11, 1985, the presiding administrative law judge (ALJ) issued an initial determined (ID) granting jet's motion along with consent order motions filed by 12 other respondents. (See 50 FR 3039, January 23, 1985.) The Commission subsequently reversed the ID with respect to jet after discovering that the parties had not submitted a copy of the proposed consent order directed to Jet. (See 50 FR 9142, March 6, 1985.) The Commission noted, however, that Jet's motion could be refiled along with the required documents.

A copy of the proposed order was filed on march 7, 1985. It was accompanied by Motion No. 174-71"C" requesting that the Commission reconsider its denial of Jet's motion. In the alternative, Jet and Delta asked that the Commission treat Motion No. 174-71"C" as a new consent order motion, and certify it to the ALJ for an ID.

The Commission treated Motion No 174-71 "C" as a new motion for the consent order termination of Jet. The Commission concluded, however, that certification of temotion to the ALJ would serve no useful purpose and would unnecessarily delay the disposition of the motion. After reviewing the motion, the Commission determined that (1) the content of the settlement agreement and the proposed consent order complies with the Commission's rules; and (2) there is no indication that the parties' settlement is not in the public interest or that the public would be adversely affected by the proposed consent order. The Commission therefore determined to grant the motion and issue the consent order.

Termination of the investigation as to respondent Jet on the basis of a consent order furthers the public interest by conserving the resources of the Commission and the parties.

Public Inspection

The parties' settlement agreement, the Commission's Action and Order of termination, the consent order, and all other nonconfidential documents on the record of the investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, Docket Section, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436, telephone 202-523-0471.

Issued: May 9, 1985.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 85-11778 Filed 5-14-85; 8:45 am]

BILLING CODE 7020-02-M

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

Advisory Policy Board, National Crime Information Center; Meeting

The Advisory Policy Board of the National Crime Information Center (NCIC) will meet on May 22-23, 1985, from 9 a.m. until 5 p.m. at the Villa Capri Motor Hotel, 2400 North IH 35, Austin, Texas 78705.

The major topics to be discussed include:

(1) Presentation of results of studies conducted by independent contractors regarding Federal Agency noncriminal justice use of criminal history records.

(2) Reports of and recommendations from ad hoc subcommittees on the Interstate Identification Index, Quality Assurance, Planning and Evaluation, and Sanctions.

(3) Presentations of proposals recommended by state and local users of the NCIC System to enhance the quality and completeness of records in the System.

The meeting will be open to the public with approximately 25 seats available for seating on a first-come-first-served basis. Any member of the public may file a written statement with the Advisory Policy Board before or after the meeting. Anyone wishing to address a session of the meeting should notify

the Advisory Committee Management Officer, Mr. William A. Bayse, FBI, at least 24 hours prior to the start of the session. The notification may be by mail, telegram, cable, or hand-delivered note. It should contain the name, corporate designation, consumer affiliation, or Government designation, along with a capsulized version of the statement and an outline of the material to be offered. A person will be allowed not more than 15 minutes to present a topic, except with the special approval of the Chairman of the Board.

Inquiries may be addressed to Mr. David F. Nemecek, Committee Management Liaison Officer, NCIC Federal Bureau of Investigation, Washington, DC 20535, telephone number 202–324–2606.

Dated: May 13, 1985.

William H. Webster,

Director.

[FR Doc. 85–11852 Filed 5–14–85; 8:45 am]

BILLING CODE 4410–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Humanities Panel Meetings

AGENCY: National Endowment for the Humanities, NFAH.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, as amended), notice is hereby given that the following meetings of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue, NW., Washington, D.C. 20506:

Date: 1. June 5, 1985.
Time: 8:30 a.m. to 5:30 p.m.
Room: 316–2.
Program: This meeting will review Summer Seminars for Secondary School Teachers applications in Religion and Philosophy, submitted to the Division of Fellowships and Seminars, for projects beginning after May 1, 1985.

Date: 2. June 6, 1985.
Time: 8:30 a.m. to 5:30 p.m.
Room: 316–2.
Program: This meeting will review Summer Seminars for Secondary School Teachers applications in British and American Literature, submitted to the Division of Fellowships and Seminars, for projects beginning after May 1, 1985.

Date: 3. June 7, 1985.
Time: 8:30 a.m. to 5:30 p.m.
Room: 316–2.
Program: This meeting will review Summer Seminars for Secondary School Teachers applications in History, submitted to the Division of Fellowships and Seminars, for projects beginning after May 1, 1985.

Date: 4. June 10, 1985.
Time: 8:30 a.m. to 5:30 p.m.
Room: 316–2.
Program: This meeting will review Summer Seminars for Secondary School Teachers applications in Modern Literature and the Arts, submitted to the Division of Fellowships and Seminars, for projects beginning after May 1, 1985.

Date: 5. June 11, 1985.
Time: 8:30 a.m. to 5:30 p.m.
Room: 316–2.
Program: This meeting will review Summer Seminars for Secondary School Teachers applications in Classical, Medieval, and Renaissance Studies, submitted to the Division of Fellowships and Seminars, for projects beginning after May 1, 1985.

Date: 6. June 12, 1985.
Time: 8:30 a.m. to 5:30 p.m.
Room: 316–2.
Program: This meeting will review Summer Seminars for Secondary School Teachers applications in Politics and Society, submitted to the Division of Fellowships and Seminars, for projects beginning after May 1, 1985.

Date: 7. June 13–14, 1985.
Time: 8:30 a.m. to 5:00 p.m.
Room: 415.
Program: This meeting will review state humanities council applications, for activity beginning November 1, 1985.

Date: 8. June 20–21, 1985.
Time: 8:30 a.m. to 5:00 p.m.
Room: 415.
Program: This meeting will review state humanities council applications, for activity beginning November 1, 1985.

Date: 9. June 27–28, 1985.
Time: 8:30 a.m. to 5:00 p.m.
Room: 415.
Program: This meeting will review state humanities council applications, for activity beginning November 1, 1985.

Date: 10. June 17–18, 1985.
Time: 9:00 a.m. to 5:00 p.m.
Room: 315.
Program: This meeting will review applications submitted for Exemplary Projects in Undergraduate and Graduate Education and Teaching Materials from Recent Research, for projects beginning after August 1, 1985.

Date: 11. June 10–11, 1985.
Time: 8:30 a.m. to 5:00 p.m.
Room: M–14.
Program: This meeting will review applications submitted for the "Humanities Instruction in Elementary and Secondary Schools" programs, for projects beginning after January 1, 1986.

Date: 12. June 7, 1985.
Time: 8:30 a.m. to 5:30 p.m.
Room: 315.
Program: This meeting will review applications submitted to the Publications category, Basic Research Program, Division of Research Programs, for projects beginning after October 1, 1985.

Date: 13. June 10, 1985.
Time: 8:30 a.m. to 5:00 p.m.
Room: 315.
Program: This meeting will review applications submitted to the Publications category, Basic Research Program, Division of Research Programs, for projects beginning after October 1, 1985.

The proposed meetings are for the purpose of Panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. Because the proposed meetings will consider information that is likely to disclose: (1) Trade secrets and commercial or financial information obtained from a person and privileged or confidential; (2) information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; and (3) information the disclosure of which would significantly frustrate implementation of proposed agency action; pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee Meetings, dated January 15, 1978, I have determined that these meetings will be closed to the public pursuant to sebsections (c) (4), (6) and (9) (B) of section 552b of Title 5, United States Code.

Further information about these meetings can be obtained from Mr. Stephen J. McCleary, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, D.C. 20506, or call (202) 786–0322.

Stephen J. McCleary,

Advisory Committee Management Officer.

[FR Doc. 85–11774 Filed 5–14–85; 8:45 am]

BILLING CODE 7536–01–M

NATIONAL SCIENCE FOUNDATION

Membership of National Science Foundation's Senior Executive Service Performance Review Board

AGENCY: National Science Foundation.

ACTION: Announcement of Membership of the National Science Foundation's Senior Executive Service Performance Review Board.

SUMMARY: This announcement of the membership of the National Science Foundation's Senior Executive Service Performance Review Board is made in compliance with 5 U.S.C. 4314(c)(4).

ADDRESS: Comments should be addressed to Director, Division of Personnel and Management, National Science Foundation, Room 212, 1800 G Street, NW, Washington, D.C. 20550.

FOR FURTHER INFORMATION CONTACT: Mr. John Wilkinson or Ms. Patricia Bond at the above address or (202) 357–7857.

SUPPLEMENTARY INFORMATION: The membership of the National Science Foundation's Senior Executive Service Performance Review Board is as follows:

Permanent Membership

Deputy Director, Chairperson
Thomas Ubois, Assistant Director for Administration, Acting Chairperson and Executive Secretary

Rotating Membership

Judith Sunley, Deputy Director, Division of Mathematical Sciences, Directorate for Mathematical and Physical Sciences
Carl W. Hall, Deputy Assistant Director for Engineering
James F. Hays, Director, Division of Earth Sciences, Directorate for Astronomical, Atmospheric, Earth and Ocean Sciences
William Steward, Deputy Director, Division of Science Resources Studies, Directorate for Scientific, Technological and International Affairs
Alan I. Leshner, Deputy Director, Division of Behavioral and Neural Sciences, Directorate for Biological, Behavioral and Social Sciences
Robert F. Watson, Head, Office of College Science Instrumentation, Directorate for Science and Engineering Education
James M. McCullough, Executive Assistant to Director, Office of Legislative and Public Affairs, Office of the Director.

Dated: May 10, 1985.

Jeff Fenstermacher,

Director, Division of Personnel and Management.

[FR Doc. 85–11667 Filed 5–14–85; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Subcommittee on Regulatory Activities; Meeting

The ACRS Subcommittee on Regulatory Activities will hold a meeting on June 4, 1985, Room 1046, 1717 H Street, NW, Washington, DC.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Tuesday, June 4, 1985—8:45 a.m. Until the Conclusion of Business

The Subcommittee will review the following: (1) Proposed Regulatory Guide (Task No. IC 127–5), "Criteria for Programmable Digital Computer Systems Software in Safety-Related Systems of Nuclear Power Plants," (2) proposed Revisions to Appendix J to 10 CFR Part 50, "Leak Tests for Primary and Secondary Containments of Light-Water Cooled Nuclear Power Plants," and (3) proposed Regulatory Guide (Task No. MS 021–5), "Containment System Leakage Testing."

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Sam Duraiswamy (telephone 202/634–3267) between 8:15 a.m. and 5:00 p.m., EDT. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: May 10, 1985.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 85–11732 Filed 5–14–85; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50-320]

General Public Utilities Nuclear Corp.; Environmental Assessment and Finding of No Significant Environmental Impact

The U.S. Nuclear Regulatory Commission (the Commission) is planning to issue a partial Exemption relative to Facility Operating License No. DPR–73, issued to General Public Utilities Nuclear Corporation (the licensee), for operation of the Three Mile Island Nuclear Station, Unit 2 (TMI–2), located in Londonberry Township, Dauphin County, Pennsylvania.

Environmental Assessment

Identification of Proposed Action

The action being considered by the Commission is an exemption from the 10 CFR 50.54(a) requirement to update the facility's FSAR whenever the QA plan is revised. This partial exemption was requested in the licensee's letter dated April 11, 1983.

The Need for the Action

The exemption is warranted because GPUNC has already been given an exemption from the FSAR updating requirements of 10 CFR 50.71(e). The subject exemption was issued on February 4, 1982. Since the FSAR is not being maintained current, as permitted by the foregoing exemption, it is therefore consistent and justified that an exemption from the FSAR QA plan update requirements of 10 CFR 50.54(a) be granted. Pursuant to the February 1982 exemption, however, the licensee is still required to submit changes to its QA plan to the NRC.

Environmental Impacts of the Proposed Actions

The staff has evaluated the subject exemption and concluded that it will not result in significant increases in airborne or liquid contamination radioactivity inside the reactor building or in corresponding releases to the environment. There are also no non-radiological impacts to the environment as a result of this action.

Alternative to This Action

Since we have concluded that there is no sigfnificant environmental impact associated with the subject Exemption, any alternatives to this change will have either no significant environmental impact or greater environmental impact. The principal alternative would be to deny the requested action. This would not reduce significant environmental impacts of plant operations and would

result in the application of overly restrictive regulatory requirements when considering the unique conditions at TMI–2.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Alternate Use of Resources

This action does not involve the use of resources not previously considered in connection with the Final Programmatic Impact Statement for TMI–2 dated March 1981.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the subject Exemption. Based upon the foregoing environmental assessment, we conclude that this action will not have a significant effect on the quality of the human environment.

For further details with respect to this action see letter to B. J. Snyder, USNRC, from R. C. Arnold, GPUNC, TMI–2 Recovery Quality Assurance Plan, Revision 2, dated April 11, 1983.

The above document is available for inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the Commission's Local Public Document Room at the State Library of Pennsylvania, Government Publications Section, Education Building, Commonwealth and Walnut Streets, Harrisburg, Pennsylvania 17126.

For the Nuclear Regulatory Commission.

Bernard J. Snyder,

Program Director, Three Mile Island Program Office, Office of Nuclear Reactor Regulation.

[FR Doc. 85–11731 Filed 5–14–85; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. PRM–20–7]

Natural Resources Defense Council, Inc.; Action on Petition for Rulemaking

AGENCY: Nuclear Regulatory Commission.

ACTION: Denial of petition for rulemaking.

SUMMARY: The Nuclear Regulatory Commission (NRC) is denying a petition for rulemaking submitted by the Natural Resources Defense Council, Inc. The petitioners requested that the Commission adopt interim regulations for shallow land disposal of low-level radioactive waste. The petition is being denied on the grounds that the promulgation of the final rule creating 10 CFR Part 61 (entitled "Licensing Requirements for Land Disposal of Radioactive Waste") provides the means of ensuring consistent and safe practices for near-surface disposal of radioactive wastes. Thus, the seven issues raised in the petition were encompassed in the Part 61 requirements.

ADDRESSES: Copies of correspondence and documents cited below are available for public inspection at the NRC's Public Document Room at 1717 H Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Kenneth C. Jackson, Sr. Section Leader, Low-Level Waste and Uranium Recovery Projects Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: 301–427–4500.

SUPPLEMENTARY INFORMATION:

I. Background

On August 6, 1976, Richard Cotton and Terry Lash submitted to the Commission a petition for rulemaking on behalf of the Natural Resources Defense Council, Inc. A notice of receipt of the petition for rulemaking was published in the **Federal Register** on September 23, 1976 (41 FR 41759). The petitioners requested that the Commission adopt the following provisions as interim standards for shallow land disposal of low-level radioactive wastes.

A. Long-Lived, Transuranic-Contaminated Wastes

1. The transfer of regulatory authority over long-lived transuranic wastes from the states to NRC.

2. An immediate end to burial of long-lived transuranic wastes with only retrievable storage permitted.

3. Payment of fees by persons that produce transuranic wastes to finance adequately safe permanent disposal.

4. Establishment of a reporting and inspection system operated by NRC (with on-site, unannounced inspection by NRC inspectors) to assure accurate classification of transuranic wastes.

B. Other Low-Level Radioactive Wastes

5. The suspension of licensing of new or enlarged burial sites until NRC establishes site selection criteria, radioactive release standards setting maximum permissible migration rates for radionuclides away from disposal sites, minimum standards for environmental monitoring programs, and standards for long-term care with mechanisms to finance sure care.

6. Establishment of minimum fees to be paid effective immediately for each cubic foot of waste buried at existing sites to assure adequate funds for long-term care.

C. Solidification of Low-Level Radioactive Wastes Before Shipment

7. The solidification of all radioactive wastes before shipment to reduce the potential for release to the environment either through accident or sabotage.

In an accompanying document (entitled "Memorandum of Points and Authorities in Support of the Natural Resources Defense Council's Petition for Rulemaking and Request for a Programmatic Environmental Impact Statement"), the petitioners also requested that the Commission undertake the preparation of a programmatic generic environmental impact statement (GEIS) on low-level waste disposal.

II. Partial Denial of Petition

Following an analysis by the NRC staff of the issues and points raised by the petition and of the comments received in response to the filing of the petition, the NRC published a partial denial of the petition; specifically, the request for the preparation of a separate programmatic GEIS on the grounds that the Commission believed that a separate GEIS for low-level waste disposal was neither required by the National Environmental Policy Act of 1969 (NEPA) nor necessary for the development of the NRC program. This denial was included in a **Federal Register** notice that was published on July 25, 1979 (44 FR 43541) and included a lengthy discussion of the petition, the public comments received on the petition, the NRC staff position on the petition, and a discussion of the regulations development program which the NRC staff had begun in 1977. The NRC staff indicated that when complete, the regulations under development would address the issues of disposal site selection, financing arrangements for closure and long-term maintenance and surveillance of disposal sites, waste form and classification, and waste disposal alternatives.

III. Development of 10 CFR Part 61

The regulations that the NRC staff had under development became the new 10 CFR Part 61, "Licensing Requirements for Land Disposal of Radioactive Waste." Part 61 includes licensing procedures, performance objectives and technical requirements for land disposal of radioactive waste. The Draft Environmental Impact Statement was published on October 22, 1981 (46 FR 51776) following the publication of the

notice of proposed rulemaking for Part 61 on July 24, 1981 (46 FR 38081). Following the NRC staff's evaluation of a broad range of public comments, the final EIS was published on November 26, 1982 (47 FR 53829) and the final rule for Part 61 was published on December 27, 1982 (47 FR 57446).

Part 61 establishes a classification scheme which divides waste intended for land disposal into three classes based on radiological hazard: Class A, B, and C. Class A waste contains the lowest concentrations of radionuclides and must meet only minimum waste form requirements. Class B and Class C wastes contain higher concentrations and must meet both the minimum and stability waste form requirements. Additionally, Class C waste must be disposed of by the disposal site operator using methods that provide additional protection against inadvertent intrusion.

IV. Resolution of Petition Issues in 10 CFR Part 61

Issue 1. The transfer of regulatory authority over long-lived transuranic wastes from the states to NRC.

Part 61: Agreement States have made changes in their license conditions for the operating commercial disposal sites to effect compatibility with Part 61 (See § 61.2, Definitions; Subpart C, Performance Objectives; Subpart D, Technical Requirements for Land Disposal Facilities; portions of Subpart B necessary to implement Subparts C and D; § 20.311, Transfer for Disposal and manifests; and that portion of Subpart E requiring closure funding arrangements). See issue 2, below, regarding transuranic waste disposal.

Issue 2. An immediate end to burial of long-lived transuranic wastes with only retrievable storage permitted.

Part 61: The Part 61 classification system (§ 61.55) limits the disposal of long-lived transuranic contaminated waste to 100 nanocuries per gram (Class C maximum concentration). Wastes exceeding Class C are currently being stored by waste generators at their sites.

The NRC staff is currently developing criteria for evaluating disposal of waste which exceeds Class C concentrations. The results of the criteria development will help accomplish two objectives: Expansion of the 10 CFR Part 61 impact analysis methodology (on a generic rather than site-specific basis) and provision for supporting information for case-by-case evaluations of the impacts of individual waste and variations on disposal methods. The methodology will also enable a limited independent check of site-specific proposals. Efforts to define requirements for disposal of waste that exceed Class C concentrations are expected to take several years. However, the staff believes that generic guidance for evaluating disposal requests for a wide spectrum of these wastes will be available by mid-1985.

Issue 3. Payment of fees by persons that produce transuranic wastes to finance adequately safe permanent disposal.

Part 61: Subpart E, Financial Assurances, § 61.61—Each applicant for a disposal site license shall show that it possesses the necessary funds to cover the estimated costs of conducting all licensed activities; § 61.62—Applicants shall provide assurance of funds to carry out disposal site closure and stabilization; and § 61.63—Applicants shall provide assurances that arrangements are in place to provide sufficient funds to cover the cost of monitoring and any required maintenance during the institutional control period (i.e., up to 100 years).

Radioactive waste which exceeds the Class C concentration limits is not generally acceptable for near-surface disposal (in the case of transuranic waste, the Class C upper limit is 100 nanocuries per gram of waste). However, the Commission may, upon request or its own initiative, authorize other provisions for the classification and characteristics of waste on a specific basis, if, after evaluation of the specific characteristics of the waste, disposal site, and method of disposal, it finds reasonable assurance of compliance with the Part 61 performance objectives (see § 61.58).

The matter of special fees being charged to waste generators for disposal of above Class C wastes is currently moot since, in the absence of a repository or other method for disposal, these wastes are currently being stored by the waste generators. When these facilities become available, the matter of fees will be considered.

Issue 4. Establishment of a reporting and inspection system operated by NRC (with on-site, unannounced inspection by NRC inspectors) to assure adequate classification of transuranic waste.

Part 61: Subpart G, Records, Reports, Tests, and Inspections, §§ 61.80, 61.81, 61.82, and 61.83—The commercial operating disposal sites are all under Agreement State jurisdiction, and requirements compatible to Subpart G are required by license conditions at the sites.

Issue 5. The suspension of licensing of new or enlarged sites until NRC establishes site selection criteria, radioactive release standards setting maximum permissible migration rates for radionuclides away from disposal sites, minimum standards for environmental monitoring programs, and standards for long-term care with mechanisms to finance such care.

Part 61: Subpart D, Technical-Requirements for Land Disposal Facilities—§ 61.50 specifies the minimum characteristics a disposal site must have to be acceptable for use as a near-surface disposal facility; § 61.53 (b), (c), and (d) require a licensee to have plans for corrective measures if migration of radionuclides would indicate that the performance objectives of Subpart C may not be met, require maintenance of a monitoring program during the disposal facility construction and operation, and requires maintenance of a monitoring system after disposal site closure based on the operating history and the closure and stabilization experience of the disposal site; also Subpart C, § 61.41 provides limits for annual dose rates to members of the public from releases of radioactive material to the general environment. The requirements of Subpart E, Financial Assurances, are discussed under Issue 3.

Issue 6. Establishment of minimum fees to be paid effective immediately for each cubic foot of waste buried at existing sites to assure adequate funds for long-term care.

Part 61: Subpart E, Financial assurances, is not incombent on the existing sites, since they operate under Agreement State regulations. However, the Agreement States routinely assess a charge for waste disposal which is placed in a fund to finance long-term care of the site.

Issue 7. The solidification of all radioactive wastes before shipment to reduce the potential for release to the environment either through accident or sabotage.

Part 61: Subpart D, § 61.56, paragraphs (a)(2) and (b)(2) assure that wastes will not be shipped as liquids.

The foregoing discussion of NRC actions, coupled with the earlier partial denial of the NRDC petition, completes the NRC's response to this NRDC petition. The Commission believes that implementation of 10 CFR Part 61 provides the means of ensuring consistent and safe practices for near-surface disposal of wastes. Accordingly, the petition is denied.

Dated at Bethesda, Maryland this 29th day of March, 1985.

For the Nuclear Regulatory Commission.
William J. Dircks,
Executive Director for Operations.

[FR Doc. 85-11730 Filed 5-14-85; 8:45 am]
BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC-14506 (812-6087)]

American Pension Investors Trust et al.; Application for Order Permitting Assessment (and Waiver) of a Contingent Deferred Sales Load

May 8, 1985.

Notice is hereby given that American Pension Investors Trust ("Trust") and American Pension Distributors, Inc. ("APDI" and, collectively with the Trust, "Applicants"), each at 2316 Atherholt Road, Lynchburg, VA 24501, filed an application on April 9, 1985, and an amendment thereto on April 30, 1985, for a Commission order, pursuant to section 6(c) of the Investment Company Act of 1940 ("Act"), exempting Applicants from sections 2(a)(23), 2(a)(35), 22(c) and 22(d) of the Act and Rule 2c-1 thereunder to the extent necessary to permit assessment (and waiver) of a contingent deferred sales load ("CDSL") on certain redemptions of Trust shares. All interested persons are referrred to the application on file with the Commission for a statement of the represenentations contained therein, which are summarized below, and to the Act and the rules thereunder for the text of the applicable provisions.

According to the application, the Trust was organized as a Massachusetts business trust in January 1985, and is registered under the Act as an open-end, diversified, management investment company. APDI, a registered broker-dealer, is the Trust's distributor and will receive the proceeds of the CDSL. American Pensions Investors, Inc. ("Adviser"), an affiliate of APDI, is Trust's investment adviser.

Applicants propose to impose a CDSL on certain redemptions of Trust shares. Applicants represent that no CDSL will be imposed upon redemption on amounts derived from (i) increases in the value of shares above the total cost of shares being redeemed due to increases in the net asset value per share, or (ii) shares acquired through reinvestment of dividend income and capital gains distributions, or (iii) purchases made more than five years prior to the redemption. Applicants also represent that if the current net asset value of the shares redeemed has declined below the shareholder's cost due to the Trust's performance, the CDSL will be applied to the current value rather than the repurchase price.

Applicants state that where a CDSL is imposed, the amount will depend upon when the shares being redeemed were purchased. During the first 12 months after purchase, the charge would be 5% of the amount subject to a redemption charge. The charge would decrease by 1% per 12-month period thereafter until after five 12-month periods, at which time no charge would be imposed upon redemptions. Applicants represent that any CDSL imposed upon redemption would not, in the aggregate (including any prior charges incurred), exceed 5% of the total cost of the shares being redeemed. Applicants further represent that in determining the amount of the CDSL, shares held the longest will be assumed to be the first redeemed.

According to the application, the Trust proposed to finance its distribution expenses pursuant to a plan ("Plan") adopted under Rule 12b-1 under the Act. The Plan provides that the Trust will pay APDI a fee for expesnses related to the distribution of shares at the rate of 1% per annum of the Trust's average daily net assets. The fee will accrue daily and be paid monthly.

Applicants support its request for relief from sections 2(a)(32), 2(a)(35) and 22(c) of the Act and Rule 22c-1 thereunder by alleging that the CDSL in no way restricts an investor from receiving his proportionate share of the current net assests of the Trust, but merely defers the deduction of a sales load and makes it contingent upon an event which may never occur. Applicants also allege that the CDSL is functionally a sales load because it is paid to APDI to reimburse it for expenses related to offering the Trust to the public, and making it contingent upon an event which may never occur does not change its nature. Further, Applicants allege that the imposition of a CDSL at redemption instead of at purchase does not cause an investor to receive less than a price based on the current net asset value of his shares.

Applicants propose to waive the CDSL on redemptions (i) by officers and directors of APDI and Adviser and (ii) pursuant to certain systematic withdrawal or employee benefit plans. Because a CDSL may be considered a sales load under the Act, Applicants also request an exemption from section 22(d) of the Act permitting the proposed waivers. Applicants represent that such waivers will be fully disclosed in the Trust's prospectus and that there will be no discrimination among the members of each class who would benefit from the waivers.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than June 3, 1985, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicants at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.
Shirley E. Hollis,
Assistant Secretary.

[FR Doc. 85-11679 Filed 5-14-85; 8:45 am]
BILLING CODE 8010-01-M

[Release No. IC-14507 (File No. 812-5961)]

Benham California Tax-Free Trust and Benham National Tax-Free Trust; Application for Order Permitting Acquisition of Standby Commitments

May 8, 1985.

Notice is hereby given that Benham California Tax-Free Trust ("California Trust") and Benham National Tax Free Trust ("National Trust") (collectively, "Applicants"), 755 Page Mill Road, Palo Alto, CA 94304, each registered under the Investment Company Act of 1940 ("Act") as an open-end, diversified, management investment company, filed an application on October 12, 1984, and amendments thereto on January 30 and May 3, 1985, for a Commission order pursuant to section 6(c) of the Act exempting them from the provisions of section 12(d)(3) of the Act to the extent necessary to permit them to acquire rights to sell their portfolio securities to banks, brokers or dealers. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act and the rules thereunder for a complete text of the applicable provisions.

Applicants state they are Massachusetts business trusts, each with several series of shares ("Trusts")

to be offered to the investing public. California Trust has been selling its shares to the public since November 1983; National Trust first offered its shares to the public in August 1984. Applicants' investment adviser is Benham Management Corporation.

Applicants represent that their objective is to provide investors with maximum interest income exempt from federal income taxes (and, for investors in California Trust, income also exempt from California income taxes) while avoiding undue risk to principal. Applicants further represent that substantially all assets of a Trust will be invested in investment grade municipal securities. Additionally, Applicants represent that the Trusts are differentiated primarily by the average weighted portfolio maturity and expected yield characteristics of each Trust's investment portfolio.

Applicants propose to improve portfolio liquidity by acquiring standby commitments ("Puts") from broker-dealers. Applicants represent that their investment policies permit them to purchase Puts solely for such purpose. Applicants state that all Puts acquired (1) will be in writing and physically held by Applicants' custodian; (2) may be exercised by Applicants at any time prior to their expiration; (3) will be entered into only with banks, dealers and brokers which, in the investment adviser's opinion, present a minimal risk of default; (4) will provide Applicants with an unconditional and unqualified right of exercise; and (5) will not be transferable although the underlying security could be sold to a third party at any time even though a Put was outstanding. Further, Applicants state that the exercise price of a Put will be (i) the acquisition cost of the underlying security (excluding any accrued interest which an Applicant paid at acquisition) less any amortized market premium or plus any amortized market or original issue discount during the period an Applicant owned the security, plus (ii) all interest accrued on the underlying security since the last interest payemnt date during the period the security was owned by an Applicant.

Applicants represent they will value municipal securities in their money market Trusts on an amortized cost basis in accordance with the requirements of Rule 2a-7 under the Act. In the unlikely situation where the market or fair value of a security is not substantially equivalent to the amortized cost value, Applicants state they will value the money market Trust securities on the basis of available market information and will hold them to maturity. Applicants advise they expect to refrain from exercising Puts in such situations to avoid imposing a loss on a broker, dealer or bank and jeopardizing their business relationship with that entity.

According to Applicants, a Put may be available without the payment of any direct or indirect consideration but if necessary or advisable Applicants will pay for Puts, either separately in cash or by paying a higher price for the securities acquired subject to the Put. Applicants state that the total identifiable consideration paid for outstanding Puts held in a Trust will not exceed ½ of 1% of the value of a Trust's total assets calculated immediately after any Put is acquired. Because it is difficult to evaluate the likelihood of the use or the potential benefit of such Put, Applicants will assign that Put a "fair value" of zero. Applicants further represent that when they pay for a Put, they will reflect its cost as unrealized depreciation for the period during which it is held. Additionally, Applicants state that for purposes of computing the dollar-weighted average maturity of the Trusts, the maturity of a portfolio security shall not be considered shortened or otherwise affected by any Put.

Applicants believe the requested relief is appropriate in the public interest and consistent with the protection of investors. They contend that the Puts will not affect the calculation of the Trust's net asset value per share and will not pose new investment risks. Applicants also contend that the Puts will not expose Trust assets to the entrepreneurial risks of the investment banking business. Nevertheless, Applicants represent that their investment adviser intends to evaluate periodically the creditworthiness of the institutions issuing such commitments. Finally, Applicants state they will not acquire the Puts to promote reciprocal practices, to encourage the sale of its shares, or to obtain research services.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than June 3, 1985, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon an Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 85-11678 Filed 5-14-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-22014; File No. SR-PSE-85-10]

Self-Regulatory Organizations; Proposed Rule Change by the Pacific Stock Exchange Inc.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on April 18, 1985, the Pacific Stock Exchange Incorporated filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Pacific Stock Exchange Incorporated ("PSE") or "Exchange") proposes to amend Rule VIII, section 2(d), of the Rules of its Board of Governors, as set forth below. (Brackets indicate language to be deleted; Italic indicates language to be added).

Rule VIII

Dual Employment

Sec. 2(d) A registered employee may not be engaged in any other business or be employed by another employer in any capacity *or receive compensations*, without the prior and continuing approval of [the Exchange, and] *his member or member organization*, and *such registered employee* shall devote a substantial portion of the business day to the activities of his firm.

The proposed rule change was approved by the Board of Governors of the Exchange on February 28, 1985.

Questions or comments concerning the proposed rule change should be directed to Mr. Kenneth Marcus, Staff Attorney, Pacific Stock Exchange Incorporated, 618 South Spring Street,

Los Angeles, California 90014, at (213) 614–8576.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) The PSE requirements regarding the dual employment of registered employees of member organizations are set forth in Rule VIII, section 2(d) and currently provide that such dual employment is not allowed, "without the prior and continuing approval of the Exchange."

The basic concern here was what role the PSE should take in regard to employees of members being engaged in other businesses or by other employers at the same time, and whether or not the PSE must continue to give prior approval of such "Dual Employment" as required by section 2(d).

A review of New York Stock Exchange ("NYSE") Rule 346(b) provided some guidelines in addressing this issue. The NYSE rule provides that written consent is needed from the member organization before such dual employment is allowed. Rule 346(b) does not require prior approval of the NYSE, apparently believing that the member organization is in the best position to evaluate whether a conflict of interest would occur. In contrast, PSE Rule VIII, section 2(d), places the burden on the PSE to approve and supervise such restrictions.

Recognizing that the PSE is not in the best position to regulate and evaluate such dual employment questions, the Ethics and Business Conduct Committee and the PSE's Board of Governors approved amending the rule so as to place the responsibility of evaluating such dual employment with the member organization. It was recognized that the member organization is in the best position to evaluate the possibility of conflict of interest and that to require the PSE to give approval or get prior notice of such a decision would neither be necessary or advisable.

The proposed rule change is consistent with section 6(b)(5) of the Securities Exchange Act of 1934 ("Act"), in that it is intended to prevent fraudulent and manipulative practices and to protect investors and the public interest.

(B) The proposed rule change imposes no burden on competition.

(C) Comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, D.C.

Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by May 30, 1985.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

John Wheeler,

Secretary.

May 6, 1985.

[FR. Doc. 85–11780 Filed 5–14–85; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–22026; SR–Amex–83–33, SR–BSE–84–1, SR–CBOE–83–53, SR–NASD–80–10, SR–NASD–85–5, SR–NYSE–84–4, SR–PSE–84–2, SR–Phlx–83–27 and Phlx–84–28 and File No. S7–37–84]

Self-Regulatory Organizations; American Stock Exchange, Inc., Boston Stock Exchange, Inc., Chicago Board Options Exchange, Incorporated; National Association of Securities Dealers, Inc., New York Stock Exchange, Inc., Pacific Stock Exchange, Inc., and Philadelphia Stock Exchange, Inc.; Release Discussing Exchanges' and NASD's Proposed Rule Changes; and Soliciting Comment on Granting Unlisted Trading Privileges to Exchanges for Purpose of Allowing Integrated Market Making

May 8, 1985.

Date: Comments should be received by June 10, 1985.

Addresses: Interested persons should submit 6 copies of their views and comments to John Wheeler, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549 and should refer to File No. S7–37–84.

For further information contact: Alden Adkins or Sharon Lawson, Division of Market Regulation, 450 Fifth Street, NW., Washington, DC 20549 [(202) 272–2843 and (202) 272–2855]

Table of Contents

I. Introduction

On June 12, 1980, the National Association of Securities Dealers, Inc. ("NASD") submitted to the Commission a proposed rule change to establish an over-the-counter ("OTC") market in standardized put and call options on certain individual OTC stocks. On June 28, 1982, the NASD submitted to the Commission Amendment No. 1 to its proposed rule change, which, among other things, proposed to estabilsh an OTC market in standardized put and call options on certain stock indexes. On December 1, 1982, the NASD submitted Amendment No. 2, which proposed to trade options on additional OTC stock indexes.[1] In addition, on December 22, 1983, and June 15, 1984, the NASD submitted documents describing the proposed rule change, as amended, proposing certain additional changes; and discussing certain issues raised in previous comments on the proposal.[2] On March 19, 1985, the NASD submitted Amendment No. 3, which codified the changes to its proposed rule change in its December submission and June letter.[3] On March 20, 1985, the NASD submitted a separate rule filing containing the current specifications for an option on a 100 stock, NMS index.[4]

From November 1983 to July 1984, the Chicago Board Options Exchange, Incorporated ("CBOE"); American ("Amex"); Pacific ("PSE"); Philadelphia ("Phlx"); New York ("NYSE"); and Boston ("BSE") Stock Exchanges, submitted proposed rule changes to permit exchange trading of standardized options on Securities that are not listed and registered on a national securities exchange under Section 12(a) of the Securities Exchange Act of 1934 ("Act")[5] but are designated as National Market System Securities ("NMS Securities") pursuant to Rule 11Aa2-1(b)(1)[6] under the Act.[7] On April 12, 1984, the Commission issued a release soliciting additional comments on the NASD and the exchange proposals.[8] One hundred and ninety six comment letters were received from 175 different commentators, including the NASD and each of the proposing exchanges.[9] On November 7, 1984, the Phlx filed with the Commission a proposal to trade options on an index composed of the 100 most highly capitalized NMS Securities.[10]

The Commission has determined, in principle, that the exchange proposals and the NASD proposal may be modified to make them consistent with the Act. The Commission also has determined that a one year pilot program for integrated market making involving the six most active NMS stocks, commencing no later than October 1, 1985 would be appropriate if the exchanges are allowed to participate in such a pilot and if equity and options audit trails are in place prior to the commencement of such a pilot. The Commission is soliciting comment on the appropriateness of granting unlisted trading privileges in OTC stocks for the purpose of allowing exchanges to participate in such a pilot.

II. The Exchange Proposals

A. Options on Individual OTC Stocks

1. Background

The Amex, CBOE, Midwest Stock Exchange ("MSE") and PSE originally proposed to list standardized options on underlying securities traded exclusively in the OTC market in 1976 and 1977.[11] These proposals, however, were voluntarily withdrawn pursuant to an agreement between the Commission and the self-regulatory organizations ("SROs") participating in a moratorium on the introduction of new options products ("Moratorium").[12] During the Moratorium, the Commission staff conducted a study of the options market.[13] Although the Options Study did not discuss the exchange proposals to trade options on OTC stocks in detail, it did analyze the issues raised by an NASD proposal to establish an OTC market in standardized put and call options on certain OTC securities. In discussing the NASD proposal, the Options Study stated that the "absence of real-time last sale reporting of transactions in underlying securities traded exclusively in the OTC market may present questions of fairness if options trading with respect to these

[1] The proposed rule change and Amendments No. 1 and 2 were noticed in Securities Exchange Act Release Nos. 16979, 18917 and 19330, July 15, 1980, July 26 and December 13, 1982, 45 FR 53295, 47 FR 33575 and 57812.

[2] Submission of December 22, 1983, accompanied by letter from Gordon Macklin, President, NASD, to Douglas Scarff, Director, Division of Market Regulation, SEC, dated December 22, 1983, ("December Submission"); and letter from Gordon S. Macklin, President, NASD, to George A. Fitzsimmons, Secretary, SEC, dated June 15, 1984 ("NASD letter"). The December submission and NASD letter were not made pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") and Rule 19b-4 thereunder; however, their contents have been filed pursuant to Rule 19b-4 in Amendment No. 3. *See infra*, note 3.

[3] Amendment No. 3 was noticed in Securities Exchange Act Release No. 21891, March 25, 1985, 50 FR 12673.

[4] SR-NASD-85-5. Notice of this proposal was published in Securities Exchange Act Release No. 21890, March 25, 1985, 50 FR 12672.

[5] 15 U.S.C. 781(a) (1982).

[6] 17 CFR 240.11Aa2-1 (1984). Rule 11Aa2-1 designates certain OTC stocks as NMS Securities. Under the Rule's Tier I criteria, the most actively traded OTC securities are mandatorily designated as NMS Securities. The primary effect of designation as an NMS Security at the present time is to require that transactions in the security be reported on a real time basis and that quotations in the security be firm for the publicly displayed size. *See* Rules 11Aa3-1 and 11Ac1-1 under the Act.

[7] These proposed rule changes were noticed in Securities Exchange Act Release Nos. 20471 (CBOE), 20498 (Amex), 20538 (PSE), 20690 (Phlx), 20691 (NYSE) and 21151 (BSE), December 9 and 16, 1983, January 6, February 23, July 18, and July 19, 1984; 48 FR 55939 and 56875, 49 FR 1808, 7684, 7682 and 29689. The BSE's proposal also would authorize the BSE to trade options on stocks listed on securities exchanges. The other exchanges already trade, or have been authorized by the Commission to trade, options on listed stocks.

[8] Securities Exchange Act Release No. 20653, April 12, 1984, 49 FR 15291 ("April Release").

[9] A list of the commentators and a summary of the comments received, prepared by the Commission's staff, has been placed in File No. SR-NASD-80-10.

[10] The proposed rule change was noticed in Securities Exchange Act Release No. 21576, January 18, 1985, 50 FR 3445. The NYSE also has filed a proposed rule change to trade an option on an index composed of OTC stocks (File No. SR-NYSE-83-52, Securities Exchange Act Release No. 20343, November 3, 1983, 48 FR 51995). The Commission understands, however, that the NYSE is currently reconsidering whether to pursue this index in its proposed form.

[11] See File Nos. SR-CBOE-76-16, SR-Amex-76-28, SR-PSE-76-17, SR-MSE-77-4. The Commission noticed these proposed rule changes in Securities Exchange Act Release Nos. 12703, August 12, 1976, 41 FR 35584; 13095, December 22, 1976, 42 FR 2146; 12539, June 11, 1976, 41 FR 24787; and 13406, March 25, 1977, 42 FR 19200, respectively.

[12] See Securities Exchange Act Release Nos. 15026, August 3, 1978, 43 FR 35772; and 14878, June 22, 1978, 43 FR 35770.

[13] SEC, *Report of the Special Study of the Options Markets* H.R. Rep. No. IFC3, 96th Cong., 1st Sess. (Comm. Print 1978) ("Options Study").

securities is permitted." [14] The Options Study recognized that these same concerns were applicable to the exchange proposals to trade options on OTC stocks and suggested that the prudent course of action for both the exchange and NASD proposals was to defer trading of standardized options on OTC stocks "until such time as [OTC stocks] are included in the consolidated transaction reporting system and real-time last sale reporting is available.[15]

The Moratorium was terminated in 1980.[16] New proposals for the exchange trading of options on OTC stocks were not submitted, however, until the instant filings were submitted by the six exchanges between November 1983 and June 1984.[17]

2. Description

Under the current proposals, Amex, BSE, CBOE, NYSE, PSE and Phlx propose to trade options on OTC stocks that have been designated as NMS Securities meeting the Tier I criteria set forth in Rule 11Aa2-1(b)(1) under the Act.[18] OTC securities would qualify for options trading on an exchange under the proposals if they meet both the Tier I criteria under Rule 11Aa2-1 and the exchange's existing numerical options eligibility standards.[19]

Exchange-traded options on NMS stocks would be subject to the same trading rules and regulations and surveillance techniques that currently apply to exchange traded options on listed stocks. The CBOE, PSE and Phlx requested, however, that the Commission amend Rule 12a-6 under the Act because that rule effectively bars an exchange from trading options on all OTC securities, by effectively prohibiting exchange trading of options on stocks not listed or registered under Section 12(a).

In the April 1984 Release,[20] the Commission solicited comment on a wide range of issues regarding exchange-traded OTC options. At the same time, the Commission proposed amendments to Rule 12a-6 that, if approved, would remove the Rule's effective ban on exchange trading of options on OTC securities. In proposing these amendments, the Commission noted that their approval would not actually authorize any exchange to trade options on OTC stocks and that such trading only could commence if the Commissionindependently approved the exchange propsals as consistent with the Act.[21]

3. Discussion

a. *Exchange trading of options on NMS Stocks.* The exchanges believe their proposals are consistent with Section 6(b)(5) of the Act [22] because they extend their existing investor protection rules to options on OTC trading securities [23] and provide investors the benefits of listed options trading on OTC securities.[24] Many of the commentators, however, indicated that they would prefer trading options on OTC stocks in the OTC market.[25] Several of these commentators, for example, argued that liquidity problems on the exchanges would worsen if the Commission allowed the exchanges to trade options on NMS stocks.[26] Others indicated that, from a surveillance perspective, it was preferable to have the options traded where the underlying stock was traded.[27]

After analysis of the exchange proposals, the Commission has determined that the proposals appear to be consistent with the requirements of the Act, in paticular Section 6 thereof. The Commission believes that the existing exchange trading rules can be applied to options on NMS stocks without presenting any special regulatory concerns. As discussed below, the Commission has concluded that the exchanges will be able adequately to maintain trading in options on OTC stocks and detect abuses with the information currently available.[28] The Commission also believes that the availability of options on actively traded NMS stocks offers substantial benefits to the markets. The Commission in the past has found that options on listed stocks provide efficient and economical means hedge securities positions. The Commission can identify no reason why stocks with similar trading and issuer characteristics should be prohibited from underlying options simply because they are traded in an OTC environment.[29]

b. *Last Sale Reporting.* Since 1982, real-time last sale reports for transactions in OTC stocks have been available pursuant to Rule 11Aa3-1 under the Act. While some commentators (particularly the exchanges) expressed substantial concerns regarding the potential abuses of last sale reporting by OTC integrated market makers,[30] the exchanges

[14] *Id.* at 933.

[15] *Id.* at 975.

[16] Securities Exchange Act Release No. 16791, March 28, 1980, 45 FR 21426 ("Moratorium Termination Release").

[17] The BSE does not have an established options market and is proposing to trade options on both listed and OTC stocks. *See* Section II.B., *infra*. In addition, the Commission recently approved NYSE's proposal to enter the individual stock options market. See Securities Exchange Act Release No. 21759, February 14, 1985, 50 FR 7259.

[18] As described *supra*, note 6, the primary effect of designation as a NMS Security under Rule 11A2-1(b)(i) under the Act is real-time last sale reporting for transactions in the Security and firm quotations.

[19] The exchanges' eligibility standards require, in general, (1) a minimum public float of 7 million shares; (2) at least 6,000 beneficial owners of the security; (3) aggregated trading volume of at least 2.4 million shares during the 12 months preceding authorization of the option; and (4) a closing price of $10.00 per share on each business day for the 3 months preceding authorization of the option. The exchanges' also have quality of issuer criteria, relating to matters such as the timeliness of the issuer's reporting to the SEC, its net income, defaults on dividends, and related matters. *see, e.g.*, CBOE Rules 5.3 and 5.4.

The exchanges also have "maintenance criteria" for stocks underlying options that require that no new series be introduced in an option if, among other things, the underlying stock falls below certain volume, float and price levels. *See, e.g.*, CBOE Rule 5.4.

[20] April Release, *supra*, noted 8.

[21] In separate release, the Commission is today announcing the adoption of the amendments to Rule 12a-6 to allow exchange trading of OTC option. Securities Exchange Act Release No. 22025, May 8, 1985.

[22] 15 U.S.C. 78f[f][b][5] (1982). The NYSE also argued that its proposal is consistent with section 6(b)[1] [15 U.S.C. 78f[f][b][1] (1982)] of the Act because it will provide a regulatory framwork for a market on the floor inindividual OTC-stock options.

[23] *See, e.g.*, Amex filing.

[24] *See, e.g.*, CBOE filing.

[25] These comments are summarized in Section IV, *infra*, on the allocation of options.

[26] *See, e.g.*, letters from R. Baxter Brown, President, Brown, Geary & Mclanes, Incorporated, dated May 21, 1984; Robert Fomon, Chairman, E.F. Hutton and Company, Inc., dated June 15, 1984; Parks H. Dalton, Chairman and Chief Executive Officer, Interestate Securities, dated June 15, 1984; Richard A. Bruno, Senior Vice President, OTC Department, Painer Webber Incorporated, dated June 29, 1984; Jerome Bine, Sherwood Securities Corp., dated June 8, 1984; and George Griswold, II, Senior Vice President, Waters Parkerson & Co. Inc., dated July 3, 1984; all to George A. Fitzsimmons, Secretary, SEC.

[27] *See, e.g.*, letters from Marvin G. Perry, President, Berney Perry & Company, to George A. Fitzsimmons, Secretary, Sec, dated June 8, 1984 ("Berney Perry letter").

[28] Just as with the trading of options on listed stocks, effective options surveillance is dependent on the cooperation of the SRO responsible for the market where the underlying security is traded. The Commission expects the NASD to fulfill its statutory obligations to ensure fair and orderly markets by working closely with the options exchanges through the Inter-Market Surveillance Group. The Commission recognizes, however, that even more effective surveillance will be possible once the NASD's proposed equity audit trail is in place. *See* Section II.A.3.d. *infra*.

[29] In this Release the Commission is announcing its decision to allow the multiple trading of options on NMS stocks among the exchanges and between the exchanges and the OTC market. *See infra*, Section IV. In light of this, the actual approval of the exchange proposals is conditioned upon elimination of exchange barriers to multiple trading that would, in effect, prohibit members from trading OTC options on the OTC market, as well as modification of the Stock Allocation Plan to allow for multiple trading of options on OTC stocks. *See infra*, Section V.

[30] *See* text accompanying notes 126 to 128, *infra*.

nevertheless were satisfied that OTC last sale reporting was adequate to support the exchange trading of options on OTC stocks. Other commentators, including the NASD, stated their general view that last sale reporting is sufficient to support an options market. As discussed more fully below,[31] the Commission also believes that OTC transaction reporting is sufficiently accurate and timely to allow standardized options trading on NMS stocks.[32]

c. *Issuer Consent.* The NASD has suggested that the exchanges be required to obtain an issuer's consent before trading options on an otherwise eligible NMS stock. The NASD has proposed to impose the same condition upon inclusion of a stock in its own NASDAQ options program.

Among the arguments noted by those commentators supporting an issuer consent requirement were that options can have an adverse effect on a company's capital raising efforts,[33] can harm the public's perception of the company and affect the market for the issuer's securities [34] and is a misappropriation and unauthorized use of the issuer's assets.[35] Others noted that an issuer consent provision was consistent with the basic tenet of freedom of choice [36] and allows issuers the right to determine which market is better to trade options on their stocks.[37]

The five exchanges commenting on this aspect of the NASD's proposal opposed such a provision primarily because of the competitive implications such a requirement would have on exchange trading of OTC options.[38] For example, the Phlx contends that the proposal clearly favors the NASD to the detriment of the options exchanges because NASDAQ issuers, with whom the NASD maintains ongoing relationships and who presumably value continued successful trading of their stock on NASDAQ, would be most willing to provide consent to the NASD and least willing to provide consent to the exchanges.[39] In addition, these commentators disputed the NASD's contention that standardized options compete with an issuers capital raising efforts and emphasized the benefits to be gained from options trading.[40]

Because the exchanges have not proposed an issuer consent requirement themselves, in order for the Commission to precondition approval of their OTC options proposals on such a requirement the Commission would have to determine that such a provision is required by the Act. The Commission, however, is unable to conclude that the Act requires that the exchanges adopt rules that would require issuer consent before options could be traded on their stock, or that would give issuers a role in selecting which market(s) would be allowed to trade options on their stock.[41]

First, the Commission notes that Congress in enacting section 12(f)(1)(C) of the Act [42] evidenced a clear intent not to allow an issuer to be the determinative factor in deciding whether a security should trade on an exchange or OTC. Section 12(f)(1)(C) of the Act permits an exchange to seek unlisted trading privileges ("UTP") in securities traded solely OTC.[43] Congress made clear in enacting this amendment to section 12(f) of the Act that an issuer does not have a right to veto exchange trading of its securities. In this regard, the Senate Report recommending adoption of the amendment stated that

> in the context of a [NMS,] there is little or no justification for an issuer to deprive securities holders of the advantages of exchange trading. The protections inherent in exchange trading should be afforded to all securities within suitable characteristics and should not be dependent upon the decision of corporate management to 'list.' [44]

Similarly, the Commission believes that conditioning exchange trading of OTC options on an issuer's approval would be inconsistent with the intent of Congress.

Second, the Commission does not agree with the view that options may diminish an issuer's ability to raise capital. On the contrary, experience has indicated that options trading can actually enhance depth and liquidity for the underlying securities.

Third, the Commission believes that the availability of options can provide significant benefits to public investors. For example, it allows them to avoid downside risks of the stock market through the purchase of puts and sale of covered calls.

Fourth, the Commission believes that serious competitive implications would be raised if issuers, whose stock is quoted on NASDAQ, were permitted to determine which market—exchange or OTC—was to trade options on their stocks. For the reasons identified by the exchanges, we believe that giving the issuer its choice of markets would be tantamount to denying the exchanges the ability to trade OTC options. The Commission concludes, therefore, that an issuer consent provision is not necessary under the Act for the protection of investors and the public interest or to promote just and equitable principles of trade. At the same time, however, the Commission preliminarily believes the NASD's proposal to include issuer's consent as part of its NMS options program is not inconsistent with the Act and that there appears to be no

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[31] In summary, the Commission believes that there is no evidence that OTC market makers intentionally have withheld the execution of reporting of an execution; that the NASD's time stamping and other surveillance procedures and customers' self-interest serve to ensure both the timeliness and accuracy of OTC last sale reporting; that the withholding of the report of an order exposes a market maker to the risk of adverse market movements and would be extraordinarily cumbersome to do with small orders due to the NASD's and member firms' automated execution systems; and that the computation of mark-ups or mark-downs from the "prevailing market" for last sale reporting purposes is not an entirely subjective enterprise in the markets for the stocks that will be eligible to underlie options under the exchanges and the NASD's proposal. *See* text accompanying notes 133-145, *infra*.

[32] Before the exchanges can begin trading OTC options, however, they will need to develop an adequate surveillance plan (*see* Section II.A.3.d., *infra*).

[33] *See, e.g.*, letter from Carl P. Sherr, Carl P. Sherr & Company to George A. Fitzsimmons, Secretary, SEC, dated June 8, 1984.

[34] *See, e.g.*, letter from William G. McGowan, Chairman, MCI Communications Corporation, to George A. Fitzsimmons, Secretary, SEC, dated May 15, 1984 ("MCI Letter").

[35] *See* letter from Rifkind, Sterling, and Levin, Inc. to George A. Fitzsimmons, Secretary, SEC, dated June 13, 1984.

[36] *See, e.g.*, NASD Letter, *supra* note 2, at 4.

[37] *See, e.g.*, MCI Letter, *supra* note 34, at 3–4.

[38] The exchanges commenting on this issue were Amex, CBOE, NYSE, PSE and Phlx.

[39] *See* letter from Nicholas A. Giordano, President, Phlx, to George A. Fitzsimmons, Secretary, SEC, dated October 19, 1984 ("Phlx letter"), at 17.

[40] *See, e.g.*, letter from James E. Buck, Secretary, NYSE, to George A. Fitzsimmons, Secretary, SEC, dated July 16, 1984 ("NYSE letter"), at 54–55.

[41] In this regard, the Commission notes that the question of whether an exchange can commence trading options without an issuer's consent is currently in litigation. *See Golden Nugget, Inc.* v. *Amex*, No 83 (S.D. 647 Nev., September 1983). We note that this litigation apparently does not involve claims arising under the federal securities laws.

[42] 15 U.S.C. 781(f)(1)(C) (1982), added to the Act by the Securities Acts Amendments of 1975 ("1975 Amendments") (Pub. L. No. 94–29, June 4, 1975).

[43] Prior to the enactment of the 1975 Amendments an exchange could seek UTP only in securities listed by the issuer or another exchange. We note that although the Commission now has the power to grant UTP in OTC stocks, it generally has not granted such applications because of market structure concerns. *See* Securities Exchange Act Release No. 19609, March 17, 1983. As noted below, however, the Comission recently solicited comment on whether UTP applications in OTC stocks should be granted. *See* note 184, *infra*.

[44] Senate Comm. On Banking, Housing & Urb. Affs., *Report to Accompany S. 249: Securities Acts Amendments of 1975*, S. Rep. No. 97–75, 94th Cong., 1st Sess., 18 (Comm. Print 1975) ("Senate Report"), *reprinted in* [1975] U.S. Code Cong. & Ad. News, at 19. *See Ludlow Corp. v. SEC*, 6047 F.2d 704 (D.C. Cir. 1979)

regulatory reasons for prohibiting the NASD from deciding that it is in its interest to require consent before an option is traded on the stock in the OTC market.[45]

d. *Surveillance.* Section 6(b)(5) of the Act requires an exchange to have rules designed to prevent fraudulent and manipulative acts and practices and to promote just and equitable principles of trade. Section 6(b)(1) of the Act also requires that an exchange be organized and have the capacity to comply, and enforce compliance by its members and their associated persons, with the provisions of the Act, the rules thereunder, and the rule of the exchange.[46] Accordingly, an exchange has an obligation to develop and administer a comprehensive surveillance program designed to detect manipulation and other improper trading activities.

In determining whether the exchanges can adequately surveil an options market on NMS stocks, the Commission has focused on the information that will be available to the exchange through the NASD on the underlying OTC stocks, as well as the exchanges' operational capacity to detect abuses in such options trading. Accordingly, in the April Release, the Commission solicited comments on whether implementation of an equity audit trail and an equity surveillance system by the NASD should be a precondition to any trading of standardized options on NMS stocks.[47]

Many commentators expressed the view that no proposal (by the exchanges or NASD) to trade options on NMS stocks should be approved until the NASD's surveillance system and related equity audit trail are in place.[48] Conversely, the exchanges argued that exchange trading of OTC options can appropriately occur in the absence of an OTC equity audit trail and equity surveillance system.[49]

The Commission believes that the exchanges have the operational capacity to adequately monitor trading in options on NMS stocks.[50] In addition to operational capacity, however, exchange surveillance also will require adequate information regarding the underlying OTC stocks to detect abuses. In this connection, although the availability of underlying stock audit trail information would enhance the options exchanges' ability to detect inter-market manipulations, the Commission believes the information currently available to the exchanges under existing NASD surveillance systems will be sufficient to detect abuses and to support the exchange trading of options on such securities.[51] This conclusion is based on the obligations assumed by all participants in the Inter-Market Surveillance Group (including the NASD) to share relevant trading and surveillance data with the markets responsible for conducting surveillance in related options.

Nevertheless, the exchanges have not submitted the specific details of their surveillance plans for options on NMS stocks. Accordingly, trading of OTC options may not commence at any exchange until it demonstrates its capacity to adequately monitor trading in options on NMS stocks by submitting a satisfactory surveillance plan. These plans also should detail any proposed surveillance enhancements necessary to adequately surveil options on OTC stocks and should demonstrate that these enhancements will be operational prior to the commencement of trading.

As noted previously, the BSE's entry into options trading for the first time will require a corresponding establishment of an acceptable surveillance program. The Commission will review carefully the BSE's surveillance procedures before it may begin trading options on NMS stocks. At a minimum, the surveillance capacity of the BSE concerning options must be comparable to the surveillance programs of the existing options markets. In this regard, the BSE must incorporate a functioning options audit trail in its surveillance program along with an adequate intermarket surveillance plan prior to the commencement of trading.

e. *Summary.* For the reasons discussed above, the Commission believes that the exchange proposals appear generally to be consistent with the Act. As discussed below, however, the Commission also is approving the multiple trading of options on NMS stocks, and the exchanges will need to eliminate obstacles contained in their rules to such multiple trading before the Commission may approve these proposals.[52] As is also discussed below, the exchanges may have to delay the commencement of trading of these options for a certain period of time (possibly 60 days) after publication of this release in order to address certain regulatory concerns,[53] and the exchanges will have to have in place adequate surveillance programs prior to the commencement of trading.

B. BSE Entry Into the Individual Stock Options Market

The BSE has proposed to establish a market for the trading of standardized put and call options on certain individual exchange-listed and NMS stocks. This represents the BSE's first entry into the listed options market.

BSE has stated that the statutory basis for its rule change is section 6(b)(1) of the Act in that it would provide a regulatory framework for a market in options on the exchange floor. The BSE's existing rules, except for the changes necessary to accommodate options trading, would apply to its proposed market in options. The BSE has proposed a set of new rules to accomodate options trading that are substantially the same as the rules of

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[45] *See infra*, Section III.B.2.a.v.

[46] *See* Section 19(g) of the Act, 15 U.S.C. 78s(g) (1982).

[47] As described below, the NASD is in the process of establishing a complete equity audit trail and surveillance system for NMS stocks comparable to systems for listed stocks underlying options. The NASD currently captures price, time of trade report, amount, identity of security and identity of market maker entering the last sale report for trades in NMS stocks. The NASD system also captures all quotation changes in NMS stocks. The audit trail for all NASDAQ securities eventually will capture the following additional information: size, clearing firms (but and sell sides), executing firms (with the capacity as principal or agent for both the buy and sell sides), and the trade reference number for automated executions. *See* Section III.B.1.f. *infra*, for a more detailed discussion of this plan.

[48] *See, e.g.*, letter from Alan Bush, Alan Bush Brokerage Company, to George A. Fitzsimmons, Secretary, SEC, dated June 6, 1984.

[49] These exchanges, however, have made it clear that they believe an equity audit trail and surveillance system is a necessary precondition to NASD trading of options on NMS stocks, at least in an integrated market making environment. The comments on the adequacy of last sale reporting (*see* text accompanying notes 128 to 128 *infra*) can also be construed to suggest that the NASD's proposed surveillance program, even if implemented, will be insufficient. In this regard, the exchanges have expressed concern over the lack of mechanics for validating the data submitted into the system for surveillance purposes and the 90 second delay allowed in submitting last sale reports. The exchanges, however, do not believe these concerns apply to exchange trading of options on OTC stocks. As discussed more fully below (*see* text accompanying notes 133–145, *infra*) the Commission has concluded that last sale reporting of NMS stocks is sufficient to support options trading and should not result in insuperable surveillance problems in either OTC or exchange markets.

[50] The NYSE has stated, for example, that in terms of both personnel and computerized facilities they have the options surveillance capability to surveil a market in options on OTC stocks. NYSE Letter, *supra* note 40. It appears that the surveillance systems of the other exchanges also should be easily adaptable to surveil these options.

[51] Although the Commission does not believe approval of the exchange proposals should be conditioned on the completion of the NASD's equity audit trail, we continue to believe that the development of complete equity audit trails by both the NASD and the securities exchanges will greatly improve the surveillance capabilities of the SROs, thereby enhancing the integrity of both the options and stock markets.

[52] *See* Section IV, *infra*.

[53] *See* Section V, *infra*.

the existing options markets (in particular, Amex, Phlx and NYSE).

The BSE proposal to establish an options market does not present any significant regulatory issues. BSE will be using the options trading rules that conform to those used by the other options exchanges.[54] For these reasons, the Commission believes that the BSE's proposal to establish an options market in listed securities and NMS stocks generally would be consistent with the Act as soon as the appropriate conforming amendments are filed with the Commission and the BSE satisfies the Commission regarding its surveillance capability.[55]

C. Phlx's OTC Index Option

The Phlx's proposed index would be capitalization-weighted [56] and would consist of the 100 most highly capitalized NMS domestic stocks ("NMS Index"). The Phlx proposes to reconstitute the index semi-annually to ensure that it contains the 100 most highly capitalized NMS stocks. Thus, every six months the Phlx will delete from the index any issue that is no longer in the top 100 most highly capitalized NMS stocks and will add to the index stocks that are in the top 100. The Phlx has retained an independent entity to update the index every minute during the trading day, and updated index values will be disseminated and displayed by means of the Consolidated Transition Reporting System and the facilities of the Options Price Reporting Authority ("OPRA"). The Phlx will apply its existing broad-based index options rules, including ones that govern margin, position and exercise limits and trading limits, to the new index option.

The total capitalization of the NMS Index is $69.003 billion as of March 5, 1985. No one stock in the index constitutes more than 4.45% of the total index value and the top five stocks in the index constitute only 15.40% of the total index value. In addition, the proposed index contains issues representing approximately 30 industry groups.[57] For these reasons, the Commission finds that the Phlx's proposed designation of tis index as broad-based appears appropriate.[58]

The Commission also believes the Phlx's proposal raises no other significant regulatory issues. While this is the first index options proposal the Commission has considered that provides for the semi-annual adjustment of the composition of the index,[59] the Commission finds that this feature of the Phlx proposal, by seeking to ensure that only the most highly capitalized NMS stocks are represented in the Index, serves to ameliorate any concerns with respect to potential manipulative activity involving stocks in the Index. In addition, Phlx has provided for a method of adjusting the calculation of the Index so that these semi-annual changes do not artificially affect continuity in Index values. The Phlx already has submitted to the Commission an adequate surveillance program. Just as the Phlx, and other exchanges, need to amend their rules to eliminate obstacles to multiple trading of individual stock options,[60] however, the Phlx will need to eliminate the barriers to multiple trading of index options contained in its rules.[61] The Commission feels that Phlx's proposed contract appears consistent with the Act; however, we are deferring actual approval of Phlx's proposal until it submits rule amendments that allow its members to act as NASDAQ market makers in index options listed and traded on the Phlx.

III. The NASD Proposal

A. Overview

The NASD proposes to display quotations in standardized put and call options on designated stocks ("NASDAQ options") and stock indexes ("NASDAQ index options"). These quotations, to be displayed in the NASD's NASDAQ System, would be made by options market makers registered as such with the NASD. The options would be standardized as to exercise price, expiration data, and unit of trading, would be issued and guaranteed by the Options Clearing Corporation ("OCC") and would be registered with the Commission under the Securities Act of 1933 and in various states by the OCC. NASDAQ options an index options also would be exercisable through OCC. The NASD proposal includes a provision for last sale reporting of transactions in NASDAQ options and index options contracts. In addition, the NASD proposes to establish an automated NASDAQ options execution system for small customer orders of three contracts or less, and an "order confirmation transaction" feature that will "lock-in" other trades in NASDAQ options and index options for price reporting, surveillance and clearing purposes. The NASD proposes to allow broker-dealers to make markets simultaneously in both NASDAQ options and their underlying stocks, so long as certain conditions are satisfied. In addition, the NASD proposes to implement special coordinated surveillance measures to monitor trading in its proposed options and their underlying stocks.

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[54] The BSE needs to make certain technical changes to its filing so that its options rules conform to those of the existing options exchanges. In addition, as noted above, the BSE would need to develop surveillance systems to accommodate options trading.

[55] *See* Section II.A.3.d., *supra*.

[56] A capitalization-weighted index is one in which an issue's relative weight in the total index value is determined by its total capitalization, as determined by multiplying the issue's price per share times the number of shares outstanding.

[57] See letter from Robert B. Gilmore, Senior Vice President, Phlx, to Alden S. Adkins, Attorney, Division of Market Regulation, SEC, dated March 6, 1985. Although the index proposed by the Phlx is not a single industry index, we note that the Commission previously has recognized that certain factors, such as the number of securities in an index and the percent of index weighting of the largest stocks in the index, are relevant in determining whether a non-diversified or industry index (rather than a diversified or broad-based index) represents a "substantial segment of the market" under section 2(a)(1)(B)(II) of the Commodity Exchange Act ("CEA") [7 U.S.C. 2a(ii)(III) (1982)]. *See* Interpretation and Statement of General Policy of the CFTC and SEC, Securities Exchange Act Release No. 20578, January 18, 1984, 49 FR 2884. In this connection, the Commission notes that a Phlx subsidiary, the Philadelphia Board of Trade, has applied to the Commodity Futures Trading Commission ("CFTC") for designation as a contract market to trade a proposed futures contract on the NMS Index (*see* 50 FR 4726, February 1, 1985). Consistent with its statutory obligations, the Commission will comment separately to the CFTC regarding the status of that futures contract under section 2(a)(1)(B) of the CEA.

[58] *See* Securities Exchange Act Release No. 21032, June 8, 1984, 49 FR 24964, regarding the designation of the PSE Technology Index as a broad-based index. The designation of an index as broad-based allows the exchange to apply to trading in options on the index more liberal margin, position and exercise limits and trading halts rules than would apply if the index were designated as narrow-based. While issues will be added and subtracted to the index semi-annually, because these adjustments will tend to occur among the least capitalized issues in the index, it is unlikely that this process will cause any one stock or a small group of stocks to dominate the total index values or otherwise materially alter the nature of the index. Thus, it is unlikely that this process will effect the broad-based nature of the index.

[59] The Commission has, however, previously commented favorably on a proposed municipal bond index futures contract that included provision for bi-weekly replacement of issues in the index. *See* letter from George A. Fitzsimmons, Secretary, SEC, to Dr. Paula Tosini, Director, Division of Economics and Education, CFTC, dated July 23, 1984.

[60] *See* text accompanying notes 222–226, *infra*.

[61] As described below, the Commission also believes the NASD's proposal to trade an NMS index option could be approved in the near future. The NASD's proposed 100 stock index is not identical to Phlx's, so that approval of both proposals technically would not result in multiple trading of fungible contracts. In this connection we note, however, that the Commission previously has approved the multiple trading of index options. Securities Exchange Act Release Nos. 19264 and 20075, November 22, 1982 and August 12, 1983, 47 FR 53981 and 48 FR 37556, respectively, and believes that the multiple trading of index options between exchanges and the OTC market is also appropriate.

B. Individual Stock Options

1. Description of the Proposal

a. *Eligible Underlying Stocks.* To be eligible to underlie a NASDAQ option, a stock must be (a) a designated NMS Security, (b) displayed on the NASDAQ system and (c) either registered with the Commission under section 12(g)(1) of the Act or issued by an insurance company meeting the conditions of section 12(g)(2)(G) of the Act.[62] The stock also must satisfy certain quality of market and quality of issuer criteria identical to those established by exchanges for stocks underlying individual stock options;[63] and the issuer of the stock underlying the option ("issuer") must consent to the inclusion of the option in the NASDAQ options program.

b. *Proposed NASDAQ Options Automated Execution System.* The proposed NASDAQ Options Automated Execution System ("NOAES") [64] would execute automatically orders in NASDAQ options.[65] This system would permit the automatic execution at the best NASDAQ displayed bid or offer of customer orders for up to three contracts.[66] Participation in NOAES for a particular NASDAQ options class would be mandatory for all NASDAQ market makers in that option. All NASDAQ options quotations displayed, therefore, will reflect prices at which automatic executions may be effected. Each market maker will be able to enter "exposure limits" that specify the maximum number of contracts that the firm is willing to buy or sell via automatic execution. Until the exposure limit is exhausted (*i.e.*, reaches zero), however, the market maker must accept one automatic execution for up to three contracts at his displayed quotation, if such quotation is the best quotation in the system.

If more than one market maker is displaying the best bid or offer, orders entered without designating a preferenced market maker will be automatically executed on a rotating basis against each market maker at that price. Preferenced orders, *i.e.*, ones designating a particular market maker, also would be allowed. A preferenced order will be executed against the preferenced market maker if his quote is equal to the best NOAES price and his exposure limit has not been exhausted.[67] A firm would not be allowed to designate itself as the preferenced market maker. If the preferenced order cannot be executed against the preferenced market maker, the system will treat the order as if it were not preferenced.[68]

NOAES will forward automatically trade data from execution reports to OPRA for dissemination to the distribution vendors. In addition, NOAES will forward to OCC execution reports for both sides of the trade, resulting in a "locked-in" trade for clearing purposes.

c. *NASDAQ Options Orders Not Automatically Executed.* Under the NASD proposal, use of NOAES by order entry forms for small orders is voluntary and, as noted above, the system may not be used for orders larger than three contracts.[69] Under the NASD proposal, the Order Confirmation Transaction ("OCT") procedures would be used for non-NOAES orders. The OCT will allow an order entry firm to contact a NASDAQ options market maker by phone [70] and negotiate a trade. The order entry firm would then be required to enter into the NASDAQ system an OCT message within two minutes. The trade will be reported to OPRA upon entry of the OCT message. The market maker receiving this message will then have a certain amount of time in which to accept the message. If the message is accepted, the transaction becomes a "locked-in" trade to be reported to OCC at the end of the trading day. If a member fails to respond to an OCT message, the message will be retained in OCT for reconciliation at the close of the trading day. All OCT messages, whether accepted or not, would be captured by the system.[71]

d. *Integrated Market Making.* Under the NASD proposal, market makers in stocks underlying NASDAQ options would be able to make markets simultaneously in NASDAQ stocks and options on those stocks. The NASD proposes to impose specific requirements on these integrated market makers who, in addition, would be bound by rules applicable to all members. The specific rules that would apply to integrated market makers are as follows:

(1) Before a member could make a market simultaneously in an underlying stock and options relating to that stock, there would have to be at least 10 registered market makers in the underlying stock and at least 5 registered market makers in each option group [72] in respect to which integrated market making is intended.

(2) Before being approved as an integrated market maker, a firm will have to submit to the NASD for its approval the procedures the firm will use to ensure the integrity and

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[62] The NASD also proposed to allow a stock registered on a national securities exchange to underlie a NASDAQ option if that stock is not a "covered security" under Rule 19c-3 under the Act [17 CFR 240.19c-3 (1984)] and if the stock does not at the time of qualification for NASDAQ options trading underlie an exchange traded option issued by the OCC. *See* the December submission, note 2 *supra*, and Amendment No. 3. The NASD has agreed to a deferral of Commission consideration of this portion of its proposal. Letter from John J. Flood, Senior Attorney, NASD, to Alden Adkins, Division of Market Regulation, SEC, dated April 8, 1985. For this reason, the Commission is not at this time reviewing this aspect of the NASD's proposal.

[63] *See supra*, note 19.

[64] Technically, "NOAES" as defined in the NASD's rules would encompass both the automated execution system for options and the Order Confirmation Transaction procedure described below. For purposes of this discussion, "NOAES" refers only to the automated execution system. As the NASD points out in Amendment No. 3 to its filing, NOAES will function in a manner similar to the NASD's recently approved automated Small Order Execution System ("SOES") for stocks. *See* Securities Exchange Act Release No. 21742, February 12, 1985, 50 FR 7435.

[65] NOAES also will be available for executions of NASDAQ index options orders. *See* Section III.C., *infra*.

[66] Either market or limit orders can be entered in NOAES. If, however, a limit order is not immediately executable at the limit price or better, the order will be returned to the order entry firm.

[67] *See* proposed Section 8(e), Part IV of Schedule D, Amendment No. 3.

[68] In its June 1984 letter (note 2, *supra*) and in Amendment No. 3, the NASD indicated that, pending actual experience in the market indicating the extent of pre-opening options order flow, NOAES will not be available to handle pre-opening orders. During this initial period, NOAES will begin to accept orders in options after the underlying stocks are opened based upon quotations disseminated by each market maker. NOAES will stop accepting orders and all options trading in NASDAQ will cease at 4:00 p.m. EST, or simultaneously with the close of the markets for the underlying stocks.

[69] Options market makers will be required to execute via OCT a minimum of three contracts at their displayed quotations. *See* proposed, Section 4(d), Schedule D, Part IV, NASD By-Laws. Thus, the NASD would establish firm quotations for up to three contracts not only for customer trades but for all trades, including inter-dealer trades.

[70] Another form of OCT, called "Unsolicited Order Transaction" ("UOT"), allows the order entry firm to direct an unsolicited order to a market maker via the system without first contacting the market maker by telephone. Once the order is accepted by the market maker via terminal entry, the trade will be automatically reported and locked in for clearing purposes.

[71] The parties to a transaction also would be able to "break" the trade by mutual agreement in the event an incorrect OCT message is inadvertently accepted by the contra-party. Such "broken" trades also will be captured by the system. A third type of OCT specified in the NASD's filing would be called an "Internalized Trade Transaction" which would be utilized when the order entry firm executes its customers' orders as a market maker. The procedure is functionally identical to the basic OCT procedure, except that the trade becomes locked-in upon report of the trade to the NASDAQ System (there being no other broker to accept the trade).

[72] Under the NASD proposal, an option "group" is defined as all options contracts of the same class of options having the same exercise price and unit of trading but separate expiration dates. *See* proposed Section 1(m), Schedule D, Part IV, NASD By-laws.

timeliness of its last sale reports in the underlying stock and its submission of OCT messages.

(3) A member who has sustained over 50% of the non-block volume in a stock over the three-month period prior to application for approval to act as an integrated market maker or otherwise having potentially significant informational advantages over other market participants in overlying options would be required to show that it would be appropriate to allow that member to become an integrated market maker.

(4) Integrated market making in a new options series would not be allowed if there were fewer than 7 registered NASDAQ market displaying quotations on the NASDAQ system in the underlying stock or fewer than 3 registered NASDAQ options market makers displaying quotations on the NASDAQ system in the NASDAQ opitons group. Integrated market making would not be allowed until there were again 10 market makers in the underlying stock and 5 in the opitons group. Furthermore, if an integrated market maker sustains over 50 percent of the non-block volume in the underlying stock for any rolling two-month period,[73] or obtains a market position potentially giving him significant informational advantage over other market participants in the option, the NASD will institute procedures to determine if that firm should be allowed to continue acting as an integrated market maker.

(5) Integrated market makers would be obligated to quote continuously markets for all options series in which they were also making markets in the underlying stocks through the completion of all expiration cycles authorized for trading when the market maker started integrated market making. If an integrated market maker elected to quote options series in a subsequent expiration cycle, the market maker's continuous quotation obligation would extend through the expiration of that cycle.[74] If any integrated market maker failed to abide by this commitment, his registration as an options market maker in the options class would be revoked and he would not be permitted to re-register as market maker in such options until the expiration of both the near term expiration cycle and the expriation cycle which follows.[75]

(6) An integrated market maker would be required to maintain the spread between its bid and offer within certain parameters and also would have to maintain a certain minimal continuity in prices at which successive transactions are executed.[76]

(7) Integrated market makers would be required to report information with respect to transactions and positions in conventional, OTC options covering those stocks in which NASDAQ options markets were being made.

(8) In effecting a NASDAQ options transactions with or for a customer, an integrated market maker would be required to disclose its capacity as such on the confirmation sent to the customer.[77]

e. *Other Options Rules.* The proposed NASDAQ options rules incorporate a number of other provisions contained in exchange rules covering standardized options on individual stocks. These include position and exercise limits that would be identifical to the options exchanges' current position and exercise limits;[78] rules authorizing the NASD to impose limitations on the total number of uncovered short positions in a given class of options; authorizing the NASD to impose limitations on transactions in, or exercises of, one or more series of options in the interest of fair and orderly markets for options or their underlying stocks; prohibiting market makers from entering into any options contract with the issuer, or any controlling person or affiliate of the issuer of the underlying stock; and requiring reports concerning each account (member, associated person or customer) having an aggregate position of 200 or more options contracts on the same side of the market. The NASD also proposes to use strike price intervals, and rules governing the introduction and addition of new strike prices, that are essentially identical to existing exchange rules. The NASD's proposed rules governing comparison, clearing, settlement, exercise and payment are also essentially identical to existing exchange rules. Finally, the NASD also proposes to apply to trading in NASDAQ options the same prohibitions against fictitious and pre-arranged trades, manipulation and frontrunning as currently apply to exchange-traded options.

f. *Surveillance.* The NASD also will implement a fully automated options audit trail that will include the following elements: locked-in options transaction information including class, series, price, size, time, buyer and seller, and retail identifier, for all options trades; individual options market maker quotations, including all upticks and downticks in the actual time sequence they occur; options trade reports containing information on transaction price, size, time, buyer and seller, retail identifier, and class and series; daily options reports for members showing proprietary and customer account information on all positions of 200 contracts or more; and opening and closing interest information as provided by OCC. The NASD states that a substantial portion of the options audit trail data would be collected through the NOAES and OCT facilities described above.

The NASD currently captures the following data for all trades in NMS stocks: price, time of trade report, amount, identity of security, and identify of market maker entering the last sale report. In addition, the NASD's system

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[73] The NASD will conduct weekly reviews for this purpose. *See* proposed Section 5(d), Schedule D, Part IV, NASD BY-laws.

[74] Thus, if a market maker commenced integrate market making in ABCD stock and ABCD options at a time when January, April and July ABCD options were trading, it would be obligated to display quotations in all ABCD put and call options series through their expiration. If the market maker at any time displayed quotations in October ABCD options, it would likewise become obligated to display quotations in all October ABCD put and call series through their expiration.

[75] Under the NASD proposal, any integrated market maker who fails to abide by these commitment rules also could have its market maker registration in the underlying stock revoked for a period not to exceed thrity days. In addition, any integrated market maker whose options quotations in an integrated class were withdrawn during the 15 days preceding expiration of an options series may be found in violation of Article III, Section I of the NASD's Rules of Fair Practice, which obligates members to act in accordance with high standards of commercial honor and just and equitable principles of trade.

A member who elects not to become an integrated market maker (a "secondary market maker") also would be bound to quote continuously through expiration will options series in which it commences quotations. In addition, if a secondary market maker commences market making in an options series during the thirty calendar days preceding the expiration of such option series, he shall be abligated simultaneously to commence market making in, and thereafter quote continuously through its expiration, the option series of the same class in the next expiration cycle having the same strike price. A secondary market maker, however, would not otherwise be required to quote continuously all open options series in options classes in which it is registered. The sanctions for a secondary market maker's violations of its quote commitments include a bar from re-registration as an options market maker for the next two expiration cycles and a potential 30 day bar from registration as a stock market maker.

[76] The NASD's proposed spread parameter and continuity requirements are identical to those of the options exchanges. *See, e.g.*, CBOE Rule 8.7.

[77] *Cf.* Rule 10b-10 under the Act, 17 CFR 240.10b-10 (1984), which also requires broker-dealers to disclose in confirmations whether they acted as principal or as agent.

[78] The Options exchanges recently adopted three-tiered position and exercise limits of 3,000, 5,500 and 8,000 contracts. *See* Securities Exchange Act Release No. 21909, March 29, 1985, 50 FR 13440.

currently captures all quotation changes in NMS stocks. The NASD Board of Governors, at a meeting on July 13, 1984, approved an equity audit trail for all NASDAQ securities and for listed securities traded OTC. This audit trail eventually will capture the following trading information: the stock's identifier, price, size, time, clearing firms (buy and sell sides), executing firms (with the capacity as principal or agent for both the buy and sell sides), and the trade reference number for automated executions.

The NASD equity audit trail plan will be implemented in seven phases, the first three of which are relevent to the NASDAQ options proposal. In Phase I, the time of each trade as well as the identity and capacity (principal or agent) of the traders will be captured for NMS stocks through the clearing process. The broker's status as buyer or seller in these stocks will be entered in Phase II. Phase III will produce an integrated survelliance report from the data collected in the first two phases. The NASD currently plans to have Phases I and II fully operational by this fall, with the implementation of Phase III to follow closely thereafter. Thus, the NASD's NMS audit trail could be in place by, approximately, October 1985. [79]

The NASD also has described the monitoring systems and reports it would modify or create to use the data collected in these audit trails. Most of these systems would be comparable to those currently in place by the options exchanges and would be designed to detect violations. In addition, the NASD has proposed systems to monitor for specific possible problems raised by integrated market making such as stock/option manipulation and fair pricing of customer orders.

2. Discussion

a. *General.* The Commission preliminarily believes that, as a general matter, a suitability designed program for the trading of standardized options in an OTC environment, considered apart from questions raised by integrated market making,[80] is appropriate and consistent with the Act, and in particular, Sections 11A and 15A of the Act.[81] The discussion below focuses on the major concerns raised by the commentators.

(i). *Section 11A.* In their comment letters, the CBOE and NYSE argued that approval of the NASD's proposal would be inconsistent with Section 11A of the Act.[82] Specifically, it was argued that Section 11A expresses a "clear and compelling Congressional policy in favor of trading securities in accordance with auction trading principles in all cases where a market based on those principles can be sustained." [83] These commentators suggest that exchanges have in place proven auction/agency trading mechanisms; that options on OTC stocks appear suitable for trading on exchanges; and that, therefore, it would be inconsistent to approve a "dealer" market for the securities, which by its very nature would lack auction/agency trading mechanisms such as order interaction and limit order protection.

First, the Commission notes that, while Congress intended "options," particularly standardized options, to be traded in a NMS,[84] the standardized options market at the time of enactment of Section 11A was still in a fledgling state and was clearly not the focus of the 1975 Amendments [85] which added Section 11A to the Act. Reflective in part of this lack of clear Congressional directive, the Commission has not yet mandated any particular NMS initiatives for the standardized options markets.[86] For example, as discussed below, the Commission has encouraged but not required the exchange markets for options to those market integration facilities (*e.g.*, order routing facilities, limit order protection and consolidated opening procedures) which some have argued would be necessary to allow the multiple trading of exchange-based options.[87] Similarly, the Commission does not believe it is necessary for the OTC markets to have in place all of the optimally beneficial trading procedures and facilities before inaugurating an OTC options market.

Second, Section 11A does not require, as a precondition to OTC options trading, procedures to replicate "auction/agency" trading principles. Instead, Section 11A identifies several broad statutory goals, including "fair competition . . . between exchange markets and markets other than exchange markets," which must be reconciled with one another. Indeed, the goal of providing "an opportunity . . . for investor orders to be executed without the participation of a dealer," is clearly secondary to the goal of "fair competition" between competing marketplaces. Accordingly, the Commission believes that, rather than frustrate the goals of an NMS, the development of an OTC options market could, in the long run, facilitate an NMS by encouraging fair competition between the exchange and OTC markets for options.

Third, in adopting the 1975 Amendments, Congress expressly rejected suggestions to abolish third market (*i.e.*, OTC) trading of listed securities. Some argued that allowing third market trading of listed securities after the elimination of fixed commission rates would cause a "shift away from auction-type markets . . . toward dealer-oriented markets." [88] Instead of prohibiting third market trading of listed securities, Congress enacted section 11A(c)(3) of the Act,[89] giving the Commission the authority to prohibit the third market trading of listed securities only if the Commission found, among other things, that fair and orderly markets could not otherwise be preserved.[90] In partial explanation of its refusal to prohibit third market trading of listed securities, Congress indicated that it believed that third market dealers provide valuable competition to exchange specialists and that this competition enhances the total market making capacity for listed securities.[91] If Congress had intended, in enacting the 1975 Amendments, to require the Commission to prohibit "dealer" markets in new securities products, it seems unlikely that Congress also would have expressly rejected a prohibition against the third market trading of listed securities despite the acknowledged

[79] Portions of these two phases already have been implemented on an experimental basis. The last four phases of the NASD's planned equity audit trail relate on the non-NMS stocks, *i.e.*, those that will not be eligible to underlie NASDAQ options.

[80] The NASD's integrated market making proposal is discussed separately below.

[81] 15 U.S.C. 78k-1 and 78o-3 (1982), respectively.

[82] Letter from Anne Taylor, Secretary and Associate General Counsel, CBOE, to George A. Fitzsimmons, Secretary, SEC, dated August 16, 1984 ("CBOE 1984 letter"), and NYSE letter, *supra*, note 40.

[83] CBOE 1984 letter, *id.*, at 8. The commentators cite section 11A(a)(1)(c) (iv) and (v) of the Act [15 U.S.C. 78k-1(a)(1)(C) (iv) and (v)]. These commentators also cite the legislative history of Section 11A as indicating "clear Congressional policy supporting the preservation and extension of protections associated with auction-type trading for appropriate securities under appropriate circumstances."

[84] Senate Report, *supra*, note 44, at 7.

[85] *Supra*, note 42.

[86] *See, e.g.*, Rule 19c-3 under the Act [17 CFR 240.19c-3 (1984)], which does not apply to standardized options, and Securities Exchange Act Release No. 13662, June 23, 1977, 42 FR 33510, n. 157.

[87] As discussed below, the CBOE, along with the other options exchanges, continues to believe that the development of such facilities is not feasible at this time.

[88] Senate Report *supra* note 44, at 20.

[89] 15 U.S.C. 78k-1(c)(3) (1984).

[90] Section 11A(c)(3)(A)(iii) of the Act, 15 U.S.C. 78k-1(c)(3)(A)(iii) (1982).

[91] Senate Report *supra* note 44 at 20.

possibility that markers for these securities could shift to the third market after the elimination of fixed commission rates.

Finally, Congress also expressly rejected establishing "certain minimum components of the [NMS]" and chose instead to provide the Commission with "maximum flexibility for working out the details" of the NMS.[92] Moreover, Congress recognized that goals of a NMS and the initiatives to attain them would not apply equally at all times to all securities. Indeed, Congress stated that it was not the goal of the Act "to ignore or eliminate distinctions between exchange and [OTC] markets or other inherent differences or variations in components of a [NMS]." [93] Accordingly, the Commission does not believe that Congress, in enacting Section 11A, intended to require that the Commission prohibit the trading of new products in the OTC market until the OTC market makes itself over into an "auction/agency" market.

(ii) *Section 15A.* Section 15A(b)(6) [94] requires that the rules of a registered national securities association be designed "to prevent fraudulent and manipulative acts and practices . . . to remove impediments to and perfect the mechanism for a free and open market . . . and, in general, to protect investors and the public interest." The NASD believes that its OTC options proposal is consistent with these requirements because its proposal, in large part, represents the application of traditional OTC stock trading procedures to the standardized options markets with certain enhancements to reflect the special concerns associated with options trading.[95]

For example, the method of trading options under the NASD proposal is in many respects similar to that currently employed for OTC stocks: quotations are entered into NASDAQ by market makers, the best bid and offer are publicly disseminated, and executions either are negotiated over the phone or achieved automatically through NOAES.[96] Trades in NASDAQ options, unlike those in OTC stocks, also would be subject to reporting and clearing via the OCT feature of the NASD proposal. Moreover, the NASD proposes to apply quote spread, price continuity and quote commitment rules to both its integrated and non-integrated options market makers.[97]

Several commentators, however, suggested that the NASD proposal—even considered apart from integrated market making—is inconsistent with the Act in several respects. The CBOE, for example,[98] argued that a "fragmented unintegrated dealer market" in which no market makers have affirmative obligations lacks mechanisms necessary to assure the best execution of customer orders, to ensure necessary market depth and liquidity, to ensure reliable reporting of trades and to handle spread combination orders fairly. Along these lines, the Phlx argued that NASDAQ options market makers would be subject to pervasive conflicts of interest with their customers because such market makers would be able to deal with their customers "without the intervention of a broker or other third party to represent such order before the market maker." [99]

In large part, these arguments are basically criticims of the nature of the OTC market, rather than specific objections to the OTC options program as such. It could be argued, however, that, even if OTC stock trading is appropriate under such circumstances, OTC options trading is materially different. For example, the CBOE stated that "depth and liquidity are particularly important in an options market, due, among other things, to the large number of exercise prices, and series of both calls and puts, and complex trading strategies;" and claimed that the "unintegrated dealer markets" cannot meet these needs.[100] In addition, while limit orders are frequently employed by exchange-traded options investors, both in connection with combination orders and otherwise, they are much less often used in the OTC market. It thus could be argued that the absence of a limit order book for OTC-traded options could adversely affect the quality of executions of customer limit orders.

The Commission concurs that OTC trading of options may raise unique issues. It is unable to conclude, however, on the basis of the comments received, that these differences raise insurmountable concerns. First, it is true that the large number of options series relating to any particular stock makes it important to have a liquid options market. It should be noted, however, that a large number of commentators stated that OTC options markets would be just as liquid as OTC stock markets, and several stated that they would be more liquid than existing exchange options markets. These comments

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[92] Senate Report *supra* note 44 at 1, 7.

[93] *Id. See* Securities Exchange Act Release No. 21583, December 18, 1984, at note 80, [Approving new designation criteria for NMS stocks.]

[94] 15 U.S.C. 78o–3(b)(6) (1982).

[95] As described above, the NASD already has options rules governing matters such as margin, position and exercise limits, the opening and supervision of customer accounts as well as the generalized anti-manipulation and anit-fraud rules with respect to its members' activities in exchange-traded standardized options. Under its proposal, it would simply extend those rules to NASDAQ options.

[96] As indicated above, the NASD recently has implemented SOES for stocks that operates on principles similar to those that would govern NOAES. *See supra*, note 64.

[97] *See* proposed Sections 4 (g) and (h), 6 and 7 of Part IV, Schedule D, NASD By-laws Amendment No. 3. While some commentators suggested that the proposed price continuity rule would not be effective in the OTC market, the Commission disagrees. *See* note 148, *infra*. Some commentators also suggested the quote commitment rules will have little deterrent value. *See, e.g.*, letter from Richard O. Scribner, Executive Vice President, Amex, to George A. Fitzsimmons, Secretary, SEC, dated July 27, 1984 ("Amex 1984 letter") suggesting that the sanction for violating these rules—withdrawal of registration as a market maker—is not a real threat to a market maker failing to maintain his quotes. The Commission believes, however, that a market maker contemplating dropping quotations in some series for a short period of time is not essentially contemplating ceasing his market making activities altogether for up to six months; thus, the proposed sanctions should have an adequate deterrent effect. Furthermore, as indicated above, violation of quote commitment rules by options market makers can lead to a disqualification for up to 30 days from making a market in the related stock. *See* proposed Section 7(b), Part IV, Schedule D, Amendment No. 3. Moreover, the NASD retains the ability, under Article III of its By laws (Rules of Fair Practice), to take additional disciplinary action against market makers engaging in more serious violations of the quote commitment rules.

[98] CBOE 1984 letter, *supra* note 82.

[99] Phlx letter, *supra*, note 39. Other commentators who expressed similar concerns were Kolman Glicksberg, a CBOE market maker, Donaldson, Lufkin & Jenrette, A.G. Edwards & Sons and Raymond James & Associates.

[100] CBOE 1984 letter, *supra* note 82, at 13. The CBOE also asserts that the "unique sensitivity and volatility of options prices . . . will magnify the imperfections of the dealer trading environment in a way that will result in unusually wide spreads . . . unpredictable gyrations in prices and recurrent unfairness to customers." In this regard, the Commission notes that empirical studies which have attempted to prove or disprove whether the liquidity of a stock, or the capital raising ability of an issuer, increases or decreases when a stock lists on an exchange have resulted in a decade-long debate with no definitive answer being provided. Some academic studies have shown that liquidity for stocks does not increase after the listing upon an exchange and that indeed liquidity depends chiefly upon factors extrinsic to the particular system in which a security trades. *E.g., compare* Cooper, Groth & Avena, Liquidity, Exchange Listing and Common Stock Performance, 37 *J. Econ. Bus.* 19 (1985) *with* M. Kramer, *Liquidity Exchange Listing and the Texas A&M studies: A Critical Appraisal*, Amex, Nov. 1983. The Commission neither adopts nor rejects the findings of such studies. These studies do indicate, however, that there is no solid empirical evidence indicating the effects on liquidity of trading an instrument in various extant trading systems. The Commission believes that, in the absence of such empirical evidence, it is impossible to draw any prior conclusions about the likely liquidity of the NASD's options markets.

apparently were based on the substantially greater capital available to firms presently acting as NASDAQ stock market makers as compared to the capital available to market makers on the floor of the exchanges. Commentators also noted with concern that liquidity for many options on individual stocks has decreased as a result of increased attention paid by options market makers to options on stock indexes and other new products.[101] It is quite possible that some combination orders or complex trading strategies may be more difficult to execute because of the absence of published quotations for spreads, straddles and other combination orders and the lack of a trading crowd that can respond promptly to requests for quotes in the absence of a published market.[102] The treatment of limit orders is a major difference between the OTC and exchange markets. To the extent limit orders currently are used in the exchange options markets because customers desire an execution at the published market, but are concerned because the published quotes are not firm, the NASD's NOAES and firm quotation (for three contracts) feature may actually result in enhanced executions.

In short, the Commission is unable to agree with those commentators who suggest that an OTC market *per se* is incapable of supporting an options market. First, in view of the dramatic competitive implications of a decision that the OTC markets could not trade options the Commission believes that any such conclusion would require clear and convincing evidence before the Commission would foreclose an entire marketplace from trading a particular product.[103] Second, the Commission's experience in overseeing OTC stock trading indicates that the OTC market can in fact provide a highly liquid and efficient market for securities transactions. Third, the Commission does not believe that an OTC market is susceptible to unmanageable risks of abuse. The primary concern of those commentators opposed to an OTC options market was that in the absence of exchange-based trading with the public scrutiny associated with executions on a trading floor, brokerdealers would have additional opportunities to overreach their customers. While the Commission acknowledges that OTC trading differs from exchange trading, the Commission does not believe that such differences warrant precluding an OTC market; rather, these differences require the development—as the NASD has done—of enhanced surveillance and regulatory procedures.[104] Finally, as discussed below, the Commission believes there exists a better mechanism for evaluating many of these concerns—allowing multiple trading of options on OTC stocks—than a complete prohibition of OTC trading of options. To the extent exchange commentators are correct that the OTC markets will offer inferior depth and liquidity or inferior executions of combination orders or limit orders, it may be expected that investors and brokerdealers would prefer the exchange markets.[105] Hence, in the absence of sufficient reasons to warrant a conclusion that OTC trading of options is *per se* inappropriate, the Commission believes it is best to allow the market to determine which particular marketplace or type of market best meets investor needs.

(iii) *NOAES.* The NASD's proposed NOAES is described above. The majority of commentators indicated that NOAES would be a step forward in the standardized options markets.[106] Adverse comment on NOAES was minimal, limited primarily to a suggestion that the NASD's proposed pre-opening application of NOAES was inappropriate.[107] This problem has at least been deferred for the time being with the NASD's decision not to use NOAES prior to the opening in the option.[108]

PSE also suggested that the preferencing feature in NOAES is inappropriate.[109] The Commission believes that, at least so long as self-preferencing is not allowed, and preferenced orders must be executed at the best displayed price, allowing preferencing in general is an acceptable means of permitting legitimate business relationships between market makers and order entry firms.[110] Furthermore, the NASD's proposed OCT procedure appears to be designed to enhance the reporting, clearing and, ultimately, the surveillance of these markets.[111] Overall, therefore, the NOAES system should improve substantially the efficiency of trading in NMS options and also should improve the accuracy and timeliness of options last sale reporting. In addition, because only market makers disseminating a quotation equal to the best bid or offer will receive non-preferenced order flow through NOAES, the Commission believes that the system will enhance quote competition and improve pricing efficiency. Therefore, the Commission believes that the NASD's proposed NOAES and OCT are consistent with Section 15A.

(iv) *Surveillance.* Some commentators suggested, directly or indirectly, that the NASD's proposed surveillance of its

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[101] Letters cited *supra*, note 28.

[102] At the same time, by allowing a single firm to make simultaneous markets in both the stock and overlying option, it is arguable that the integrated market making feature of the NASD proposal could enhance executions of stock/options orders. *See* discussion of integrated market making, Section III.B.2.b., *infra*.

[103] *Cf.* Section 11A(c)(3) of the Act, discussed at text accompanying notes 88–91, *supra*.

[104] These same basic criticisms—which relate chiefly to last sale reporting and surveillance in the OTC market—were reiterated and elaborated upon in comments submitted with respect to the NASD's integrated market making proposal. Indeed, most opponents of integrated market making argued that the "deficiencies" in OTC markets and surveillance would be magnified in an environment where integrated market making occurs. *See* discussion of integrated market making, Section III.B.2.b., *infra*. Thus, matters such as last sale reporting and surveillance are discussed in more detail below.

[105] As indicated below, the Commission believes this competition will provide a fair test of the respective trading systems utilized by exchanges and the OTC market. *See* Section IV, *infra*.

[106] *See* the Summary of Comments for a detailed tabulation of these comments.

[107] *See, e.g.*, letter from Jim Gallagher, President, PSE, to George A. Fitzsimmons, Secretary, SEC, dated July 16, 1984 ("PSE letter").

[108] Given the confluence of trading at the opening, the Commission strongly urges the NASD to continue to consider ways in which trading interest can be organized before and at the opening. In particular, the Commission believes that it would be useful to undertake measures to minimize the possibility that executions could occur at the opening that were the result of an incomplete assessment of overall supply and demand in the market. While the Commission does not believe preliminarily that the absence of pre-opening procedures raises concerns sufficient to justify withholding approval of the NASD's options proposal, we believe this matter warrants the continued careful attention of the NASD.

[109] *See* PSE letter, *supra*, note 107.

[110] The Commission notes that the NASD's SOES allows preferencing and has been approved by the Commission. *See supra*, note 84. The Commission also notes that "preferencing" in essence is allowed among the exchanges' automated stock execution systems because the order entry firm can choose the system to which (*i.e.*, which exchange or specialist) it will submit its small orders.

[111] While some commentators criticize OCT because it appears to allow the report to OPRA of trades that are later not "accepted" by the market maker, (*see, e.g.*, Phlx letter, *supra* note 38), the fact remains that the trade is not reported to OPRA until after it has been negotiated. Thus, non-existent trades are not reported to OPRA, and the market maker's "acceptance" of an OCT message is more analogous to comparing the trade than accepting the trade. In addition, some commentators have criticized the time parameters of OCT [*see, e.g.*, Comments of the United States Department of Justice, dated June 15, 1984, ("DOJ Comment") and letter from Walter E. Auch, Chairman, CBOE, to John S.R. Shad, Chairman, SEC, dated March 11, 1985 ("CBOE 1985 letter")]; these parameters, however, (2 minutes to report the trade to OPRA after the trade is negotiated) are consistent with current last sale reporting requirements in the options markets. *See* Plan for Reporting of Consolidated Options Last Sale Reports and Quotations, Section V(a), approved in Securities Exchange Act Release No. 17638, March 18, 1981.

options market as a general matter (*i.e.*, considered apart from integrated market making) is inadequate. In particular, the PSE set forth several specific criticisms of the NASD's proposed surveillance program, although most of these criticisms apply only to integrated market making and are discussed in Section III.B.2.b. below.

As discussed below, the Commission believes that last sale reporting of NMS stocks, and the last sale reporting of OTC options which will be based upon these same principles, should prove to be adequate to support OTC options trading.[112] As also discussed below, the Commission believes the NASD surveillance programs are capable of detecting patterns of reports that violate the NASD's options and stock last sale reporting rules.[113]

The Commission also believes that the existing NASD equity surveillance system is adequate to allow the OTC trading of options on OTC stocks.[114] In particular, the NASD currently captures for all NMS trades the price, time of trade report, amount, security and identity of market maker entering the last sale report.[115] The NASD's options audit trail, which will be based upon its proposed NOAES and OCT, will be comparable to that utilized by the exchanges. Overall, then, the NASD proposes a data capture capacity comparable to that possessed by the exchanges. The NASD also has developed surveillance procedures to detect options violations comparable to those utilized by the exchanges.[116] Accordingly, while Commission approval of the NASD's options program would be conditioned on completion of a satisfactory surveillance system, the Commission preliminarily finds that the NASD's overall surveillance capacity should be adequate to ensure fair and orderly markets and the protection of investors. Thus, the Commission sees no reason why the NASD could not be allowed to commence trading options on individual stocks, without integrated market making, as soon as it completes the development of its options audit trail (*i.e.*, NOAES and OCT) and submits and satisfactory overall surveillance plan.

(v) *Issuer Consent.* As indicated above, we do not believe it would be appropriate to require exchanges to obtain the consent of an issuer of an otherwise options eligible stock to allow exchange listing of options on that stock.[117] The NASD proposes to impose upon itself this requirement. For the reasons discussed above, we do not agree with much of the NASD's rationale for having such a requirement. Nevertheless, as a preliminary matter we do not believe it is necessary to prohibit the NASD from deciding that it is in its best competitive interests to foster its relationship with NASDAQ issuers by voluntarily seeking their consent to the inclusion in NASDAQ of options on their stocks. Therefore, we preliminarily find that the NASD's proposal to require NASDAQ issuers' consent as a precondition to authorizing trading in NASDAQ of options on their stocks is consistent with the Act.

(vi) *Summary.* In sum, the Commission preliminarily finds that the trading of standardized options as proposed by the NASD, considered apart from integrated market making, is consistent with the Act. Because the NASD has indicated that it does not consider this portion of its proposal to be severable, however, we are not approving, at this time, this portion of the NASD proposal.

b. *Integrated Market Making*—(i) *General.* The commentators agreed that the Options Study set forth the appropriate framework for analyzing particular proposals to integrate the trading of options and their underlying stocks. As a general matter, the Options Study suggested that evaluating integation proposals requires balancing potential improvements in the quality of markets for stocks and their related options that may result from an integration proposal [118] against the competitive, regulatory and surveillance concerns that may accompany integration. The Options Study added that, when attempting to quantify improvements in market quality and the severity of the regulatory concerns that may result from a particular integration proposal, the extent of integration proposed and the characteristics of the market center making the proposal should also be taken into account.[119] The following discussion applies this analysis to the NASD proposal.

(ii) *Benefits of Integrated Market Making.* As indicated above, the benefits associated with integration of the markets for stocks and their related options depend on the extent of the integration proposed and the characteristics of the relevant trading market. The NASD proposes complete integration of stock and options trading which generally can be expected to produce the maximum benefits associated with integrated trading. For example, because of the hedging opportunities integration allows,[120] liquidity and depth in the stock and options markets may increase. While allowing stock market makers to use options solely for hedging purposes also might increase liquidity and depth in the stock markets, complete integration allows a market maker to hedge more efficiently and economically.[121] Moreover, the NASD argues that complete integration should result in the greatest number of well-capitalized options market makers.[122] Thus,

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[112] *See* Section III.B.2.b., *infra*.

[113] *Id.*

[114] As described above, *see supra* Section III.B.1.f. The NASD also intends to have in place by early fall an equity audit trail.

[115] *Id.*

[116] The PSE criticized the NASD's proposed surveillance procedures (as well as its data capture capactity). *See* PSE letter, *supra* note 107. The Commission believes, however, that as a general matter—considered apart from surveillance needs that arise if integrated market making occurs—the NASD's overall surveillance plan, including its data capture capacity, is comparable to the exchanges' and should be adequate.

[117] *See supra* Section II A.3.c.

[118] In evaluating the NASD's proposal, the Commission also believes it is appropriate to consider the competitive benefits afforded by allowing the greatest number of market makers to participate in the markets for both the option and the underlying stock.

[119] The Options Study, *supra* note 13, at 876–77.

[120] *See, e.g.*, letter from Peter B. Madoff, Bernard L. Madoff, to George A. Fitzsimmons, Secretary, SEC, dated June 1, 1984, describing various hedging strategies that might be used and explaining how they help a market maker commit greater amounts of capital to his markets.

[121] At the same time, however, complete integration, by allowing the market maker to assume options and stock positions on the same side of the market, may result in less depth and liquidity in some situations than would result if only hedging were allowed. An integrated market maker taking positions on the same side of the market in both stocks and options might well be less willing to make a market in size in either market because of his increased exposure in the other market. Such a market maker in essence is allocating his total theoretical limit on risk between his stock position and options position, instead of allocating the entire risk to the stock market alone or the options market alone.

[122] The DOJ agrees with this argument. DOJ letter, *supra* note 111. In addition, the NASD also suggests that complete integration not only provides more capital and liquidity for these markets than would be provided if there were integration or limited integration but also that OTC options markets would not even exist or be viable if complete integration is not allowed. Several commentators questioned this assertion, suggesting that options market making is a viable business—as shown by the exchange experience—so that some firms would engage in such OTC options market making even if they could not also make a market in the underlying stock. *See, e.g.*, Amex 1984 letter, *supra* note 97, and letter from Richard Jenrette, Chairman, Securities Industry Association, to George A. Fitzsimmons, Secretary, SEC, dated July 17, 1984 ("SIA letter"). Although the Commission agrees that some firms would make OTC options markets without integration, it agrees with the NASD and its members that many of the larger, more highly capitalized market making firms would be unlikely to cease making markets in stocks to be able to make markets in the option. In this connection, the Commission notes that many of the most highly capitalized firms make markets in

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complete integration can be expected, by sheer force of numbers and capital, to encourage greater overall commitments of capital and produce more liquidity and depth in both the stock and options market than would result either without any integration or with integration that only allows hedging.[123]

In addition, complete integration may result in other market improvements. Along with increasing the chances for deep and liquid markets, integrated market making enhances competitive opportunities for OTC market makers by allowing firms to participate as market makers in both the options and underlying stocks. As the NASD argues, restricting integrated market making forces firms to choose between the options and stock markets, and thus is likely to reduce the number of competitors in the market for the options, the stock or both. Integrated market making also could allow market makers to achieve certain operational and execution efficiencies, as well as benefit from their market making expertise in the underlying stock.[124]

(iii) *Regulatory and Surveillance Concerns.* In assessing the appropriateness of allowing integrated market making, the question becomes whether these benefits are significant enough to outweigh the regulatory risks associated with integrated market making. In turn, this balancing process requires a consideration of whether either market making competition or surveillance techniques can minimize the regulatory risks of integrated market making. In this regard, commentators focused on two major regulatory concerns—unfair information advantages and manipulation.

(A) *Information Advantages.* First, many commentators argue that, because an OTC stock market maker may possess unique market information about that stock, if that market maker also is allowed to make a market in options on that stock, he has an opportunity to take unfair advantage of his stock market information. For example, the Amex argued:

> [a] dual market maker would have strong economic incentives to trade options on the basis of non-public market information gained through his activity in the underlying stock . . . . At the same time that dual market making would increase the opportunities to engage in questionable practices, it would diminish the feasibility of performing effective surveillance.[125]

The NYSE also expressed this concern. Specifically, the NYSE argues that, because there is no order interaction in the OTC market, there is no mechanism for validating trade prices. Moreover, the NYSE suggests that the absence of any independent price validation is exacerbated by the OTC last sale reporting rules which require the market maker to add (or subtract) an imputed mark-up or mark-down to the customer's net price for reporting purposes. According to the NYSE, integrated OTC market makers who have sole access to their own retail options and stock order flow, and to the negotiated, unvalidated prices of their principal trades with that order flow, have "formidable information advantages and enhanced opportunities to benefit from them."[126]

In addition, the NYSE contends that the handling of stock/option combination orders by integrated OTC market makers would further aggravate these concerns. Although such orders normally are priced on a "net" basis, for reporting purposes the NYSE notes that a separate last sale reporting price must be reported for both the options and stock portion of the transaction. The NYSE contends that, in the absence of any market process to validate the market maker's determination of the reported stock and options prices, those prices are rendered "incapable of meaningful interpretation."[127] Finally, the NYSE argues that the very nature of these advantages—comprised of information about "unvalidated", unreported, negotiated prices—is not subject to surveillance. Indeed, the NYSE adds that the absence of independent price validation contributes to the surveillance difficulties because there is no independent validation of the timeliness of OTC last sale reports.[128]

Commentators contended these asserted information advantages arising from integrated market making could give rise to other abuses. In particular, some commentators suggested that integrated market making compounds the conflict of interest to which OTC market makers with retail customers are exposed.[129] For example, commentators suggested that a firm that received substantial buying interest in the stock could, by not disclosing that information and without changing its options quotes, receive favorable prices in selling transactions (*i.e.*, sales of calls or purchases of puts) with options customers. Indeed, it could improve its options quotes to attempt to attract increased order flow from its customers, as well as other dealers and order entry firms.

The NASD disagrees strongly with these contentions. It argues that because its proposal requires, as a condition of integrated market making, that the markets for both the option and the stock be dispersed and competitive, no one market maker will have enough order flow to obtain information advantages over other market makes.[130] In this regard, the NASD points to its minimum number of market maker requirements, its quote commitment, quote spread and price continuity rules and its special review procedures in the event a market maker obtains 50% or more of the non-block volume in a particular stock or obtains significant informational advantages.[131] The NASD

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virtually all of the actively traded NMS Securities. Even accepting this premise, however, we note that this does not mean that there would not be viable, competitive (especially with multiple trading) and liquid markets for options on OTC stocks without full integration. It simply means that some potential market makers will not participate in the NASD's market without approval of its integration proposal.

[123] Some commentators nevertheless suggest that, when the characteristics of the OTC market are considered, these potential improvements in market quality would disappear. Thus, the Phlx argues that, in "fragmented" markets, such as those proposed by the NASD, liquidity can never be as great as in physically centralized markets. *See* Phlx Letter, *supra* note 39. In contrast, the NASD argues that its system based on competing, highly capitalized dealers will provide superior liquidity to the exchange markets for OTC options. *See* NASD letter, *supra* note 2. As noted above (*see supra* note 100), the Commission is unaware of any incontrovertible evidence that the different trading procedures on the exchange and OTC markets result in significantly different liquidity for similar securities. Moreover, any such conclusion regarding the NASD's options proposal would be premature in view of the enhanced quotations and executions procedures envisioned for that market. *See* text accompanying notes 64–71, *supra*. Further, even if so-called "fragmentation" unavoidably reduces liquidity, this does not mean that liquidity, even in a "fragmented" system, would not be greater with complete integration of options and stock market making.

[124] *See, e.g.*, letter from A. Dulaney Tipton, Jr., Bullington-Schas & Co., Inc., to George A. Fitzsimmons, Secretary, SEC, dated June 14, 1984.

[125] Letter from Richard O. Scribner, Executive Vice President, Amex, to George A. Fitzsimmons, Secretary, SEC, dated November 29, 1980 ("Amex 1980 letter"). Amex also argues that this information advantage can be applied to stock trading, based on information obtained in connection with options trading.

[126] *See* NYSE letter, *supra* note 40.

[127] *Id.*

[128] Other commentators raised concerns similar to the Amex and NYSE comments. *See, e.g.*, CBOE's 1984 and 1985 letters, *supra* notes 82 and 111; Phlx's 1984 letter, *supra* note 39; and PSE's 1984 letter, *supra* note 107. The SIA also argued that OTC market makers may have information that is not available to the public investor and that the adverse public perception of the options markets that could result if integrated market making were allowed could threaten the integrity of these markets. *See* SIA letter, *supra* note 122.

[129] *See* Phlx letter, *supra* note 39.

[130] NASD December submission and NASD letter, *supra* note 2.

[131] The NASD also submitted statistics showing that for a select eight week period, for 87 of the 94

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also argues that the experience with the integrated market making of stocks and warrants shows that integrated trading can occur without adverse regulatory consequences, including abuse of information advantages. The NASD adds that its proposed surveillance program is capable of detecting any problems in this area.[132] Finally, the NASD notes that the alleged conflicts of interest of integrated market makers are no different than those now confronted by NASDAQ stock market makers. The NASD argued that, because a firm risks alienating customers who are systematically disadvangaged to benefit trading of other customers or the firm's own proprietary trading, it has significant incentives to avoid acting on that information to take advantage of those customers.

In response, the NYSE contending that information advantages may be worse in the OTC markets precisely because in dispersed markets some market makers, having their own order flow, will have information others do not. The NYSE also argued that the NASD's proposed standards, *i.e.*, 10 market makers in the stock and 5 in the option initially, and maintenance levels of 7 market makers in the stock and 3 in the option, do not ensure dispersed markets, and also disputed the value of the NASD's statistics showing sustained non-block volume percentages for market makers. Finally, the NYSE, like certain other commentators, disputes whether the NASD's experience with integrated market making of warrants and stocks indicates the likely consequences of options and stock integration.[133]

While the Commission recognizes the seriousness of the concerns raided by the NYSE and other commentators, it does not agree that those concerns necessarily should preclude entirely the development of an OTC options market with integrated market making. First, the Commission believes that OTC last sale reporting is presently adequate generally to support an options market on NMS stocks as well as to allow integrated market making. Critical comment has focused, however, upon the theoretical deficiencies some believe inherent in OTC last sale reporting. In this regard, many of the concerns raised by commentators in this proceeding also were raised in connection with the Commission's determination to adopt Rule 19c-3. Yet throughout the period of intensive monitoring of OTC trading in Rule 19c-3 securities neither the Commission nor the NASD, identified instances of a firm intentionally withholding execution or reporting of an order.[134] Indeed, the critics of OTC last sale reporting have not provided any empirical support for their assertions.

While the Commission recognizes that sequencing of trade reports, particularly during peak volume periods,[135] will remain a continuing difficulty in a multi-dealer OTC environment, the Commission believes that, for stocks characterized by widely dispersed and highly competitive market maker interest, the quality of last sale reporting in the OTC market should be sufficient to support integrated market making. In this connection, the Commission disagrees with the assumpiton made by certain commentators that integrated market makers could intentionally withhold reporting an option or stock execution in order to benefit their proprietory position. The Commission notes that broker-dealers are required to time stamp orders both at the time they receive an order and at the time that order is executed.[136] Furthermore, the absence of a crowd to observe the actual submission of the reports is compensated for by various factors in the OTC market. Withholding an order imposes a very real risk on a market maker that the market will move in an adverse direction, requiring it to finally execute the order at a more favorable (superior to the market) price to the customer or face customer dissatisfaction. The use of automated execution systems, *i.e.* SOES, NOAES and broker-dealer in-house systems, also makes it very cumbersome to manipulate the input of data for a number of trades.[137] In addition, the NASD requirement of special case-by-case pre-approval review of each integrated market making firm's last sale reporting procedures should further enhance the quality of last sale reporting by complying integrated market makers.

Further, the Commission does not agree that the need to impute mark-ups or mark-downs for principal trades renders OTC last sale reporting totally subjective. Particularly for the largest market makers in the most active OTC stocks, from an operational perspective, computation of mark-ups must of necessity be a largely mechanical process. Compliance with the 90 and 120 second stock and options reporting requirements—indeed, avoiding substantial paperwork problems—will preclude any significant amount of individualized computations.[138] Moreover, under the NASD's rules, reported prices must be reasonably related to the "prevailing" market. In active stocks characterized by numerous market makers several of whom are at the inside quotation,[139] the "prevailing" market shold not be either a totally abstract or subjective concept or one that, as described above, represents "unvalidated" prices.[140] The Commission believes the NASD has implemented surveillance parameters and programs that assure that last sale reports are in fact "related to the prevailing market."[141] In addition,

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securities eligible to underlie NASDAQ options, the share of the market marker with the highest level of sustained non-block volume over the eight week period was less than 18% and in only four of these stocks did the fifth largest market maker account for less than 4% of non-block volume. NASD letter, *supra* note 2.

[132] Many members of the NASD agreed with the NASD's argument that there are no significant information advantages in the dispersed, OTC markets. *See, e.g.*, letter from John E. Herzog, President, Herzog Heine Geould, to George A. Fitzsimmons, Secretary, SEC, dated June 13, 1984, and letter from Samuel E. Hunter, Senior Vice President, Merrill Lynch Capital Markets, to George A. Fitzsimmons, Secretary, SEC, dated June 14, 1984. In addition, the DOJ argued that market makers in dispersed markets are unlikely to have information advantages over other market makers. *See* DOJ letter, *supra* note 111.

[133] *See* NYSE letter, *supra* note 40.

[134] *See* SEC, *A Monitoring Report on the Operation and Effects of Rule 19c-3 under the Securities Exchange Act of 1934* (August, 1981); and Securities Exchange Act Release No. 20074, August 12, 1983 (Statistical Appendix), 48 FR 38250.

[135] The Commission believes that this problem has been significantly ameliorated by the development by the NASD and broker-dealers of small stock order automatic execution systems and that NOAES would tend to alleviate similar peak volume problems for NASDAQ options price reporting.

[136] *See* Part XIV, Schedule D, Section (2)(a)(5) NASD By-laws, and Rule 17a-3 (6) and (7) under the Act [17 CFR § 240.17a-3 (6) and (7) (1984)].

[137] As mentioned previously, the size limit for executions in SOES is now 500 shares, and the Commission notes that use of SOES has steadily increased to the point where over 17,344 trades representing 3,451,330 volume were executed in SOES in the first 22 days of February, 1985. Some large firms have in-house systems that automatically execute orders of up to 1,000 shares at the best inside quotation. As described above, NOAES would provide automatic executions for customer orders of three contracts or less. Of course, these systems will not be able to execute combination orders, so that the last sale reports for such trades, which in the past have been significant in options markets, will not be subject to the control provided by these systems.

[138] *Cf.* note 49, *infra*.

[139] In its June, 1984 letter, *supra* note 2, the NASD submitted statistics showing that on May 9, 1984, between 1 p.m. and 3 p.m. in stocks that are options eligible 53.9% of total bids and offers were at the inside quotation.

[140] The development of automated execution systems for OTC (*e.g.*, the NASD's SOES and the system operated by Institutional Networks Corporation in which market makers have agreed to accept trades up to 500 and 1,000 shares, respectively, at the best quotation) provides added validity to the reliance on these quotations as the prevailing market for purposes of the numerous smaller OTC stock orders.

[141] The Commission acknowledges the concerns expressed by certain commentators that automated

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customers have incentives to check the reported prices of their trades to ensure that they receive quality executions.[142]

Finally, the Commission finds significant the dissemination of quotation information through NASDAQ in both the stock and option. In the most actively traded NMS stocks quotation spreads are often ⅛th of a point and seldom exceed ¼ of a point.[143] In such an environment, the ability of any market maker to substantially adjust a transaction price without causing customer complaints and permitting detection by sophisticated surveillance systems appears very limited.

The Commission concurs that combination orders are a source of particular concern. The Commission does not agree, however, with commentators' assertions that customers will be entirely unconcerned with the reported prices of each portion of such an order. In implementing a NASDAQ options program, the Commission does believe it would be useful for the NASD to remind member firms of their obligations to report the components of such transactions at the prevailing market.[144] The NASD also will need to develop specialized surveillance procedures designed to detect reporting of combination transactions or inappropriate prices.

The Commission also disagrees with the commentators' contention that there are no independent market mechanisms in the OTC market for validating reported prices. As a general matter, the dissemination of quotes in a competitive system tends to ensure that prices overall reflect systemwide supply and demand. Thus, pricing in the OTC market is not as free of market discipline as some commentators suggest. In sum, the Commission believes that OTC market makers are not free to negotiate a price for a trade unaffected by market forces, nor are prices reported for that negotiated trade merely the result of a subjective determination; rather, any flexibility in OTC last sale reporting is restrained by the NASD's surveillance as well as its own operational needs.[145]

The Commission believes that the central question, then, is whether integrated market makers possess material, non-public information that would allow them to trade the related option (or stock) to their advantage in a manner that is undertectable. As a preliminary matter, the Commission believes that, in markets truly characterized by dispersal of order flow and competition among market makers, individual market makers, even those with retail order flow, are unlikely to have this type of information advantage.[146] The Commission emphasizes that it is not concluding here that inappropriate informational advantages necessarily exist in competitive markets that are characterized by concentrated order flow, nor is it concluding that competitive markets must have dispersed order flow. Rather, the Commission is a simply stating its belief that informational advantages, as a theoretical matter, and in the absence of dispositive, empirical data one way or the other, are less likely to exist in markets characterized by dispersed order flow than in other types of markets. Accordingly, to determine whether market makers would have a significant informational advantage in the context of integrated trading, the Commission believes a pilot program, as discussed below, limited to options on six OTC stocks with widely dispersed order flow presents minimal risks of abuse of market information.

Although a market maker with retail orders has sole access to that portion of the supply and demand for that stock (or option), such information should not provide material competitive advantages to a market maker in truly dispersed markets. That is, in dispersed markets, knowledge of one market maker's non-block order flow should not provide material information that is consistently predictive of the likely future price of either the stock or option. Any market maker attempting to take advantage os such information in the related options market would take the substantial risk that the remainder of the order flow is actually imbalanced in the opposite direction.

With respect to stock/option combination orders, the Commission believes it would be difficult for a market maker to exploit information regarding such an order without exposing itself to either adverse reaction by other market makers or to detection by the NASD's surveillance system. A market maker attempting to establish a short-term market favorable to making "advantageous" offsetting trades may often have to report a price for one portion of the combination order which is outside of the prevailing market price, rendering its activity detectable.[147] This is particularly true for OTC securities with highly competitive secondary markets, where quotation spreads are narrow.

For these reasons, the Commission believes that, in principle, integrated market making, if it occurs in a market characterized by the dispersal of order flow and open competition, should not confer unfair or unsurveillable information advantages on any integrated market maker. At the same

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surveillance systems may not be successful at detecting incorrect transaction reports if those reports are at or within the disseminated quotations. The Commission notes, however, that the price of a related option will often not respond to trades at or within the disseminated quotation because the trade, in and of itself, does not indicate a market trend. While a large number of consecutive trades at the offer or bid might affect the options price, the effect would appear sufficiently speculative as to make it an unlikely price manipulation tool. In addition, the Commission believes that the NASD will be capable through automated surveillance and examinations to identify a market maker who mis-reports a substantial number of trades in a short period of time.

[142] If the Commission adopts its recently proposed amendments to Rule 10b–10 under the Act [17 CFR 240.10b–10 (1984)], which would require the disclosure in trade confirmations sent to customers of mark-ups or mark-downs charged in principal trades (*see* Securities Exchange Act Release No. 21708, February 4, 1985, 50 FR 5766), that rule would further enhance the ability of customers to validate the accuracy of last sale reporting.

[143] For example, statistics submitted by the NASD to the Federal Reserve Board ("Board") in connection with the Board's 1983 review of its margin regulations showed that over 70% of all NMS Securities had closing spreads of ¼ of a point or less for the three days studied.

[144] Such a reminder is important both for options in which integrated market making is allowed and for those in which it is not. It is useful to note that the options exchanges have relatively detailed rules relating to the execution of spread, straddle, and combination transactions, particularly when executed with a customer. These rules generally require that, in order to have priority over limit orders or interest in the trading crowd, each leg of such a transaction must be executed at a price equal to our better than the prevailing market.

[145] Moreover, as discussed above, any pricing flexibility at or within the disseminated quotation may not be useful in influencing price changes in the related option.

[146] In making this preliminary determination, the Commission has not, however, relied upon the experience with integrated market making of warrants and stocks. The Commission does not believe that this experience is indicative of the likely regulatory results of integrating stock and option trading. In important respects warrants are sufficiently different from options (*e.g.*, warrants generally have much lower relative trading volume, are usually issued out-of-the-money with substantially longer terms to expiration and thus are less responsive to price changes in the underlying stock) that the warrants precedent is not comparable to integrated options trading. *See* Securities Exchange Act Release No. 21863, March 18, 1985, 50 FR 11972, File No. SR-Amex-84–35.

[147] In this regard, the Commission notes that it expects the NASD to establish special surveillance parameters to detect such improper activity. *See* text and *infra* note 152. In addition, the NASD will have to develop, and propose pursuant to Rule 19b–4 under the Act, acceptable frontrunning restrictions for integrated market makers prior to the commencement of even a pilot program for integrated market making (*see infra*, at notes 150–54).

time, however, the Commission is uncertain whether integrated market making outside of such a market could confer significant information advantages, especially given the leveraged nature of options. Thus, it is important that, until the Commission has obtained adequate empirical evidence regarding the effects of integrated market making, such market making occur only in markets that are both highly competitive and "truly" dispersed, *i.e.*, ones dispersed enough to prevent any one market maker from obtaining significant information advantages. In this regard, the Commission does not believe that the NASD's proposal, as currently constituted, ensures that integrated market making will only occur in highly *dispersed* markets.

As noted above, the NASD's proposal would require a minimum of 7 market makers in the stock and 3 in the option,[148] and also would require a special review of an integrated maker who sustains over 50% of non-block volume for any two-month period or who obtains "significant information advantages." The Commission does not believe that the NASD's proposed requirements are sufficient to ensure that any one market maker could not obtain a large enough percentage of order flow (especially in light of the exclusion of block volume), or that a small number of market makers could not each obtain a sufficient percentage of order flow, to raise possible market information advantage concerns.[149]

Thus, the Commission believes that a firm that garnered close to 50% of sustained non-block market share (with the potential of having an even greater share of the market for some periods, or by including block volume) very well might be able to predict the overall direction of the market for a stock based on changes in its own order flow, information which it might profitably employ on a leveraged basis in making markets in options on the stock. Accordingly, in view of the significant concerns raised by integrated market making, the Commission believes a more cautious approach is warranted, as an initial matter.

The Commission believes the six most actively traded NMS stocks [150] clearly have substantial trading volume, dispersed among numerous market makers.[151] As a preliminary matter, the Commission believes these six stocks could support integrated market making without raising the serious market information advantage concerns that have been associated with integrated market making. The Commission also believes, however, that equity and options audit trails must be in place prior to the commencement of any integrated market making. For these stocks, the Commission believes any information advantages of integrated market makers, operating under the NASD's proposal and with equity and options audit trails, would be reduced to manageable and surveillable proportions.

The Commission also believes that integrated market making in these stock should occur as a one-year pilot program, designed to collect information to allow a determination of the actual benefits or costs incurred by allowing integrated market making. During this one year pilot period the NASD would be expected to closely monitor integrated market making trading activities. Such a monitoring program should include, at least, and evaluation of: (1) The distribution of stock and options trading activity among integrated market makers on a daily basis (both for block and non-block size orders), (2) the timeliness and accuracy of last sale reporting by integrated market makers, [152] (3) the handling of combination orders, and (4) whether the introduction of integrated market making affected the underlying market for the stock.[153] The Commission also would expect the NASD [154] to submit an interim report covering the first six months experience with integrated market making. Prior to the end of the one year pilot period the Commission would consider the data gathered to determine whether integrated market

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[148] The Commission believes that the NASD's proposed quote commitment rules will tend to reinforce the minimum number of market maker requirement by ensuring that the market makers who count toward the minimum number are continuously quoting markets. While some commentators suggested that the quote commitment rules lack deterrent value, the Commission disagrees. *See supra* note 97. In addition, the proposed quote spread and price continuity rules should further reinforce the purpose of the minimum number of market makers requirements by ensuring that the market makers who count toward that minimum are making relatively competitive markets, *i.e.* markets characterized by limited spreads and some price continuity. The CBOE argued that the price continuity rules, which are based upon the rules of CBOE and the other options exchanges, are unworkable in the OTC market due to the absence of a common reference. While the Commission concurs that precise sequencing for OTC trades can be problematic, it believes the last sale reporting should be adequate to support these prophylactic rules. *See* text accompanying notes 133-145, *supra*. Thus, the Commission feels this rule is workable and should accomplish the same essential price continuity goal as does that of CBOE.

[149] While the NASD's proposal to review the appropriateness of integrated market making by a firm that has "significant informational advantages" is intended to avoid such a possibility the Commission does not believe that such a subjective standard lends itself to the type of assured and effective interpretation and application that is necessary in this context given the potentially large adverse regulatory costs at stake.

[150] These six stocks, based upon 1984 dollar volume, are MCI Communications, Inc., Apple Computer, Intel, Convergent Technology, DSC Communications, Inc. (formerly Digital Switch), and Tandem, Inc. Two of those six stocks, MCI Communications, Inc. ("MCIC"), and Convergent Technology ("CVGT") do not at this time meet the price per share criterion of the NASD's proposed options eligibility rule. The NASD's proposed rules require that the underlying stock trade at least $10 per share for each business day during the six months before trading in the option commences. The Commission believes, however, that it might be appropriate to permit options trading on stocks such as MCIC and CVGT that have a lower price per share than that required by the exchange's current (and the NASD's proposed) options eligibility criteria but also have exceptionally high market values. Such stocks would not seem prone to the speculative abuse or manipulative potential the price per share criterion is designed to address. The Commission believes, therefore, that amendments to the current (and NASD's proposed) eligibility criteria along these lines might be appropriate.

[151] The six most active NMS stocks based upon 1984 dollar volume were characterized by substantial dispersal of volume among a large number of market makers (ranging from 22 to 43). Thus, no one market maker in these stocks sustained more than approximately 15% of the non-block volume in the stock for the period shown in the latest figures provided by the NASD (May 1984), and the fifth largest market maker in each of these stocks (based upon shares of non-block volume) sustained at least a 5.8% share of volume for this period. In addition, the dollar volume for these stocks for 1984 ranged from $15.063 billion to $1.965 billion. In contrast, in the stocks ranked 7–10, market makers sustained high shares of non-block volume for this period from 27.8% to 19.7% and dollar volume ranged from $1.8 billion to $1.277 billion.

[152] The Commission expects that such an examination would involve, at least on a simple basis, a comparison of the prices reported by the market maker for purposes of transaction reporting with the prices confirmed by the market maker to its customers. In particular, the Commission expects the NASD to inspect separately the execution of block transactions and combination orders in order to ensure compliance with the applicable reporting and regulatory requirements (*e.g.*, frontrunning). In this regard, such an examination would be substantially similar to the monitoring program the NASD undertook in connection with off-board trading pursuant to Rule 19c-3 under the Act. *See* Securities Exchange Act Release No. 20074, August 12, 1983, 48 FR 38250.

[153] For example, the NASD might undertake to examine, on a before and after basis, whether the bid-ask spreads, price continuity or liquidity for the underlying stock was significantly altered by the introduction of integrated market making. In this regard, such as evaluation would be similar to the NASD's evaluation of the effects of last sale reporting on NMS Securities. *See* Securities Exchange Act Release No. 19797, May 20, 1983, 48 FR 24823. The Commission recognizes, however, that it will be difficult, if not impossible, to identify appropriate control groups for such a study because, by definition, the pilot program will include the most actively traded NMS stocks.

[154] Although this monitoring program is described in terms of the NASD's obligation to report to the Commission, in the event an exchange commences integrated trading, the Commission expects such exchange to provide a six-month report which is comparable to that which the NASD is obliged to provide the Commission.

making should be expanded (if desired), eliminated or left intact.

(B) *Manipulative Activity.* Similar to the concerns regarding unfair information advantages, many commentators argue that integrated market makers are in a unique position, and have unique incentives, to engage in manipulative activity.[155] Manipulative activity of greatest concern is mini-manipulation, capping and pegging.[156] In response, the NASD argues that integrated market makers operating in a competitive environment will not have substantial manipulative incentives or abilities and that the NASD's surveillance programs can detect manipulations that are attempted nonetheless.

Attempting such manipulative activities would be quite risky with respect to stocks with deep, liquid, highly competitive markets. Because attempted mini-manipulation, capping or pegging in such markets likely would require substantial trading activity in the underlying stock (and correspondingly, significant options positions), the Commission also believes that these manipulative concerns are surveillable in highly competitive markets. In such an environment, an adequately designed surveillance program, based on operating audit trails in both the stock and options such as proposed, should be able to detect manipulative acts that are likely to be attempted.

In this regard we note that NYSE's comment on the potential abuses associated with the handling of combination orders by integrated market makers raises mini-manipulation concerns as well as informational advantage concerns.[157] For example, under NYSE's hypothesis an integrated market maker with a long call position could attempt to report the price of the stock side of a large combination order [158] at an artificially inflated price in order to profit artificially on his call position. The Commission believes, however, that a market maker attempting to print a price for the stock side of a combination order that will artificially affect options prices likely would be required to print a price far enough outside the market to raise concerns with its customer regarding the quality of the execution it received as well as to permit detection by the NASD's surveillance systems. In this connection we reiterate our expectation that the NASD will develop, prior to the commencement of integrated market making, special surveillance procedures for monitoring potential abuses associated with the reporting of prices of large combination orders.[159]

As discussed above, however, we do not believe that the NASD's proposal adequately limits integrated market making to highly competitive markets. In this regard, it is especially important, for purposes of preventing manipulation, to ensure that one integrated market maker is not the consistent price leader for a particular security. Indeed, it is conceivable that such price leadership could be exercised by a market maker that does not necessarily quantitatively consistently dominate the market. Accordingly, the Commission does not believe the NASD's minimum number of market makers and percentage of the market criteria and other restrictions adequately address this concern. The pilot program described above, however, allowing integrated market making in the top six OTC stocks, would be an acceptable approach. The markets for these stocks are sufficiently competitive, by any measure, that any attempted price manipulation would involve substantial risks of attracting significant opposite side orders from other market makers, thus greatly increasing the cost of the attempted manipulation.

(iv) *Need for and Solicitation of Comment on Exchange Participation in the Pilot.* While, for the reasons discussed above, the Commission believes that a pilot program allowing integrated market making in the OTC market in six stocks with equity and options audit trails appears to be acceptable from a regulatory point of view, such a pilot might impose unfair competitive burdens on exchanges seeking to trade options on the same OTC stocks.[160] Specifically, some commentators [161] suggested that, if exchange options market makers were not allowed to act as integrated market makers, they could be at a disadvantage in competing with OTC integrated market makers.[162] This competitive disadvantage could be particularly acute with the six most active, and thus possibly the six most desirable, NMS option stocks being traded on an integrated basis in the OTC market. For this reason, the Commission does not believe that an integrated market making pilot should be allowed to occur in the OTC market unless the exchanges are provided an opportunity to participate in such a pilot.

Nevertheless, before an exchange could trade an option on an NMS stock side-by-side with the underlying stock, it would be necessary for: (1) The exchange to file and the Commission approve appropriate rule amendments to allow such integrated trading and (2) for the Commission to grant the exchanges unlisted trading privileges ("UTP") in such security.[163]

Both the grant of UTP in NMS stocks and integrated market making on exchange floors may raise potentially difficult issues not raised by integrated market making in the OTC markets. In this connection, the Commission previously issued a release soliciting comment on the appropriateness of granting UTP in NMS stocks.[164] In that release, the Commission specifically requested comment on whether the extension of UTP in any NMS Securities should be conditioned on those securities being traded pursuant to intermarket information and trading linkages (and if so how those linkages should operate), a short sale rule, or the removal of some or all exchange off-board trading restrictions. Although the Commission will address these questions in the near future with respect to determining whether UTP should be extended to a larger group of NMS

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[155] *See, e.g.*, Amex's 1980 letter, *supra* note 125.

[156] A mini-manipulation involves the acquisition of an options position, the manipulation of the price of the underlying stock to increase the value of the options position, the liquidation of the options position at prices reflecting the artificially inflated (or reduced) price of the stock, and then the liquidation of the stock position. Capping involves manipulating the price of a stock by the writer of a call option near the expiration of the option in order to avoid the option from being exercised. Pegging is the same type of activity as capping, but engaged in by a put writer.

[157] *See* text accompanying notes 126-128, *supra*.

[158] We do not believe small combination orders would lend themselves to mini-manipulations, especially in markets characterized by ⅛ or ¼ point spreads. In such a market, reports for small stock transactions are not likely to affect options quotations or prices.

[159] The Commission emphasizes that its preliminary determination is premised upon audit trails for both the option and the underlying stock. As described above, the NASD could complete its NMS stock audit trail by October, 1985.

[160] *See* Section 11A(C)(ii) of the Act [15 U.S.C. 78k-1(a)(1)(C)(ii) (1982)], which states that it is in the public interest to assure "fair competition . . . between exchange markets and markets other than exchange markets."

[161] *See, e.g.*, PSE Letter, *supra* note 107, and letter from Arthur Levitt, Jr., Chairman, Amex, to Chairman and Commissioners, SEC, dated April 15, 1985.

[162] As discussed in Section IV below, the Commission is approving the multiple trading of options on NMS stocks.

[163] *See* Section 12(f)(1)(C) of the Act, 15 U.S.C. 781(f)(1)(C) (1982). Two exchanges already have applied for UTP in NMS stocks, see Securities Exchange Act Release Nos. 21496 and 21497 November 16, 1984, 49 FR 46156.

[164] Securities Exchange Act Release No. 21469, November 16, 1984, 49 FR 46150, File No. S7-37-84.

Securities, the Commission requests further comment on whether any or all of these conditions should be imposed prior to a grant of UTP on any of the six pilot OTC stocks.[165] Should commentators favor imposing any particular conditions, the Commission requests a discussion of how the conditions should be implemented as well as the delays it might cause in permitting an exchange to commence trading the security on a UTP basis.

Regarding integrated market making of listed options and their underlying stocks, such trading is not currently allowed. As a matter of settled policy, the exchanges either have established separate floors for the trading of stocks and their related options [166] or, in the case of Amex, a policy that requires delisting of the option if the underlying stock lists. Commentators and the Commission have raised the same general types of concerns with integrated market making on exchanges as have been discused in connection with the NASD's integrated market making proposal, *i.e.*, concerns with information advantages and manipulative opportunities. The Commission notes, however, that concerns regarding the informational advantages and manipulative opportunities entailed by side-by-side trading on an exchange which is the primary market for the stock may not arise where an exchange is granted UTP for a stock already actively traded in the OTC market.[167] Accordingly, the Commission requests commentators to address whether such integrated trading, for the pilot stocks, is appropriate on an exchange and, if so, under what conditions.[168]

If the exchanges chose to seek UTP in the six pilot stocks and if the Commission determines not to approve UTP or exchange side-by-side trading in those stocks, the Commission believes that competitive fairness requires that integrated market making, even on a pilot basis, not be allowed in the OTC market. If on the other hand, the Commission determines to allow integrated market making on exchanges as well as by NASDAQ market makers, the Commission believes that the pilot program discussed above (including those exchanges that seek and obtain Commission approval), should commence no later than October 1, 1985, if the necessary equity and options audit trails are in place by then. Of course, the Commission retains the authority to move this date back if interested persons show good cause for so doing.

(v) *Summary.* In sum, the Commission believes that integrated market making should offer substantial improvements in market quality, and that the potential regulatory costs of integrated market making are substantially reduced in a market characterized by competition among market makers, dispersal of order flow and adequate surveillance. The Commission believes, however, that potentially severe regulatory costs could result should integrated market making occur in markets that are not competitive enough to ensure against information advantages and manipulative opportunities. The Commission is unable to conclude, at this time, that the markets in which integrated market making would occur under under the NASD proposal are sufficiently competitive to ensure that these adverse regulatory results will not occur.

The Commission does believe, however, that a more cautious approach would appear to be acceptable, *i.e.*, one allowing integrated market making initially in the six most active NMS stocks for one year, with integrated market making in these six stocks to commence only when options and equity audit trails for the stocks and options are operational. While such a pilot would allow examination of the regulatory concerns raised by integrated market making, if exchanges were not allowed to participate in such a pilot they might be subjected to unfair competitive burdens. Thus, the NASD should not be allowed to proceed with such a pilot until the exchanges have been provided an opportunity to obtain UTP in these six stocks.

In this connection, the Commission solicits comments on whether it should grant exchanges UTP in the top six NMS stocks in order to allow the exchanges to participate in such a pilot. If the Commission determines not to approve UTP or side-by-side trading for exchanges in the pilot stocks, the NASD may not be allowed to proceed separately with the pilot. If, on the other hand, the Commission does approve UTP, the Commission would allow the pilot to commence by October 1, 1985, assuming the necessary equity and options audit trails are in place at that time. If this pilot does occur, after six months, the participants would be required to submit an interim report showing the effects of integrated market making. At the end of one year, the Commission would determine whether an expansion, reduction or even elimination of the pilot is warranted.

C. Index Options

I. Rules

The NASD also proposes rules to govern the trading of NASDAQ index options. The NASD would apply to these index options the same basic trading systems as would be applied to its individual stock options. Thus, these options would trade ina multiple market maker system, with small orders (three contracts or less) eligible for automatic execution in NOAES at the best inside bid (or offer), and executions of other orders (or small orders if the order entry firm so chooses) being negotiated over the phone and reported via the OCT method. Integrated market making of these options and the stocks comprising the underlying indexes would be permitted without the types of limitations imposed upon the integrated market making of options on individual stocks and the underlying stocks.[169] The NASD intends to propose that there be at least five market makers in an index option before trading in the index option can commense, and that no new series could be authorized unless there are at least three index options market

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[165] For example, granting UTP to an exchange using a multiple dealer system may raise different compliance concerns than granting UTP to an exchange using a specialist system (*e.g.*, how would a multiple dealer system comply with the requirement that broker-dealer's quotes be firm for NMS Securities?)

[166] *See, e.g.*, Securities Exchange Act Release No. 21759, February 14, 1985, 50 FR 7250 (approving NYSE's listed options proposal).

[167] *See, e.g.*, the Options Study, *supra* note 13, at 870-930. The Commission notes that while particular concern has been expressed with regard to either integrated trading or integrated market making on the primary or dominant exchange for the underlying stock, [*see, e.g.*, Securities Exchange Act Release No. 21710, February 4, 1985, 50 FR 5708 (approving NYSE specialist use of options on their speciality stocks for hedging purposes)] exchange participation in a six NMS stock integrated market making pilot would appear not to raise such concerns initially because there would be no primary or dominant exchange for these stocks.

[168] Interested persons should submit, on or before June 10, 1985, six copies of their comments regarding either UTP for NMS Stocks included in the integrated trading pilot or integrated trading on an exchange to John Wheeler, Secretary, SEC, 450 5th Street, NW., Washington, D.C. 20549. Reference should be made to File No. S7-37-84.

[169] The Commission notes that, for the reasons discussed below, the index on which the NASD desires to commence trading options appears to be a broad-based or market index. If, in the future, the NASD desires to commence trading an option on a narrow-based or industry index, *i.e.*, essentially an index dominated by one or a small group of stocks, the Commission would have to adress whether it was appropriate to permit integrated market making fo such a narrow-based index option and the dominant stocks in the index without the same conditions as may be approved for integrated market making of individual stock options and their underlying stocks.

makers.[170] The NASD also proposes to apply quote commitment rules to index options market makers which will require that, once quotations are commenced in all index options, quotations must be continuously maintained for all series listed in the option at that time or listed thereafter through expiration. The penalty for violation of this rule would be termination of the market maker's registration for up to two expiration cycles.[171]

The NASD proposes to apply to these index options the same margin and position and exercise limits as currently are applied to exchange-traded index options. In addition, as with individual stock options, the NASD proposes to apply the same customer protection (*e.g.*, suitability and account approval rules) rules as apply to exchange traded index options.

2. Specific Contract

The composition and calculation of the index on which the NASD proposes to commence trading options is similar to that of the Phlx OTC index.[172] Specifically, the NASD proposes to trade an option on the "NASDAQ-100 Index" composed of the 100 largest non-financial NMS securities with a minimum market value of $100 million. The index would be limited to one issue per company and include both domestic and foreign NMS Securities. Any security included in the index which is deleted from NASDAQ or NMS status would be replaced by the next largest non-financial NMS Security not in the index.

The index would be weighted by capitalization. Thus, the representation of each security in the index is proportional to its market capitalization (*i.e.*, last sale price times the total number of publicly held shares outstanding) in relation to the total market value of the index. Adjustments to the index for securities being added or deleted or for capitalization changes would be handled so that they will not, in and of themselves, alter the level of the index. The index's base value was calculated as of February 1, 1985, and was set at 250. A multiplier of 100 would be used for the index option [173] and the options would expire in consecutive months.

The most highly capitalized stock in the index as of February 1, 1985, accounted for 6.01% of the total capitalization of the index. The five most highly capitalized issues in the index together accounted for 18.1% of the total index capitalization. In addition, more than 20 industry groups are represented in the index.[174]

3. Discussion

The NASD's index options, of course, would trade in a different system than will Phlx's proposed index contract. As described above, this system is the same system which the NASD proposes to use for individual stock options, and, for the reasons discussed above, the Commission believes that the trading of options in this system would be consistent with the Act. As described above, the non-trading rules that will apply to these index options, *e.g.*, margin, position and exercise limits, disclosure, suitability and generalized antifraud and manipulation rules, are the same as currently apply to exchange traded options.

The NASD has not yet submitted, however, a complete set of index options rules [175] or a comprehensive surveillance plan for these index options. While NOAES, OCT and the NASD's current and enhanced equity audit trails will provide the options and equity trail data that will be sufficient to monitor the markets for these options, the NASD will need to submit a plan for the use of this data that indicates that the NASD's surveillance parameters and systems will be adequately designed to monitor potential abuses in the trading of these index options. Should the NASD complete its index options rules, as it indicates it will, and submit an adequate surveillance plan, the Commission believes, as a preliminary matter, that these portions of the NASD rules would be consistent with the Act.

IV. Allocation of Options

A. General

The OTC options proposals raise questions concerning how options on OTC stocks shold be allocated among the various market centers.[176] Although the exchanges and the NASD have not specifically sought approval to trade options on stocks on which options are traded in another marketplace, in the April release the Commission solicited comment on whether, and under what circumstances, multiple trading of options on OTC stocks should be allowed either among the exchanges and/or between the OTC market and the exchanges. That release reflected the Commission's preliminary view that, because of the potential benefits obtained from competition and in light of the limited risks of significant long-term market fragmentation or of existing market structure disruption, the market, rather than a Commission sanctioned allocation program, should be determine where options on OTC stocks are traded.[177] This view is consistent with the Commission's present position on multiple trading of new options products [178] and its conclusion that,

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[170] *See* NASD letter, *supra* note 2. These proposed requirements, however, have not yet been formally filed.

[171] *See* Proposed Part IV, Schedule D, Sections 6 and 7, NASD By-Laws, Amendment No. 3. Because the NASD also proposes to use a consecutive month expiration cycle for index options, this means that the bar on re-registration as an index options market maker for violation of index options quote commitment rules would last a maximum of two months.

[172] *See* Section II.C., *supra*.

[173] The multiplier is the amount by which the index value is multiplied to obtain the aggregate contract value; thus, if the index value is 250 and the multiplier is 100, the contract is worth $25,000.

[174] The Commission notes that the Chicago Board of Trade, pursuant to an agreement with the NASD, has sought contract market designation for futures on this index. The Commission intends to review the terms of that contract application under the provisions of section 2(a)(1)(B) of the CEA.

[175] As indicated above, the NASD has not yet submitted a rule requiring a minimum number of market makers in each index option class. In addition, the NASD has not yet submitted special exercise notice provisions for these cash settled products (*see e.g.*, CBOE Rule 11.1.04). The NASD has stated that it is deferring completion of the portion of its filing relating to index options pending Commission resolution of the issues raised by the portions of its filing relating to individual stock options. *See* NASD letter, *supra* note 2.

[176] The trading of standardized options on the same underlying security on more than one market, with reliance on the market to allocate trading interest in those options to the various markets, is referred to as "multiple trading." The expansion of multiple trading of options on individual listed stock has been prohibited since the commencement of the options moratorium in July 1977. Currently, options on additional listed stocks are allocated among the various options exchanges by lottery pursuant to an allocation agreement. Thirteen stock options, however, continue to be multiply traded among the exchanges.

[177] In making this determination, the Commission recognized that certain competitive implications may be raised by permitting multiple trading between the OTC market and the exchanges. Accordingly, in addition to soliciting comments on the direct benefits and costs of multiple trading, the Commission solicited specific comments on the competitive issues raised by OTC options multiple trading.

[178] In the past, the Commission had been concerned, among other things, that the expansion of multiple trading of options on individual listed stocks might disrupt the existing options market structure and adversely affect, to a material degree, the financial conditions of certain regional exchanges. *See* Moratorium Termination Release, *supra note* 6, 45 FR at 21430–31. The Commission, however, has relied on the market to allocate new options products, such as options on nonequity securities and options on stock index. In permitting the multiple trading of these new options products, the Commission has emphasized that the existing market structure would not be disrupted because, among other things, the markets had not expended resources based on an expectation that they would receive an exclusive franchise and were not dependent on these new products for their viability. *See, e.g.*, Securities Exchange Act, Release No. 18297 December 2, 1981, 46 FR 60376.

under appropriate circumstances, the benefits of multiply trading options on individual listed stocks appear to outweigh the potential adverse consequences.[179]

B. Comments

Nine commentators opposed the multiple trading of options on NMS stocks. As a general matter these commentors believe that the multiple trading of options on NMS stocks, absent market integration facilities (*e.g.*, market linkages, coordinated openings and limit order files), will result in market fragmentation and best execution problems.[180] Some of these commentators stated that multiple trading also would create operational problems for firms.[181]

Many of the commentators opposing multiple trading emphasized that the competitive benefits of multiple trading are transitory because order flow would focus on a primary market and thus true competition among markets would be eliminated.[182] Phlx, in particular, disagreed with the assumption that the dominant market can be challenged by price and service competition from other securities markets.[183] The Amex also stated that if the Commission approved multiple trading the exchanges would have the difficult and expensive task of developing market integration facilities to link competing markets. In this regard, some of the commentators noted that there have been no changes in the structure of the option markets since a 1981 SRO task force report[184] indicated that such integration facilities are not feasible.[185]

Some commentators addressed the effects multiple trading will have on new entrants. The BSE, for example, stated:

> As a practical matter, elimination of the allocation system will effectively preclude BSE entry. It will not be economical for the BSE to compete with other exchanges under such conditions. The other exchanges will continue to enjoy a protected market share while competing in a small portion of the remaining market. The BSE on the other hand, would face competition in its entire market.[186]

The BSE concluded that multiple trading, at this time, would eliminate all new entrants, except the NYSE, from the market.[187]

Many of the commentators also disagreed with the Commission's comparison of new options products to options on NMS stocks. For example, Phlx stated that options on listed stocks and OTC stocks, as a general matter, have similar trading characteristics and are both options on common stock.[188]

Some of the commentators opposing multiple trading addressed additional concerns that they believed would arise if the Commission permitted multiple trading of OTC options between the OTC market and one or more options exchanges.[189] The major concern noted by the exchange commentators was the competitive advantage that OTC integrated market makers would have over exchange market makers who only would be trading in the options. For example, the PSE argued that the exchanges could not compete fairly with integrated OTC market makers because the latter would be able to observe customer order flow in both the stock and option, and change their market in the stock at will.[190]

The NASD has requested that options on NMS stocks be traded exclusively in the NASDAQ system during a pilot period.[191] In this regard, the NASD argues that without an exclusive pilot it may not be allocated a sufficient number of options for its program to be successful. Following such a pilot, the NASD supported multiple trading so long as there are no barriers to any market seeking to trade OTC options[192] and issuers of underlying stocks have a voice in determining whether options are traded on their stocks.[193] The NASD, however, believes that the benefits of multiple trading only will exist if the markets are linked and has suggested that the NASDAQ system eventually could be used as a market integration facility.[194]

A substantial number of commentators indicated that they preferred trading OTC options in the OTC market rather than on the exchanges.[195] These commentators cited a variety of reasons for preferring to trade OTC options in the NASDAQ system, rather than on the exchanges. Some commentators for example, stated that NASDAQ would provide a more

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[179] Traditionally, the Commission has believed that a number of benefits result from the inter-market competition prompted by multiple trading. These benfits include allowing the marketplace to determine the best market (or markets) for a particular option, rather than having a regulatory process make such a selection without regard to quality. Other possible benefits include improvements in depth, liquidity and price continuity (at least for short periods of time until a primary market emerges or re-emerges in the option) more efficient execution, back office and clearing services, and the development of options contracts that are best suited to the economic needs of market participants. The primary adverse consequences of multiple trading the Commission has identified is market fragmentaton which may result in pricing disparities. Fragmentation, however, appears generally to be a short-term effect because experience indicates that a primary market for each multiply traded option will develop. Moreover, when a primary market does emerge, the potential competition provided by the possibility of multiple trading provides a continuing incentive for the primary market to maintain or improve the quality of its markets. *See* Moratorium Termination Release, *supra* note 16, 45 FR at 21430–34; and Securities Exchange Act Release Nos. 18297, December 2, 1981; 46 FR 60376; 1264, November 22, 1982, 47 FR 53981; and 20075, August 12, 1983, 48 FR 37556.

[180] *See, e.g.*, SIA letter, *supra* note 122 and letter from Howard Brenner, Chairman, SIA Options and Derivative Products Committee, to John Shad, Chairman, SEC, dated March 7, 1985

[181] *See, e.g.*, Amex 1984 letter, *supra* note 97, at 14.

[182] *Id.*

[183] *See* Phlx letter, *supra* note 39, at 33.

[184] As discussed below, a 1981 SRO task force concluded that market integration facilities for equity options were not feasible at that time. *See* note 227, *infra*, and accompanying text.

[185] *See, e.g.*, PSE letter, *supra* note 107, at 2.

[186] Letter from Brian Riddell, Executive Vice President, BSE, to George A. Fitzsimmons, Secretary, SEC, dated July 13, 1984, at 2–3 ("BSE letter").

[187] *Id* at 2. Phlx and Amex proposed pilot programs, which would allocate OTC options among the various markets equally by lottery, to eliminate the competitive disadvantages for new entrants that exist in a multiple trading environment (Phlx, however, would exclude the NYSE from the allocation). Under Phlx's proposed pilot the exchanges and the NASD would commence options trading on separate NMS stocks (allocated equally among the markets) at the same time for a one year period. At the end of the one-year period OTC options trading would be reviewed and revised to the extent necessary. Under Amex's proposed pilot, options on 24 underlying stocks would be initially allocated among the exchanges and the NASD.

[188] Phlx letter, *supra*, note 39, at 35–36.

[189] For example, the Phlx stated that market fragmentation problems would be excacerbated if multiple trading between the OTC market and exchanges was permitted. *See* Phlx letter, *supra* note 39, at 36.

[190] As a result of these concerns, the PSE stated that if the NASD's proposed integrated market making proposal is permitted, it would expect the Commission to grant the exchanges UTP in the stocks underlying exchange-traded OTC options and allow the exchanges to trade the stock and option on an integrated basis. For a discussion of these concerns and, in particular, the question of UTP for the exchanges, *see* text accompanying notes 160–168, *supra*.

[191] NASD letter, *supra* note 2, at 2–3 and 27–28.

[192] In addition, the NASD stated that it would be unfair to permit the exchanges to trade options on NMS stocks and not permit OTC market makers to trade options on exchange listed securities. *Id.*, at 27–28.

[193] It also appears from the NASD's comments that it would like issuers to have the ability to determine which market—OTC or exchange—will trade options on their stocks. *See id.*, at 3–5.

[194] The NASD did not discuss in any detail how trading on an exchange floor could be successfully integrated into a NASDAQ System.

[195] Most of these commentators, however, did not indicate their view on the manner in which OTC options should be allocated between market centers if both the exchange and NASD proposals are approved.

liquid, competitive market than existing exchanges. In this regard, many of the broker-dealers noted liquidity problems that they believe currently exist for exchange traded options (particularly since the advent of index options trading) and believe that if the Commission permits the exchanges to trade options on NMS stocks these liquidity problems will worsen, resulting in "spreading too thin an already too thin market."[196] Others favored the OTC market for surveillance reasons noting that it would be easier to detect manipulation if the options and stocks are traded in the same market.[197] Some commentators asserted that the current lottery system is inequitable and reduces competitive and regulatory efficiencies, but that, in any case, multiple trading should not occur unless the multiple markets are integrated. For example, Dean Witter stated that, until market integration facilities are developed, the NASD options proposal, which would allow exchange floor members to register as NASDAQ option market makers, would provide an open competitive environment for all markets while avoiding the problems of multiple trading.[198]

In addition to the NASD's support for the eventual multiple trading of OTC options as discussed above, five commentators supported the multiple trading of OTC options without qualification.[199] These commentators generally believe that it is beneficial to allow market forces to determine which market emerges for a particular option. For example, despite the fact that experience indicates that after a relatively brief period one market becomes dominant and receives most or all of the subsequent order flow, the DOJ views the direct inter-market competition spurred by multiple trading during the first few days or weeks of trading as desirable.[200] In addition, the DOJ noted that the risk that another market could attract order flow away from the dominant market at any time could have a positive impact on the dominant exchange.

The CBOE agreed with the Commission's belief that options on OTC stocks should be treated as new options products because, among other things, such trading is not likely to have a radical effect on the existing market structure.[201] In addition, CBOE believes that allocating OTC options by lottery is not appropriate because it would be left to chance whether a given option was traded in an exchange or OTC environment.

In addressing the competitive implications of multiple trading, the DOJ believes that it would be inappropriate to insulate markets and individual market makers from competition solely because some way fail. In this regard, the DOJ noted that, if the exchanges become the dominant markets for OTC options, the NASD's ability to operate in other areas would not be seriously threatened.[202]

Although the NYSE also supports the multiple trading of options on OTC stocks, it has proposed a phase-in plan that could have the practical effect of permitting some or all SROs to defer multiple trading for one year.[203] Under the NYSE proposal, each of the exchanges and the NASD would trade options on two or three OTC stocks for a one year period. The NYSE believes that, although its phase-in proposal would not technically preclude multiple trading, the two or three stock limitation would have the practical effect of encouraging some or all SROs to avoid multiple trading during the pilot period. The NYSE also noted that its pilot could afford the new market entrants, the NASD and BSE, time to implement options programs without delaying the established options exchanges.

C. Discussion

The Commission has on numerous occasions had an opportunity to consider the concerns commentators have raised in connection with multiple trading of standardized options. Those concerns, primarily involving fragmentation of the market, the lack of a fair field of competition and possible structural questions, also have been raised in connection with the possible multiple trading of OTC options.

While the Commission recognizes the commentators concerns over multiple trading either among the exchanges or among the exchanges and the OTC market, the commission believes these concerns are outweighed by the benefits that can be derived from permitting multiple trading, particularly in allowing market forces to determine which market (or markets) should trade a particular option.

In the April Release, the Commission stated its preliminary belief that OTC options, like recently introduced new option products,[204] should be subject to multiple trading. The Commission continues to believe that, just as with the introduction of new options products, multiple trading of options on OTC stocks will not have a radical effect on existing markets because no SRO's financial viability is dependent on revenues from these products. Moreover, in approving the multiple trading of new options products in the past the Commission has emphasized that unlike options on listed stocks, the market structure would not be disrupted because no particular market relied on revenue flow from newly introduced options products. In addition, as noted above, the Commission has recognized that the multiple trading of new options products would result in the development of options contracts best suited to the economic needs of market participants, enhance price competition among the markets, at least until a dominant market in a particular option emerged,[205] and improve the quality of markets and execution and back office services.[206] As discussed more fully below, the Commission believes that the same benefits can be derived from multiply trading options on OTC stocks.

The Commission believes that the benefits of multiple trading outweigh those problems which may be associated with market fragmentation resulting from multiple trading. The Commission believes that, during periods of market "fragmentation," *i.e.*, in which more than one market actively trades options on the same stock, increased competition should result in reduced spreads and improved services.[207] Some commentators, however, argued that the benefits to the markets of multiple trading are, at best, transitory because in the long run, a dominant market will emerge and any remaining competition will be

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[196] *See* letters cited note 26, *supra*.

[197] *See, e.g.*, Berney Perry letter, *supra* note 27, at 1.

[198] See letter from Jay H. Perry, Executive Vice President & Director, Dean Witter Reynolds, Inc. to George A. Fitzsimmons, Secretary, SEC, dated June 12, 1984.

[199] These commentators are CBOE, DOJ, Donaldson, Lufkin & Jenrette, and General Electric Investment Corp. We note, however, that although the NYSE does not believe multiple trading should be prohibited, it has proposed a pilot program which, in its view, could result in deferring multiple trading in OTC options for a one-year period. *See* text accompaning notes 200 to 203, *infra*.

[200] DOJ letter, *supra* note 111, at 22.

[201] *See* CBOE 1984 letter, *supra* note 82, at 19.

[202] DOJ letter, *supra* note 111, at 28.

[203] *See* NYSE letter, *supra* note 40, at 2–4

[204] For example, options on foreign currencies, stock index and Treasury securities.

[205] *See* Options Study, *supra* note 13, at 807–24.

[206] Indeed, the Commission previously has recognized that multiple trading of options on individual stocks can result in these same benefits (*see* Moratorium Terminaiton Release, *supra* note 16, 45 FR at 21430–34) but deferred action on multiple trading for other reasons. *See* note 227, *infra*.

[207] Previous studies of multiple trading have indicated that the quality of the markets for standardized options generally improved after the initiation of multiple trading. The Commission notes, however, the data was insufficient to conclude that the improvement in market quality was caused solely by multiple trading. In addition, the data did not provide enough information to determine the long-term effects of multiple trading on the quality of the markets. *See* Options Study, *supra* note 13, at 807–24.

ephemeral. The Commission disagrees with the assertion that because of the "primary market phenomenon" no real benefits are derived from multiple trading. Indeed, the Commission finds that a principal benefit of multiple trading is that, notwithstanding the primary market phenomenom, multiple trading allows the marketplace (rather than a lottery) to determine which SRO is offering the best market for a particular option. By definition an allocation process ensures that the marketplace offering the least depth and liquidity receives a franchise on an identical number of desirable OTC options than marketplaces boasting superior market quality and services. Permitting multiple trading is especially important for OTC options because by right such options investors will not only be choosing between exchanges, but choosing whether to trade on an exchange or in the OTC market.[208]

The Commission also believes that many of the benefits of multiple trading would remain after the emergence of a dominant market because market participants still would have the ability to execute their options orders in alternate markets. Such potential competition will help encourage the dominant market to continue to provide improved services and facilities and respond to the needs of market participants or risk losing its market share. In this regard, experience has indicated that potential competition does, in fact, encourage primary markets to achieve greater efficiency and other operational improvements.[209] Furthermore, although some contend that the benefits of multiple markets, such as improved depth, liquidity, price continuity and spreads, are of limited duration,[210] such effects from competition can reemerge over time. [211]

In addition, the Commission believes that the multiple trading of OTC options, like that of other new options products, can result in the development of options products that are best suited to the economic needs of market participants. In this connection, however, some commentators have sought to distinguish OTC options from other new options products, because, like listed options, they are options on individual stocks.[212] Hence, it is argued, innovation in contract design is not a likely benefit of multiple trading of OTC options as it is for other new products such as index options (*e.g.*, by designing a superior underlying index).

The Commission disagrees strongly with this conclusion. One of the most significant issues raised by the various OTC options proposals is the choice between different trading systems: an exchange market or an OTC market.[213] It is difficult to conjecture the extent to which various features of the exhcange and OTC systems have developed or may arise in response to the competitive conditions provided by possible multiple trading, although prior experience suggests it will provide clear incentives for innovation. It is clear, however, that the proposed exchange and NASDAQ markets provide clear alternative trading systems. The Commission believes the choice between those systems, to the extent possible, should be made by market participants and not by regulatory fiat.[214]

1. Competitive Implications of Permitting Multiple Trading

Certain markets proposing to trade OTC options have suggested that, if the Commission permits multiple trading, they would be precluded, as new entrants, from effectively competing against the established markets.[215] The Commission has made clear in the past that it does not regard the perpetuation of any particular market place to be a legitimate objective of any allocation system.[216] This view is supported by the Commission's mandate under the Act.[217] The Commission believes its responsibility is to promote fair competition among markets and market participants, not to promote or ensure the viability of any particular market place or participant.[218]

The Commission recognizes that the larger established options exchanges may well be able to attract more order flow than new entrants in a multiple trading environment. In this regard, options trading would not appear to differ materially from other commerical endeavors. It is a natural consequence of fair competition beween markets rather than any unfair advantage the Commission is conferring upon the established options markets.[219] Moreover, to the extent new entrants provide liquid and competitive markets for multiple traded OTC options, the Commission cannot conclude that they cannot attract significant order flow.[220]

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[208] *See* text accompanying note 234, *infra*.

[209] An example of this phenomenon is CBOE's development of an enhanced execution system for small public customer market orders on the S&P 100 index. *See* Securities Exchange Act Rule No. 21695, January 28, 1985, 50 FR 4823. While the CBOE may have been persuaded to develop such systems, even in the absence of competition from other functionally similar broad-based index options markets, the presence of those other markets apparently has spurred the CBOE's determination to develop such systems.

[210] *See* note 182, *supra*, and accompanying text.

[211] For example, the recent trading of options on National Semiconductor ("NSM") indicates that market centers may choose to compete for order flow in different options at different times. NSM options are one of thirteen listed stock options currently eligible for trading on more than one exchange (in this case, CBOE and Amex). CBOE consistently has been the primary market, attracting approximately 95% of the order flow. Recently, however, the Amex specialist for NSM options has begun to compete actively to capture order flow from CBOE. CBOE has responded, in part, by eliminating any charges for limit orders in NSM. *See* Securities Exchange Act Release No. 21609, December 28, 1984, 50 FR 911. As a result of this increased competition, in the past several months, Amex has managed to attract between 20 and 40% of the order flow in NSM away from CBOE. This illustrates that, even absent direct order-by-order competition, market centers can attract order flow away from the primary market by providing a more competitive market. It also indicates that the "potential competition" that exists in a multiple trading environment, even where an established primary market has attracted the vast preponderance of the order flow in the past, is not illusory and can provide effective incentives for market centers to offer better services and markets to attract and retain order flow.

[212] *See* Amex 1984 letter, *supra* note 97.

[213] In addition, within each system markets have developed or proposed systems enhancements (such as exchange limit order books and the NASD's proposed NOAES and OCT procedures) which may offer varying benefits to firms and customers. *See* text accompanying notes 64–71, *supra*.

[214] Once options trading commences on any particular NMS stock, options on that stock will continue to be allocated by the market rather than by lottery, irrespective of whether or not the stock subsequently lists in an exchange. This approach is consistent with the treatment of the exising multiply-traded options classes at the time the allocation plan originally was approved by the Commission. *See* Securities Exchange Act Release No. 16863, May 30, 1980, 45 FR 37928 and Moratorium Termination Release, *supra* note 16, 45 FR 21431, n. 51. As noted below, the exchanges will need to modify their allocation agreement rules to reflect this position. *See* note 225, *infra*.

[215] To the extent multiple trading does develop between the NASD and exchanges, the commission believes it will be necessary for them to develop a single reporting stream to integrate exchange and OTC quotation and last sale reports.

[216] *See* Moratorium Termination Release, *supra* note 16, 45 FR at 21430, n. 47.

[217] *See* Options Study, *supra* note 13, at 870.

[218] As noted in the Moratorium Termination Release, the 1975 Amendments do not require the Commission to pursue competition *per se*, but instead stress the need to assure "fair competition among brokers and dealers, among exchange markets and between exchange markets and markets other than exchange markets." Section 11A(a)(1)(c)(ii) of the Act, 125 U.S.C. 78K–1(a)(C)(ii)(1982).

[219] The BSE has contended that it is unfair to provide for multiple trading of OTC options while the existing options exchanges are largely shielded from direct competition in listed stock options. The Commission recognizes, as noted above, that the existence of established programs is a competitive asset for the existing options exchanges. Each marketplace however, had an equal opportunity to commence trading options after the Commission's initial determination to approve the CBOE in 1973. The fact that the BSE chose not to apply for options trading until now should not result in a conclusion that the competitive advantages enjoyed by earlier entrants are somehow unfair.

[220] For example, as noted above, some commentators stated that they find it preferable to

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In addition, even if the new entrants market in options are unsuccessful, their ability to operate in other areas of the securities markets will not be seriously threatened.[221]

2. Existing Barriers to Multiple Trading

Multiple trading between the exchanges and the NASD would be substantially inhibited unless the exchanges amend their rules prohibiting their members from trading off the floor of an exchange options listed on that exchange.[222] These restrictions were initially adopted to assure that all transactions in standardized options (except accommodation liquidations) occurred on an exchange floor. By their terms, however, these rules also could be applied to prevent exchange members from trading multiply traded standardized options on the NASDAQ system. Accordingly, in the April Release, the Commission indicated its preliminary belief that, as a precondition to Commission approval of their proposals, the exchanges would have to eliminate any barriers to multiple trading that would prevent that members from trading standardized options in the OTC market.

One commentator, the CBOE, stated that any modification of such restrictions would weaken the strength of the existing auction markets and therefore, any change to these rules would require fact findings and hearings to ascertain the effect of a change on options market structure.[223] The NASD, on the other hand, believes that the exchanges should not be permitted to trade OTC options if exchange barriers to trading options in the OTC market are still in place.[224]

These restrictions would effectively prevent options exchange members from being NASDAQ options market makers in any multiply traded options, and thereby artificially would preclude any meaningful multiple trading between the exchanges and the OTC markets. Thus, the Commission continues to believe that approval of the exchange proposals should be conditioned upon the amendment of such rules.[225] Accordingly, before the Commission approves the exchange OTC options proposals, they must amend those rules.[226]

3. Market Integration

As discussed above, many of the commentators are concerned about market fragmentation in a multiple trading environment. The Commission has recognized, however, that, in addition to the emergency of dominant markets, market integration facilities such as order routing facilities, limit order protection and consolidated opening procedures could alleviate many of these fragmentation concerns while maximizing competitive opportunities. Indeed, most commentators agree that market integration facilities could ameliorate many of their concerns about multiple trading, *e.g.*, market fragmentation. In 1981, however, a joint SRO task force concluded that market integration facilities for equity options were not feasible at that time.[227] Moreover, many commentators continue to believe that the development of such facilities remains infeasible.[228] Conversely, some commentators believe that such facilities may, in fact, be possible.[229]

For the reasons noted above, the Commission believes that, even absent market integration, substantial benefits can be derived from multiply trading OTC options. Moreover, the Commission has concluded that any concerns raised by market fragmentation may exist only until a dominant market emerges. Nevertheless, the development of market integration facilities would further the Congressional mandate to provide additional competitive opportunities, enhance opportunities for best execution of public investors orders and increase market efficienty. Accordingly, the Commission urges market participants to consider the development of integration facilities and believes that by stating its position to approve multiple trading for options on OTC stocks at this time may, in fact, encourage the SROs to develop such facilities.[230] The Commission believes, however, that any determination as to what type of market integration facilities would be premature until the securities industry and the Commission can evaluate multiple trading in OTC options on the basis of actual experience.

4. Summary

As discussed above, the Commission believes that substantial benefits can be derived from multiply trading options on OTC stocks. Although the Commission

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trade options on OTC stocks in the NASD's system rather than on the exchanges. This is an indication that the NASD's role as a new entrant will not necessarily put it at a disadvantage as compared to the established exchanges. The experience with stock index futures products supports this conclusion. The Kansas City Board of Trade introduced a future on a Value Line Index several months before any other stock index future was introduced. Nevertheless, in 1984, the number of contracts traded on the Chicago Mercantile Exchange in the S&P 500 futures contract (11,059,000 contracts) and on the New York Futures Exchange in the NYSE Composite Index Futures (3,517,833 contracts) greatly outsurpassed the number of contracts traded on the Value Line futures contract (866,602 contracts).

[221] Commentators also argued that allowing multiple trading between the OTC and exchange markets will put the exchanges at a competitive disadvantage because, unlike exchange specialists and market makers, OTC market makers will be able to internalize their retail order flow. Indeed, in proceedings to determine whether to remove exchange off-board trading restrictions some argued that an OTC market maker's ability to internalize its retail order flow may provide it a competitve advantage over exchange specialists and market makers. *See, e.g.*, Securities Exchange Act Release No. 13662, June 23, 1977, 42 FR 33510. While the Commission recognizes that the same arguments could be made regarding the effects of allowing multiple trading of options on OTC stocks among exchanges and the OTC market, the Commission notes that the NYSE has been able to compete effectively with upstairs firms for order flow in so-called "19c-3 securities," *e.i.e.*, securities as to which off-board trading restrictions may not apply.

[222] *See, e.g.*, CBOE Rule 6.49.

[223] *See* CBOE 1984 letter, *supra* note 82, at 5–6.

[224] *See* NASD letter, *supra* note 2, at 29.

[225] Prior to approval of their proposals, the exchanges must also modify their stock allocation agreement rules explicitly to exclude from the coverage of these rules options on OTC stocks traded through NASDAQ. In addition, the exchanges will need to amend the allocation agreement rules so that multiply traded options would not become subject to the lottery allocation procedure at a later time because of the subsequent exchange listing of the underlying NMS stock. *See* note 214, *supra*.

[226] The Commission does not believe that hearings on the effects on market structure are statutorily required or necessary. Under section 19(b) of the Act, the Commission has the authority to approve proposed rule changes submitted by the exchanges after notice and opportunity for comment. No hearings are required under this statutory authority. *See* Securities Exchange Act Release No. 21759, February 14, 1985, 50 FR 7250, 7256–7260 [discussing when hearings are required under section 19(b)]. The Commission is not using its authority under section 19(c) to amend exchange rules. It is merely determining pursuant to the statutory analysis required by section 19(b), that approval of the exchange proposals while these restrictive rules applied to trading would appear to impose a burden on competition which is not justified by the other goals and purposes of the Act.

[227] *See* letter from Nicholas A. Giordano, President, Phlx, to George Simon, Associate Director, Division of Market Regulation, SEC, dated September 2, 1981, contained in File No. S7–772. The joint SRO task force was formed in response to a Commission request in the Moratorium Termination Release, *supra* note 18. In that Release, the Commission deferred action on multiple trading for equity options to afford the SROs an opportunity to examine whether and to what extent the development of such facilities would alleviate market fragmentation concerns and maximize competitive opportunities. As noted above, the Commission has not revised its deferral decision since the Task Force issued its conclusion that integration was not feasible at that time.

[228] *See, e.g.*, PSE Letter, *supra* note 107, at 2.

[229] DOJ letter, *supra* note 111, at 23–26 and NYSE letter *supra* note 40, at 73.

[230] Indeed the Commission questions whether market integration facilities, if feasible, will ever be developed without providing the incentive of actually allowing multiple trading. The Commission notes that since 1981 the current options exchanges apparently have not pursued the development of such integration facilities.

recognizes the competitive implications of trading options on the same OTC stocks on more than one exchange and between the exchanges and the OTC market, the Commission has determined that the multiple trading of these new options products, subject to adequate surveillance,[231] raises no signficant regulatory concerns and should be approved.

V. Timing

In addition to multiple trading, the approval of the exchange and NASDAQ proposals will raise significant issues relating to the timing of the start-up of OTC options trading. The exchanges have the operational capacity to offer options on OTC stocks very shortly after Commission approval, while the NASD has indicated that it is several months away, at the earliest, from implementing its options proposal.

A number of commentators have asserted that the first market to trade a new options product invariably captures the overwhelming preponderance of the order flow, even after subsequent entrants trade the same options contract. For this reason, the SIA, for example, has recommended (even in the absence of multiple trading) that start-up of trading by the exchanges be deferred until the NASD is able to begin trading. The NASD has proposed a program that would permit it to trade options on NMS stocks exclusively for a pilot period. The NASD claims that such a pilot would not be anticompetitive because individual exchange members would not be prohibited from participating as market makers in OTC options during the pilot period. The exchanges generally believe, however, that it would be inconsistent with the Act to delay their proposals to trade OTC options because of the NASD delay.[232]

As discussed below, we believe it is appropriate to provide a short period after Commission approval of the exchange proposals to allow the exchanges, their member firms and the public to prepare for OTC options trading. Such a temporary deferral should resolve any of the regulatory issues associated with the timing question except for the competitive concerns raised by the NASD. Accordingly, the consideration of a more extensive delay, sufficient to allow the NASD an opportunity to commence trading in its proposed options program, involves a determination of whether the benefits provided by allowing options trading on OTC stocks as soon as possible are outweighed by any competitive burdens imposed on the NASD by such an earlier start-up. On balance, the Commission has concluded that it would be inappropriate to delay start-up of the exchange programs until the NASD is also ready to trade OTC options.

The Commission does not believe that the goals of the Act are consistent with affirmatively delaying the start-up of trading in OTC options in a manner which benefits one particular marketplace. The NASD has had the technical capability and time to be ready for commencement of its program shortly after Commission action on the proposal. If the NASD is now unable to begin its program, the reason is because the NASD chose not to make the business investment until the risk of Commission disapproval was behind it. While that decision was perfectly reasonable, in light of the difficulty of the issues raised by the NASD's proposal, it is not a basis upon which the Commission can conclude that the NASD is subject to an unfair competitive disadvantage unless the exchange programs are delayed. Subject to the conditions discussed in this order, the Commission believes that there is no regulatory purpose which require delay of the exchange proposals and delay would not promote fair competition among the options markets.

Assuming the exchanges do commence trading before the NASD,[233] the Commission also believes that commentators have overstated the competitives disadvantages to which the NASD would be subject. First, while the first market to trade a particular product often becomes the dominant market, experience shows that late entrants also can have a viable options market. For example, in the new product area, the exchanges have introduced broad-based index options at different times. Although CBOE's S&P 100 index option, the first introduced, is the most successful, Amex, NYSE, and very recently, Phlx have been able to maintain viable options markets in their broad-based index options.

Second, the Commission believes the timing of start-up of trading may be much less significant in competition between the exchanges and the NASD in OTC options than it has been in other derivative product contexts in the past. Prior timing questions have arisen in the context of two competing exchanges. NASDAQ, however, represents a different type of system for trading OTC options. As noted above, many commentators indicated that they find the OTC system for trading options on NASDAQ stocks perferable to exchange trading. Furthermore, these systems will be enhance by NOAES.[234]

The Commission believes, however, that, after announcement of its determination today, a delay of 60 days (or some other appropriate period) in the commencement of the exchange trading of these options may be needed in order to ameliorate certain regulatory concerns. A delay, of course, is required for the exchanges to comply with the conditions in this Release. In addition, the Commission believes that the exchanges and the industry also will need time to have an opportunity to undertake educational efforts for their members and public investors. The Commission, therefore, intends to delay the effectiveness of its approval of the exchange proposals for 60 days (or a similar time period as might appear appropriate) after publication of this release in the **Federal Register.**[235]

VI. Conclusion

For the reasons discussed above, the Commission believes that the NASD's and the exchanges proposals can be made consistent with the Act if

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[231] *See* Section II.A.d., *supra*.

[232] *See, e.g.*, CBOE 1984 letter, *supra* note 82 at 21. The Phlx, however, believes the exchanges and the NASD should commence trading at the same time. Phlx letter, *supra* note 39.

[233] Because of the time involved in meeting the conditions set by the Commission before the exchanges can commence trading, it is unclear whether the exchanges will actually begin trading significantly before the NASD.

[234] The Commission also notes that, from a timing perspective, there will be no competitive advantages given to either the exchanges or the NASD in the context of the side-by-side trading of options on OTC stocks. As discussed above, the Commission is announcing today that in concept it approves of a six stock pilot program involving side-by-side trading for the NASD, subject to eventual approval of exchange participation in the pilot (if they request to be included). *See* Section III(b)(2)(b)(iv), *supra*. The Commission believes that, if the exchanges are permitted to participate, the pilot should commence at the same time for both the NASD and the exchanges. Since the NASD has indicated to the Commission staff that it will be ready to commence options trading by October 1, 1985, the Commission believes that, if the pilot proceeds, it should commence for both the exchanges and the NASD no later than October 1, 1985. This decision should eliminate any competitive advantage the exchanges may have over the NASD in the context of the side-by-side trading of OTC options and their underlying stocks. Moreover, the fixed date of October 1, 1985 provides notice to the exchanges and the NASD that the commencement of the pilot will not be postponed past a certain date if a participtant is not yet ready to proceed.

[235] As noted below, approval will also be conditioned in submission of surveillance plans by the exchanges.

modified. Specifically, the NASD's proposal to trade options on individual OTC stocks, appears generally consistent with sections 11A and 15A of the Act. Commencement of trading of options on OTC stocks will require an acceptable options surveillance system, including acceptable options trade data capture mechanisms. The exchange proposals to trade options on individual OTC stocks also would seem to be consistent with the Act if the exchanges eliminate the barriers in their rules to the multiple trading of these options. Prior to the commencement of trading in such options the exchanges will have to submit adequate surveillance plans for these options, and some delays, perhaps as long as 60 days after publication of this release, may be necessary between any actual approval of the NASD's and exchange proposals and the commencement of trading to address certain regulatory concerns. The multiple trading of these options—both among exchanges and among exchanges and the OTC markets—also appears appropriate. The Commission also has determined that a one-year pilot program for integrated market making involving the six most active NMS stocks commencing on October 1, 1985, would be appropriate if the exchanges are allowed to participate in such a pilot and if equity and options audit trails are in place prior to the commencement of such a pilot. The Commission is soliciting comment on the appropriateness of granting unlisted trading privileges in OTC stocks for the purpose of allowing exchanges to participate in such a pilot. The NASD and the exchanges would also have to develop acceptable frontrunning restrictions specifically applicable to integrated market making prior to the commencement of such a pilot. Finally, the Phlx's index option proposal appears to be generally consistent with the Act, but prior to actual approval, the Phlx will need to eliminate the barriers in its rules to multiple trading. The NASD's index options proposal also appears as a general matter to be consistent with the Act. As indicated above, the NASD needs to complete its filing regarding index options, and will need to submit an adequate surveillance plan prior to the commencement of trading.

By the Commission.

John Wheeler,

Secretary.

[FR Doc. 85-11767 Filed 5-14-85; 8:45 am]

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[Release No. 34-22016; File No. SR-CBOE-85-15]

Chicago Board Options Exchange, Inc.; Filing of Proposed Rule Change; Relating To Approval of Underlying Securities for Options Trading

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. § 78s(b)(1), notice is hereby given that on April 29, 1985, the Chicago Board Options Exchange, Incorporated filed with the Securities and Exchange Commission the proposed rule change as described in Items, I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Text of the Proposed Rule Change

Rule 5.3. No change.

. . . Interpretations and Policies:

.01 No change.

.02 Section (a)(iv) of Rule 5.3 does not apply to the class of options on MCI Communications.

Rule 5.4 No. Change.

. . . Interpretations and Policies:

.01–.05 No change.

.06 Interpretation .02 to Rule 5.4 does not apply to the class of options on MCI Communictations.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places spcified in Item IV below and is set forth in sections (A), (B), and (C) below.

(A) Self-Regulatory Organization's Statement of the Purpose of the Purpose of, and Statutory Basis for, the Proposed Rule Change

At its meeting of April 16, 1985, the Commission stated its preliminary approval of a pilot program of side-by-side trading in six classes of options on National Market System ("NMS") Tier 1 securities. The Exchange has not yet seen the Release reflecting the Commission's decisions on April 16, 1985, but understands from the discussion at the meeting and from discussions with Commission staff after the meeting, that two of the underlying securities proposed for the side-by-side pilot, MCI Communications ("MCIC") and Convergent Technologies, do not meet options listing standards because these stocks will not have had a market price of at least $10.00 per share for each business day of the three calendar months preceding the election date. See, e.g., Exchange Rule 5.3(a)(iv). The Exchange understands that the Commission position is that, due to the volume, capitalization, and number of shareholders of these two over-the-counter securities, the lower share price trading standardized options thereon should not be precluded. It should also be noted that one of the Exchange's delisting standards would also jeopardize listing MCIC options. See Interpretation .02 to Rule 5.4.

Because the Commission has expressed the view that it will permit exchanges to list for trading standardized options on NMS Tier 1 securities, including the six side-by-side pilot stocks, the Exchange has made this rule filing to exempt the MCIC options from those listing and delisting standards based on price. Otherwise, the Exchange would be precluded from listing MCIC options. The Exchange is not currently planing to list options on Convergent Technologies. The Exchange understands that absent further rule changes, options on NMS Tier 1 securities are not to be traded on a side-by-side basis with the stock, including options which the Commission has identified as part of the side-by-side pilot.

The Exchange believes that this rule change is consistent with the provisons of the Securities Exchange Act of 1934, and, in particular, section 6(b)(5) thereof, in that the rule change will permit investors in MCIC stock to obtain the hedging benefits of trading standardized options in an auction market and that the capitalization, volume, and number of shareholders of MCIC stock counterbalance the lower per share market price on MCIC stock.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that this proposed rule change will impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (1) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to the file number in the caption above and should be submitted by June 6, 1985.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: May 6, 1985.

John Wheeler,

Secretary.

[FR Doc. 85-11771 Filed 5-14-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35-23685; 70-7060]

Columbia Gas System, Inc., et al.; Proposal To Form Oil and Gas Exploration and Development Subsidiary To Acquire Properties and Farm-Out Agreements; and To Issue, Sell, and Acquire Securities and Notes

May 9, 1985.

Columbia Gas System, Inc. ("Columbia"), 20 Montchanin Road, Wilmington, Delaware 19807, a registered holding company, together with Columbia Gas Transmission Corporation ("Transmission"), 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 25314, and The Inland Gas Company ("Inland"), 340 17th Street, Ashland, Kentucky 41101, subsidiaries of Columbia engaged in the production, transportation and sale of natural gas, have filed an amendment to a proposal with this Commission in this proceeding pursuant to sections 6(a), 7, 9(a), 10, 12, and 13 of the Public Utility Holding Company Act of the 1935 and Rules 42, 43, and 50 thereunder.

It was proposed that Inland's and Transmission's natural resource properties including all mineral and surface rights and related personal property be transferred, pursuant to a Reorganization Agreement, to Columbia Natural Resources, Inc. ("CNR"), a new corporation organized under the laws of Texas. Upon consummation of the transactions proposed, CNR would become a wholly owned subsidiary of Columbia through which all exploration and production of oil and natural gas in the eastern U.S. would be handled. Transmission's operations would thereafter be confined to operation of an interstate pipeline. Inland would own an interstate pipeline and related facilities.

This matter was noticed on January 3, 1985 (HCAR No. 23561). On January 28, 1985, the Office of Consumer's Counsel of Ohio filed a Request for Hearing, and the Kentucky Public Service Commission requested rate impact information. Kentucky withdrew its request on May 3, 1985.

By letter dated May 6, 1985, the applicants-declarants proposed Post-Effective Amendment No. 1 in SEC File No. 70-7051 (Intrasystem Money Pool) as Amendment No. 6 in this matter. The Amendment has the initial effect of deleting all references to the immediate transfer of property to CNR by Transmission and Inland under the Reorganization Agreement, which may occur at a later date subject to the reserved jurisdiction of this commission.

It is now proposed that CNR will issue and sell up to $3 million of its common stock, and up to $2 million of installment promissory notes to Columbia. This, plus internally generated funds, will finance part of CNR's 1985 capital expenditure program. Additionally, Columbia proposes to make advances on a short-term, open account basis in an amount not to exceed $13 million. The terms and conditions will be the same as provided by prior order in Columbia Gas System, Inc., *et al.*, SEC File No. 70-7051, above (HCAR No. 23560, December 28, 1984). CNR will also participate in the Intrasystem Money Pool as provided by that order.

CNR would operate as an oil and gas production company, engaging in construction and gas supply projects. It would acquire new acreage and drill on properties owned by Columbia's system companies pursuant to farm-out agreements.

The application-declaration is available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by June 5, 1985, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the applicants-declarants at the addresses specified above. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the application-declaration, as now filed or as it may be amended, may be granted and permitted to become effective.

For the Commission, by the Division of Investment Managment, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-11766 Filed 5-14-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35-23684; 70-7104]

National Fuel Gas Co.; Proposal To Indemnify Subsidiary for Up to $35 Million for Pollution Control Liability, and To Indemnify All Subsidiaries in an Aggregate Amount of $15 Million, When Indemnification Is Required by Law

May 9, 1985.

National Fuel Gas Company ("NFG"), 10 Lafayette Square, Buffalo, New York 14203, a registered holding company, has filed a declaration with this Commission pursuant to section 12(b) of the Public Utility Holding Company Act of 1935 ("Act") and Rule 45 thereunder.

By prior Commission order, Seneca Resources Corporation ("Seneca"), an NFG subsidiary, was authorized to engage in oil and gas exploration

projects in the Gulf of Mexico (HCAR No. 23162, December 9, 1983). The projects are conducted pursuant to Federal and Louisiana leases, subject to the provisions of the Outer Continental Shelf Lands Act, as amended ("Lands Act"), 43 U.S.C. 1331. The Lands Act requires leaseholders to provide evidence of financial responsibility in an amount of $35 million to cover costs arising out of oil spills. Seneca does not qualify as a self-insurer under the Lands Act, but carries jointly with NFG, pollution liability insurance in excess of $35 million. However, Seneca's carrier will not certify the coverage to the U.S. Coast Guard as required. In order to obtain a Certificate of Financial Responsibility for Seneca, NFG, which can qualify as a self-insurer, proposes to guarantee through June 30, 1990 any liabilities Seneca incurs in the event of any pollution of Gulf Waters up to an amount of $35 million.

Additionally, NFG seeks authority to act through June 30, 1990 without further authorization as surety, indemnitor or guarantor of any subsidiary in an aggregate amount of up to $15 million, where such evidence of financial responsibility is required by law. Such authority would be used to meet New York and Pennsylvania requirements regarding their Workers' Compensation Funds, but would not be limited to that use.

The declaration is available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by June 3, 1985, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the declarant at the address specified above. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the declaration, as now filed or as it may be amended, may be permitted to become effective.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-11765 Filed 5-14-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-22024; File No. SR-NSCC-85-2]

Self-Regulatory Organizations; Order Approving Rule Change by National Securities Clearing Corporation ("NSCC") Relating to an Amendment to NSCC Rules and Fee Structure Regarding and Release of Clearing Data

The National Securities Clearing Corporation ("NSCC") on March 28, 1985 submitted a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") adding a new Rule 49, "Release of Clearing Data" to delineate the current practice that NSCC follows with respect to requests for the release of data within its possession and control.

As a result of its clearing of municipal bond transactions, NSCC has the ability to accumulate, in a central location, a significant amount of data concerning the municipal bond market that was previously unavailable. The rule change governs NSCC's dissemination of this information. The rule change will presently limit NSCC to providing municipal bond comparison data only to (i) regulatory organizations and self-regulatory organizations (and, upon their request, to third parties) for the sole purpose of assisting such entities in the performance of their regulatory functions under the Securities Exchange Act of 1934 or other applicable Federal or State statutes, and (ii) for other than regulatory or self-regulatory purposes to responsible entities, but only in the form of a ranking by trading activity of a pre-selected group of municipal bonds compared by NSCC. NSCC will withhold dissemination of municipal clearing data, other than for regulatory purposes or as permitted above, pending a resolution among industry participants and regulators as to the appropriateness of expanded dissemination.

The rule change also sets forth the basis for fees charged for clearing data. NSCC indicates that the rule change does not affect its ability to safeguard securities and funds in its custody or control or for which it is responsible.

Notice of the proposed rule change was given in Securities Exchange Act Release No. 21905 (50 FR 13906, April 8, 1985). No comments on the proposed rule change were received.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and rules and regulations thereunder applicable to the NSCC and, in particular, the requirements of section 17A and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Dated: May 8, 1985.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 85-11764 Filed 5-14-85; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF STATE

[Public Notice CM-8/855]

Integrated Services Digital Network (ISDN) Joint Working Party and Study Group C of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT); Meeting

The Department of State announces that the ISDN Joint Working Party and Study Group C of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT) will meet on June 11, 1985 in Room B841, Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C. The meeting will begin at 9:30 a.m.

The agenda for the meeting is as follows:

1. Report on the meeting of international CCITT Study Group XI (Geneva, March 1985);

2. Consideration of contributions to the meeting of international Study Group XVIII (June 17-28, 1985);

3. Consideration of contributions to the meeting of the Group of Experts of CCITT Study Group XI (Boulder, Colorado, July 2-11, 1985);

4. Any other business.

Members of the general public may attend the meeting and join in the discussion, subject to the instructions of the Chairman. Admittance of public members will be limited to the seating available. It is suggested that prior to June 11, all persons planning to attend the meeting should contact Mr. T. de Haas, Department of Commerce, Boulder, Colorado, 80303; telephone 303 497-3728.

Dated: May 9, 1985.

Richard E. Shrum,

Acting Director, Office of International Communications Policy.

[FR Doc. 85-11703 Filed 5-14-85; 8:45 am]

BILLING CODE 4710-07-M

[Public Notice CM-8/854]

Study Group C of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT); Meeting

The Department of State announces that Study Group C of the U.S. Organization for International Telegraph and Telephone Consultative Committee (CCITT) will meet on June 6, 1985 at 9:30 a.m., Room 925, Department of State, 2201 C Street, NW., Washington, D.C.

The meeting will be concerned with fiber optics.

Members of the general public may attend the meeting and join in the discussion, subject to the instructions of the Chairman. Admittance of public members will be limited to the seating available. In that regard, entrance to the Department of State building is controlled and entry will be facilitated if arrangements are made in advance of the meeting. It is requested that prior to the meeting, persons who plan to attend, so advise the office of Mr. Earl Barbely, Department of State; telephone (202) 632-3405. All attendees must use the C Street entance to the building.

Dated: May 1, 1985.

Richard E. Shrum,

Acting Director, Office of International Communications Policy.

[FR Doc. 85-11704 Filed 5-14-85; 8:45 am]

BILLING CODE 4710-07-M

[Public Notice CM-8/856]

Study Group C of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT); Meeting

The Department of State announces that Study Group C of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT) will meet on June 12, 1985 at 9:00 a.m., Room 3524, Department of State, 2201 C Street, NW., Washington, D.C.

The meeting will be concerned with telephone credit card numbering.

Members of the general public may attend the meeting and join in the discussion, subject to the instructions of the Chairman. Admittance of public members will be limited to the seating available. In that regard, entrance to the Department of State building is controlled and entry will be facilitated if arrangements are made in advance of the meeting. It is requested that prior to the meeting, persons who plan to attend, so advise the office of Mr. Earl Barbely, Department of State; telephone (202) 632-3405. All attendees must use the C Street entrace to the building.

Dated: May 9, 1985.

Richard E. Shrum,

Acting Director, Office of International Communications Policy.

[FR Doc. 85-11702 Filed 5-14-85; 8:45 am]

BILLING CODE 4710-07-M

[CM-8/857]

Advisory Committee on International Investment, Technology, and Development; Meeting

The Department of State will hold a meeting of the Advisory Committee on International Investment, Technology, and Development on May 31, 1985 from 9:30 a.m. to 12:30 p.m. The meeting will be held in the Loy Henderson Conference Room of the Department of State, 2201 "C" Street, NW., Washington, D.C. 20520.

The purpose of the meeting will be to discuss the World Bank's proposal to establish a Multilateral Investment Guarantee Agency, recent developments in the U.N. Commission and Centre on Transnational Corporations, and a request from the Oil, Chemical and Atomic Workers International Union to discuss a labor relations matter concerning the OECD Guidelines for Multinational Enterprises. With regard to the latter issue, the Advisory Committee will meet in its capacity as U.S. National Contact Point under OECD procedures.

Access to the State Department is controlled. Therefore, members of the public wishing to attend the meeting must contact the Office of Investment Affairs ((202) 632-2728) in order to arrange admittance. Please use the "C" Street entrance.

The Chairman of the Committee will, as time permits, entertain comments from members of the public at the meeting.

Walter B. Lockwood, Jr.,

Executive Secretary.

[FR Doc. 85-11707 Filed 5-14-85; 8:45 am]

BILLING CODE 4710-07-M

[CM-8/852]

Shipping Coordinating Committee; Subcommittee on UNCTAD; Meeting

The Subcommittee on the United Nations Conference on Trade and Development (UNCTAD) of the Shipping Coordinating Committee (SHC) will hold an open meeting at 10:00 a.m. on June 4, 1985, in Room 1105 of the Department of State, 2201 C Street, NW., Washington, D.C.

The purpose of the meeting is to discuss United States preparations for the third session of the United Nations Conference on Conditions for Registration of Ships from July 8 to 19, 1985. In particular, the Subcommittee will discuss the development of U.S. positions regarding the composite text developed at the last sessioon of the Conference especially concerning the issues of ownership, management, and manning.

Members of the public may attend up to the seating capacity of the room. Entrance to the Department of State building is controlled and entry will be facilitated if arrangements are made in advance of the meeting. For further information, contact Mr. Ronald M. Roberts, Office of Maritime and Land Transport, Room 5826, Department of State, 2201 C Street, NW., Washington, D.C. 20520. Telephone (202) 632-0703.

Dated: May 1, 1985.

Samuel V. Smith,

Executive Secretary, Shipping Coordinating Committee.

[FR Doc. 86-11706, Filed 5-14-85; 8:45 am]

BILLING CODE 4710-07-M

[CM-8/853]

Shipping Coordinating Committee; Subcommittee in Safety of Life at Sea Working Group on Radiocommunications; Meeting

The Working Group on Radiocommunications of the Subcommittee on Safety of Life at Sea will conduct an open meeting at 9:30 a.m. on June 5, 1985, room 8334-8336 of the Department of Transportation, 400 Seventh Street, S.W., Washington, D.C.

The purpose of the meeting is to prepare position documents for the Thirtieth Session of the Subcommittee on Radiocommunications of the International Maritime Organization to be held 14-18 October 1985. In particular the working group will discuss the following topics:

—Maritime Distress System
—Digital Selective Calling
—Satellite Emergency Position Indicating Radio Beacons (EPIRB)
—Preparations for the International Telecommunication Union (ITU) World Administrative Radio Conference (WARC) for Mobile Telecommunications
—Preparations for International Radio Consultative Committee (CCIR) Study Group 8
—Promulgation of Navigational and Meteorological Warnings

Members of the public may attend up to the seating capacity of the room.

For further information contact Mr. Richard Swanson, U.S. Coast Guard Headquarters (G-TPP-3/63), 2100 2nd Street, SW., Washington, D.C. 20593. Telephone: (202) 426-1231.

Dated: May 3, 1985.

Samuel V. Smith,

Executive Secretary, Shipping Coordinating Committee.

[FR Doc. 85-11705 Filed 5-14-85; 8:45 am]

BILLING CODE 4710-07-M

SYNTHETIC FUELS CORPORATION

Draft Environmental Appendix to Comprehensive Strategy

AGENCY: United States Synthetic Fuels Corporation.

ACTION: Availability of draft of environmental appendix to Comprehensive Strategy report.

SUMMARY: The Corporation announces the availability to the public of a draft of an environmental appendix to the Comprehensive Strategy report of the Corporation.

Copies: For copies of the draft appendix, contact Catherine McMillan, Director of Public Disclosure, United States Synthetic Fuels Corporation, 2121 K Street, NW., Washington, D.C. 20586, (202) 822-6460.

FOR FURTHER INFORMATION CONTACT: Andy Lawrence, Acting Director—Environment, United States Synthetic Fuels Corporation, 2121 K Street, NW., Washington, D.C. 20586, (202) 822-6316.

SUPPLEMENTARY INFORMATION: The Corporation's Board of Directors is expected to take final action on the Comprehensive Strategy report, including the environmental appendix, a draft of which is being made available to the public, at a meeting of the Board presently scheduled for June 18, 1985.

Dated: May 10, 1985.

United States Synthetic Fuels Corporation.

March Coleman,

Assistant Secretary.

[FR Doc. 85-11681 Filed 5-14-85; 8:45 am]

BILLING CODE 0000-00-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Reports, Forms, and Recordkeeping Requirements; Submittals to OMB Apr. 3, 1985-May 6, 1985

AGENCY: Department of Transportation (DOT), Office of the Secretary.

ACTION: Notice.

SUMMARY: This notice lists those forms, reports, and recordkeeping requirements imposed upon the public which were transmitted by the Department of Transportation, during the period Apr. 3, 1985-May 6, 1985, to the Office of Management and Budget (OMB) for its approval in accordance with the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35).

FOR FURTHER INFORMATION CONTACT: John Chandler or Annette Wilson, Information Requirements Division, M-34, Office of the Secretary of Transportation, 400 7th Street, SW., Washington, D.C. 20590, telephone (202) 426-1887, or Gray Waxman or Sam Fairchild, Office of Management and Budget, New Executive Office Building, Room 3228, Washington, D.C. 20503, (202) 395-7340.

SUPPLEMENTARY INFORMATION:

Background

Section 3507 of Title 44 of the United States Code, as adopted by the Paperwork Reduction Act of 1980, requires that agencies prepare a notice for publication in the **Federal Register**, listing those information collection requests submitted to the Office of Management and Budget (OMB) for initial, approval, or for renewal under that Act. OMB reviews and approves agency submittals in accordance with criteria set forth in that Act. In carrying out its responsibilities, OMB also considers public comments on the proposed forms, reporting and recordkeeping requirements. OMB approval of an information collection requirement must be renewed at least once every three years.

Information Availability and Comments

Copies of the DOT information collection requests submitted to OMB may be obtained from the DOT officials listed in the "For Further Information Contact" paragraph set forth above. Comments on the requests should be forwarded, as quickly as possible, directly to the OMB officials listed in the "For Further Information Contact" paragraph set forth above. If you anticipate submitting substantive comments, but find that more than 10 days from the date of publication are needed to prepare them, please notify the OMB officials of your intent immediately.

Items Submitted for Review by OMB

The following information collection requests were submitted to OMB from Apr. 3 1985-May 6, 1985.

DOT No: 2552
OMB No: 2138-0017
By: Research and Special Programs Administration
Title: Passenger Origin and Destination Survey Report
Forms: RSPA Form 2787
Frequency: Quarterly
Respondents: Scheduled Air Carriers
Need/Use: O & D data is used in administering DOT's international air transportation program, small community air service program, fitness reviews for new certifications, anti-trust cases, WASP program, guaranteed loan program and aviation policy and planning program. The Bureau of Labor Statistics use O & D data in adjusting the Consumer Price Index.

DOT No: 2553
OMB No: 2138-0013
By: Research and Special Programs Administration
Title: Report of Financial and Operating Statistics for Certificated Air Carriers
Forms: RSPA Form 41
Frequency: Monthly, Quarterly, Semi-annually, Annually
Respondents: Large Certificated Air Carriers
Need/Use: To provide basic financial and traffic data which are used extensively by the Department of Transportation in its ongoing programs under the Federal Aviation Act of 1958, as amended by the Airline Deregulation Act of 1978.

DOT No: 2554
OMB No: 2120-0061
By: Federal Aviation Administration
Title: Application for Aerodrome Vehicle Operation Permit
Forms: FAA Form 4670-1
Frequency: One-time per respondent
Respondents: Individuals who need to operate motor vehicles on airport flight operation areas.
Need/Use: There is a definite security and safety need to assure that only responsible individuals are operating motor vehicles on the portion of the airport which access actual flight operation areas and maintenance and storage areas. The affected public is personnel at National and Dulles Airports who drive on the Aerodrome.

DOT No: 2555
OMB No: New
By: Federal Aviation Administration
Title: FAA Survey of FAA User's Attitudes
Forms: None
Frequency: One-time survey
Respondents: Individuals
Need/Use: Administrator Engen has been told that the administration of regulations is infringing on the evaluative role of industry persons and increasing operational costs to operators without commensurate safety benefits. A survey of industry which includes demographics will

substantiate or refute the assertions and establish the geographic extent of the problem.

DOT No: 2556
OMB No: 2127–0512, 5015, 0517, and 0522
By: National Highway Traffic Safety Administration
Title: Consolidated Labeling Requirements for Hydraulic Brake Systems, Sd. 105, Glazing Materials, Sd. 205, Seat Belt Assemblies, Sd. 209 and Motor Vehicle Certification, Part 567.
Forms: None
Frequency: On occassion
Respondents: Manufacturers of Motor Vehicles, Glazing Mfrs. Seat Belt Assemblies and Hydraulic Brakes
Need/Use: Motor vehicles and motor vehicle equipment must be properly labeled to provide for safe operation by users and to ensure prompt identification of such equipment in the event of safety related defects.

DOT No: 2557
OMB No: New
By: National Highway Traffic Safety Administration
Title: Production Reporting System for Automatic Occupant Restraint Compliance
Forms: None
Frequency: Annually
Respondents: Motor Vehicle Manufacturers
Need/Use:FMVSS No. 208 requires motor vehicle manufacturers to comply with a 3-year phase-in schedule introducing air bags, or other automatic restraints.

DOT No: 2558
OMB No: New
By: Federal Aviation Administration
Title: In-Flight Medical Emergency Reports
Forms: None
Frequency: Annually for 2 years
Respondents: Air carriers operating under FAR 121
Need/Use: Requires certificate holders to provide medical kits for use in in-flight treatment of injuries or medical emergencies, and report on their usage.

DOT No: 2559
OMB No: 2115–0543
By: U.S. Coast Guard
Title: Regulations, Certificates of Adequacy for Reception Facilities
Forms: Agency form under development; no number
Frequency: On occasion
Respondents: Ports and terminals used by oceangoig ships will have to apply for Certificates of Adequacy for reception facilities.
Need/Use: The Act to Prevent Pollution from Ships, directs the Secretary of the Department in which the Coast Guard is operating, to establish regulations for determining the adequacy of reception facilities at ports and terminals. The reception facilities are needed to receive wastes which ships may not discharge at sea. In order to certify the adequacy of reception facilities, the Coast Guard needs to collect certain information from operators of ports and terminals.

DOT No: 2560
OMB No: New
By: National Highway Traffic Safety Administration
Title: 49 CFR Part 584, Splash and Spray Suppression Devices
Forms: None
Frequency: Once
Respondents: Manufacturers of splash and spray devices
Need/Use: Manufacturers of spray suppression flaps are required to label each device with the "DOT" symbol and with either the number 35 or 75 to show that the flaps are certified as complying with these requirements.

DOT No: 2561
OMB No: 2115–0041
By: U.S. Coast Guard
Title: Outer Continental Shelf Lands Act of 1978 Facility Application for Certificate of Financial Responsibility
Forms: CG–5210
Frequency: On occasion
Respondents: Owner or Operation of Offshore Facilities
Need/Use: This information collection requirement is needed to provide evidence of financial responsibility as required by 43 U.S.C. 1815. Coast Guard Offshore Oil Pollution Compensation Fund uses the information submitted on the application form to evaluate the request for certification of financial responsibility.

DOT No: 2562
OMB No: 2115–0528
By: U.S. Coast Guard
Title: International Oil Pollution Prevention Certificate
Forms: CG–5352, CG–5352A, and CG–5352B
Frequency: On occasion
Respondents: Ship owners and operators of ships of various countries who request inspection of their vessels.
Need/Use: 33 U.S.C. 1901–1911 requires that MARPOL 73/78 requirements be implemented in U.S. regulations. The IOPP Certificate will be used for ensuring and documenting compliance. Ships will suffer restrictions in international voyages if they do not posess an IOPP Certificate.

DOT No: 2563
OMB No: 2125–0032
By: Federal Highway Administration
Title: A Guide to Reporting Highway Statistics
Forms: FHWA–531, 532, 534, 536, 541, 542, 543, 551M, 556, 561, 562, 566, 571, 1502
Frequency: Quadrennially
Respondents: State Highway Agencies
Need/Use: The reports are essential to FHWA and Congress in evaluating the effectiveness of the Federal-aid and highway programs.

Issued in Washington, D.C. on May 9, 1985.

Jon H. Seymour,

Acting Assistant Secretary for Administration.

[FR Doc. 85–11683, Filed 5–14–85; 8:45 am]
BILLING CODE 4910–62–M

Application of Presidential Airways, Inc. for Certificate Authority Under Subpart Q

AGENCY: Department of Transportation.

ACTION: Notice of Order to Show Cause, (Order 85–5–44) Docket 42960.

SUMMARY: The Department is directly all interested persons to show cause why it should not issue an order finding Presidential Airways fit, awarding it a certificate of public convenience and necessity to engage in scheduled interstate and overseas air transportation.

DATES: Persons wishing to file objections shall do so no later than May 29, 1985; answers to objections shall be filed no later than June 10, 1985.

ADDRESSES: Objections and answers to objections should be filed in Docket 42960 and addressed to the Documentary Services Division, U.S. Department of Transportation, 400 Seventh Street, SW., Room 4107, Washington, D.C. 20590, and should be served upon the persons listed in Attachment B to the order.

FOR FURTHER INFORMATION CONTACT: Jeffrey B. Gaynes, Office of Aviation Enforcement and Proceedings, U.S. Department of Transportation, 400 Seventh Street, SW., Room 4116, Washington, D.C. 20590, (202) 426–7631.

SUPPLEMENTARY INFORMATION: The complete text of Order 85–5–44 is available from our Documentary Services Division at the address above. Persons outside the metropolitan area may send a postcard request for Order 85–5–44 to that address.

Dated: May 8, 1985.

Matthew V. Scocozza,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 85–11682 Filed 5–14–85; 8:45 am]
BILLING CODE 4910–62–M

Sunshine Act Meetings

Federal Register
Vol. 50, No. 94
Wednesday, May 15, 1985

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).

CONTENTS

1

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

TIMES AND DATES:

2:00 p.m. (eastern time), Monday, May 13, 1985
9:30 a.m. (eastern time), Tuesday, May 14, 1985

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 50–88–19262.

CHANGE IN THE MEETING: The following matter was added to the agenda for the closed portion of the meetings:

"Proposed Contract for Expert Services in Connection with a Court Case" A majority of the entire membership of the Commission determined by recorded vote that the business of the Commission required this change and that no earlier announcement was possible. In favor of the change:

Tony E. Gallegos, Commissioner.
William A. Webb, Commissioner
Fred Alvarez, Commissioner
Ricky Silberman, Commissioner

CONTACT PERSON FOR MORE INFORMATION: Cynthia C. Matthews, Executive Officer Executive Secretariat, at (202) 634–6748.

Dated: May 13, 1985.

Cynthia C. Matthews,

Executive Officer, Executive Secretariat.

This notice issued May 13, 1985.

[FR Doc. 85–11848 Filed 5–13–85; 3:20 pm]

BILLING CODE 6750–06–M

2

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 4:40 p.m. on Thursday, May 9, 1985, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to: (1) Receive bids for the purchase of certain assets of and the assumption of the liability to pay deposits made in Story County State Bank, Story City, Iowa, which was closed by the Superintendent of Banking for the State of Iowa on Thursday, May 9, 1985; (2) accept the bid for the transaction submitted by Story County Bank & Trust Company, Story City, Iowa, a newly-chartered State nonmember bank; (3) approve the applications of Story County Bank & Trust Company, Story City, Iowa, for Federal deposit insurance and for consent to purchase certain assets of an assume the liability to pay deposits made in Story County State Bank, Story City, Iowa; and (4) provide such financial assistance, pursuant to section 13(c)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1823(c)(2)), as was necessary to effect the purchase and assumption transaction.

At the same meeting, the Board of Directors also considered a personnel matter.

In calling the meeting, the Board determined, on motion of Chairman William M. Isaac, seconded by Director Irvine H. Sprague (Appointive), concurred in by Director H. Joe Selby (Acting Comptroller of the Currency), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting pursuant to subsections (c)(2), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2), (c)(6), (c)(8),(c)(9)(A)(ii), and (c)(9)(B)).

Dated: May 10, 1985.

Federal Deposit Insurance Corporation.

Margaret M. Olsen,

Deputy Executive Secretary.

[FR Doc. 85–11830 Filed 5–13–85; 1:14 pm]

BILLING CODE 6714–01–M

3

INTERNATIONAL TRADE COMMISSION

TIME AND DATE: At 2:00 p.m., Wednesday, May 15, 1985.

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. Ratification List.
4. Petitions and Complaints:
(a) Automotive visor/illuminated mirror package and components thereof. (Docket No. 1190).
5. Inv. 731–TA–255 [Preliminary] (Animal feed grade DL-methionine from France)—briefing and vote.
5. Inv. 731–TA–243, 244 [Preliminary] and Inv. 731–TA–256, 258 [Preliminary] (Carbon steel wire rod from Poland, Portugal and Venezuela)—briefing and vote.
6. 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. 85–11781 Filed 5–13–85; 8:58 am]

BILLING CODE 7020–02–M

4

INTERNATIONAL TRADE COMMISSION

TIME AND DATE: At 10:00 a.m., Monday, May 13, 1985.

PLACE: Room 117, 701 E Street, NW., Washington, D.C. 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Investigations Nos. 731–TA–191 and –195 [Final] (Oil country tubular goods from Argentina and Spain) – briefing and vote.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, *Secretary*, (202) 523–0161.

Kenneth R. Mason,

Secretary.

[FR Doc. 85–11782 Filed 5–13–85; 8:58 am]

BILLING CODE 7020–02–M

5

INTERNATIONAL TRADE COMMISSION

TIME AND DATE: At 2:00 p.m., Wednesday, May 15, 1985.

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. Ratification List.
4. Petitions and Complaints:
(a) Automotive visor/illuminated mirror package and components thereof. (Docket No. 1190).
5. Inv. 731-TA-255 [Preliminary] (Animal feed grade DL-methionine from France)—briefing and vote.
6. Inv. 701-TA-243, 244 [Preliminary] and Inv. 731-TA-256, 258 [Preliminary] (carbon steel wire rod from Poland, Portugal and Venezuela)—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. 85-11783 Filed 5-13-85; 8:58 am]
BILLING CODE 7020-02-M

6

INTERNATIONAL TRADE COMMISSION

TIME AND DATE: At 11:00 a.m., Wednesday, May 22, 1985.

PLACE: Room 331, 701 E Street, NW., Washington, D.C. 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda.
2. Minutes.
3. Ratification List.
4. Petitions and Complaints:
5. Inv. TA-201-55 (Nonrubber footwear)—briefing and vote on injury.
6. 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. 85-11784 Filed 5-13-85; 8:58 am]
BILLING CODE 7020-02-M

7

INTERSTATE COMMERCE COMMISSION

TIME AND DATE: 10:00 a.m., Tuesday, May 21, 1985.

PLACE: Hearing Room A, Interstate Commerce Commission Building, 12th & Constitution Ave., NW., Washington, D.C. 20423.

STATUS: Open Special Conference.

MATTER TO BE DISCUSSED: Ex Parte No. 297 (Sub-No. 7), Motor Carrier Rate Bureaus—Expansion of Collective Ratemaking Territory.

CONTACT PERSON FOR MORE INFORMATION: Robert R. Dahlgren, Office of Public Affairs, Telephone: (202) 275-7252.

James H. Bayne,
Secretary.
[FR Doc. 85-11785 Filed 5-13-85; 9:14 am]
BILLING CODE 7590-01-M

8

LEGAL SERVICES CORPORATION BOARD OF DIRECTORS

TIME AND DATE: The meeting will commence at 9:00 a.m., Friday, May 24, 1985 and continue until all official business is completed.

PLACE: Capitol Holiday Inn, 550 C Street, SW., Columbia Room, Washington, D.C. 20024.

STATUS OF MEETING: Open [A portion of the meeting is to be closed to discuss personnel, personal, litigation, and investigatory matters underTthe Government in the Sunshine Act (5 U.S.C. 552b(c) (2), (6), (7), (9) (B), and (10) and 45 CFR 1622.5(a), (e), (f), (g), and (h)].

MATTERS TO BE CONSIDERED:

1. Approval of Agenda
2. Approval of Minutes
—March 7 and 8, 1985
3. Report from Interim Corporation President
4. Report from Special Committee on Presidential Search
5. Action on Recommendations of the Operations and Regulations Committee
—45 CFR 1601 (By-Laws)
—45 CFR 1622 (Sunshine Act)
—45 CFR 1620 (Priorities)
—45 CFR 1614 (Private Attorney Involvement)
6. Actions on Recommendations of the Audit and Appropriations Committee
—Reorganization of the Office of Field Services
—Allocation Formula for Fiscal Year 1986 Basic Field Grants
—Allocation of Fiscal Year 1984 Carryover funds
7. Discussion of litigation and investigatory matters (Closed)
8. Discussion of personnel and personal matters (Closed)

CONTACT PERSON FOR MORE INFORMATION: Dennis Daugherty, Executive Office, (202) 272-4040.

Date issued: May 13, 1985.

Dennis Daugherty,
Acting Secretary.
[FR Doc. 85-11831 Filed 5-13-85; 1:15 p.m.]
BILLING CODE 6820-35-M

9

LEGAL SERVICES CORPORATION

Operations and Regulations Committee Meeting

TIME AND DATE: Meeting will commence at 9:00 a.m., Thursday, May 23, 1985 and continue until all official business is completed.

PLACE: Capitol Holiday Inn, 550 C Street, SW., Columbia Room, Washington, D.C. 20024.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

1. Approval of Agenda
2. Approval of Minutes—April 25, 1985
3. Report from the Office of Field Services—45 CFR 1614 (Private Attorney Involvement)
4. Report from the Audit Division—45 CFR 1614 (Private Attorney Involvement)
5. Report from the Office of the General Counsel
— 45 CFR 1614 (Private Attorney Involvement)
— 45 CFR 1612 (Lobbying)
6. Recommendations to full Board on above cited Regulations.
7. Other Regulations Adopted after April 27, 1984.

CONTACT PERSON FOR MORE INFORMATION: Tom Bovard, Office of General Counsel, (202) 272-4010.

Date issued: May 13, 1985.

Dennis Daugherty,
Acting Secretary.
[FR Doc. 85-11832 Filed 5-13-85; 1:15 pm]
BILLING CODE 6820-35-M

10

LEGAL SERVICES CORPORATION

Committee on Audit and Appropriations

TIME AND DATE: The meeting will commence at 1:30 p.m. on Thursday, May 23, 1985 or at the adjournment of the meeting of the Operations and Regulations Committee, whichever is later, and continue until all official business is completed.

PLACE: Capitol Holiday Inn, 550 C Street, SW., Columbia Room, Washington, D.C. 20024.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

1. Approval of Agenda
2. Approval of Draft Minutes—April 25, 1985
3. Reorganization of the Office of Field Services
4. Allocation of Fiscal Year 1984 Carryover funds
5. Allocation formula for Fiscal Year 1986 Basic Field Grants

CONTACT PERSON FOR MORE INFORMATION: Joel Thimell, Executive Office, (202) 272-4040.

DATE ISSUED: May 13, 1985.

Dennis Daugherty,
Acting Secretary.
[FR Doc. 85-11833 Filed 5-13-85; 1:15 pm]
BILLING CODE 6820-35-M

11

MARINE MAMMAL COMMISSION

TIME AND DATE: The meeting will commence at 10:00 a.m., Tuesday, May 21, 1985 and continue until all official business is completed.

PLACE: Room 211, Douglas F. Manchester Executive Conference Center, University of San Diego, Alcala Park, San Diego, California 92110.

STATUS: The meeting will be open to public observation. Public participation will be allowed if time permits and it is determined to be desirable by the Chairman.

MATTERS TO BE CONSIDERED:

(1) Priorities for Commission activities over the next year;
(2) Scope and content of the Commission's Annual Meeting, 24, 25, 26 October 1985;
(3) Provisions for ensuring compliance with the Government in the Sunshine Act;
(4) Budget; and
(5) Appropriations and other Congressional Hearings.

CONTACT PERSON FOR MORE INFORMATION: John R. Twiss, Jr., Executive Director, Marine Mammal Commission, 1625 I Street, NW., Washington, D.C. 20006, 202/653-6237.

Dated: May 10, 1985.

John R. Twiss, Jr.,

Executive Director.

[FR Doc. 85-11786 Filed 5-13-85; 8:45 am]

BILLING CODE 6820-31-M

12

SECURITIES AND EXCHANGE COMMISSION

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meeting during the week of May 6, 1985.

A closed meeting will be held on Tuesday, May 7, 1985, at 10:00 a.m.

The Commissioners, Counsel to the Commissioners, the Secretary of the Commission, and recording secretaries will attend the closed meeting. Certain staff members who are responsible for the calendared matters may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, the items to be considered at the closed meeting may be considered pursuant to one or more of the exemptions set forth in 5 U.S.C. 552(c) (4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10).

Chairman Shad and Commissioners Cox and Marinaccio voted to consider the items listed for the closed meeting in closed session.

The subject matter of the closed meeting scheduled for Tuesday, May 7, 1985, at 10:00 a.m., will be:

Formal order of investigation.
Institution of administrative proceedings of an enforcement nature.
Settlement of administrative proceedings of an enforcement nature.
Litigation matter.
Institution of injunctive action.
Opinion.

At times changes in Commission priorities require alternations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: David Martin at (202) 272-2179.

John Wheeler,

Secretary.

April 30, 1985.

[FR Doc. 85-11770 Filed 5-13-85 8:53 am]

BILLING CODE 8010-01-M

Federal Register

Wednesday
May 15, 1985

Part II

Department of Transportation

Federal Highway Administration

23 CFR Part 645
Utility Relocations, Adjustments and Reimbursement; Final Rule
Accommodation of Utilities; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 645

[FHWA Docket No. 79-8, Notice 3]

Utility Relocations, Adjustments and Reimbursement

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule.

SUMMARY: The FHWA is amending its regulation which prescribes policies, procedures, and reimbursement provisions for the adjustment and relocation of utility facilities on Federal-aid and direct Federal highway projects. The final rule clarifies existing provisions and eliminates unnecessary and duplicative requirements.

EFFECTIVE DATE: June 14, 1985.

FOR FURTHER INFORMATION CONTACT: James A. Carney, Office of Engineering, 202-426-0450; Harvey C. Wood, Office of Fiscal Services, 202-426-0563; or Michael J. Laska, Office of the Chief Counsel, 202-426-0762; Federal Highway Administration, 400 Seventh Street, SW., Washington, D.C. 20590. Office hours are from 7:45 a.m. to 4:15 p.m., ET, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Background

On February 27, 1979, the FHWA issued an advance notice of proposed rulemaking (ANPRM) published as 44 FR 12209, FHWA Docket No. 79-8. Its purpose was to solicit comments in anticipation of a future revision of FHWA's regulation prescribing the policies, procedures, and reimbursement provisions for the adjustment and relocation of utility facilities associated with Federal-aid and direct Federal highway construction.

A total of 25 commenters replied to the ANPRM: 9 being from utility companies or their representatives; 15 from State highway agencies (SHA); and 1 from a county highway agency. Generally, the commenters supported some revision to the regulation, although 3 utility companies and 1 SHA believed the present regulation should remain unchanged.

Several specific changes to the existing regulation were suggested by the commenters. Most of these suggestions were incorporated within a notice of proposed rulemaking (NPRM), FHWA Docket No. 79-8; Notice 2 (45 FR 6924, November 20, 1980), which presented the FHWA's proposals for updating its current regulation covering the policies, procedures, and reimbursement provisions for the adjustment and relocation of utility facilities. There were 22 comments to the NPRM. Comments were received from 12 SHA's, 9 utility companies or their trade organizations, and the Center for Auto Safety.

Overall, the responses were supportive of the rewritten regulation as proposed. Several commenters, representing both the States and the utility industry, made favorable remarks on the overall proposed regulation and many commenters presented additional supportive comments regarding specific subparts of the proposed regulation.

Because of the favorable responses received, the final rule is being issued with few changes from the text proposed in the NPRM. The changes are minor clarifications or editorial. The following discussion addresses the substantive issues most frequently mentioned by the commenters.

1. Payment of Interest

Although the FHWA's inability to pay for interest costs was specifically discussed in the preamble of the NPRM, two utility companies and one SHA asked the FHWA to reconsider its position. The FHWA cannot pay interest under existing law and regulation. A change in law would be necessary before such payments could be made and it is not planned to pursue such a change at this time.

2. Cross-Reference to Other Regulations

The NPRM contained a limited number of cross-references to other regulations within 23 CFR which apply to utility adjustments. One SHA believes researching these references would be time-consuming to a user of the utility relocation regulation. However, other commenters offered suggestions as to where additional cross-references would be helpful. It must be recognized that there are several requirements within 23 CFR which apply to utility relocations and adjustments. The FHWA's approach has been to present the majority of these within 23 CFR 645. However, in those instances where this was not possible without duplicating other material already available, selected cross-references have been used.

3. Preliminary Engineering

Based on comments on the wording in the NPRM, there is some confusion concerning preliminary engineering activities to be conducted by the utility's own forces, those forces of the highway agency, or a consultant hired by the highway agency. A new § 645.109(a) has been added to clarify that these methods for providing engineering services can be eligible for Federal participation.

4. Lump-Sum Agreements

The NPRM proposed raising the ceiling on the lump-sum payment arrangement from $10,000 to $25,000. This revision was put into effect via a final rule issued January 6, 1983 (48 FR 1948, January 17, 1983).

5. Expired Service Life Credit

Six commenters made a direct reference to the proposed change which would no longer require expired service life credit on segments of a utility's service, distribution, or transmission lines, regardless of length. Three SHA's and two utilities expressed agreement with the change in policy. One SHA objected to this change as the commenter interpreted it to mean that no expired service life credits would be required under any circumstances. This interpretation is incorrect in that an expired service life credit would still be required when there is a replacement of major facilities used for the production, transfer, or storage of a utility's products. Because the proposed change in expired service life credit requirements was well received by most commenters and possibly misinterpreted by the one negative commenter, it was decided to include this change in policy in the final rule.

6. Use of Rates in Lieu of Actual Costs

Two utilities indicated that because it is common practice to establish average rates for certain costs such as labor surcharges, the regulation should allow for this method of establishing costs. The FHWA agrees with this comment. Several of the reimbursement provisions addressed in the NPRM allowed for use of average costs. Provisions have been added to §§ 645.117(c)(1) and 645.117(e)(4) of the final rule to allow use of properly documented average rates when dealing with labor surcharges and material handling costs.

7. Audit Requirements

A SHA suggested that the regulation include provisions which would not require audits, or limit audits to a sampling basis, on less costly utility relocations. The audit requirements are being deleted from §§ 645.117(i)(4) and 645.119(c)(2) to provide the States with more flexibility in performing utility audits.

8. Alternate Procedure Exceptions

One utility and one SHA suggested that there should be fewer exceptions to

the alternate procedure process listed in § 645.119(b). These exceptions represent the more unusual circumstances which might arise and are basically the same as those in the regulation being superseded by this issuance. Therefore, no change is being made.

9. Alternate Procedure—Safety Requirements

The Center for Auto Safety presented several comments on this section of the proposed regulation. The center for Auto Safety believed the alternate procedure is a new application of the certification acceptance (CA) process described in 23 CFR Part 640, Certification Acceptance, and this should be acknowledged by an appropriate cross-reference. It is noted that the alternate procedure requirements were first established in 1968 and predate by several years CA requirements. Although somewhat similar to CA, the alternate procedures requirements are self-contained and no cross-reference to CA is necessary.

The Center also believes alternate procedure requirements should make explicit reference to such matters as highway safety improvement requirements and traffic control plans in work zones. Section 645.119(c)(1)(i) of the final rule cross-references 23 CFR Part 645, Subpart B, Accommodation of Utilities, and it is within this latter regulation that FHWA addresses safety requirements related to the use or occupancy of highway rights-of-way. No further cross-reference should be necessary.

10. Payment for Utilities on Local Projects

The FHWA's existing regulation does not permit Federal-aid funds to participate in payments made by a political subdivision of a State for utility adjustments when State law prohibits the State from making such payment. In the NPRM, FHWA proposed to modify its eligibility criteria to allow Federal-aid funds to participate in payments made by political subdivisions provided payment by the political subdivision meets the general eligibility criteria and does not violate the terms of a use and occupancy agreement, or legal contract between the utility and political subdivision.

No significant objections were raised by commenters and this provision is being incorporated into the final rule. In implementing this provision, a distinction is being made between Federal-aid highway projects within local areas when the SHA can participate in project costs versus Federal-aid highway projects within local areas when only the political subdivisions can participate in project costs. For the former situation when the SHA can participate in the highway project costs, the FHWA may participate in utility adjustment costs incurred by political subdivisions only to the extent the SHA has the authority to pay. In the latter situation when only the political subdivision can participate in the highway project costs, FHWA may participate in those utility adjustment costs incurred by the political subdivision, including costs paid for by the political subdivision for the adjustment of utility facilities it owns, in accordance with the overall eligibility criteria found in this regulation.

Regulatory Impact

The FHWA has determined that this document contains neither a major rule under Executive Order 12291 nor a significant regulation under the Department of Transportation regulatory policies and procedures.

The revised regulation updates and clarifies FHWA provisions for adjustment of utility facilities on Federal-aid and direct Federal highway projects. Specifically, modifications are provided regarding the extent utility adjustments are eligible for Federal-aid reimbursement and the application of expired service life credits. Additionally, the revised regulation simplifies and significantly reduces the number of unnecessary and duplicative requirements found in the existing regulation which will reduce implementation costs. Although the economic impact of this rulemaking action will be minimal, a Final Regulatory Evaluation has been prepared and is available for inspection in the public docket and may be obtained by contacting Mr. James A. Carney at the address provided under the heading "For Further Information Contact."

For these reasons and under the criteria of the Regulatory Flexibility Act (Pub. L. 96-354), the FHWA certifies that this action will not have a significant economic impact on a substantial number of small entities.

The rulemaking contains three information collection requirements. These items have been approved by the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.). The submission of an eligibility statement for utility adjustments required by § 645.107(g) has been approved by OMB (OMB No. 2125-0515) and expires June 30, 1986, unless renewed prior to that date pursuant to 5 CFR Part 1320. The requirement to develop and record costs for utility adjustments found in Section 645.117 has been approved by OMB (OMB No. 2125-0519) and expires November 30, 1987, unless renewed prior to that date pursuant to 5 CFR Part 1320. The submission of alternate procedures for processing utility adjustments discussed in Section 645.119 has been approved by OMB (OMB No. 2125-0533) and expires November 30, 1985, unless renewed prior to that date pursuant to 5 CFR Part 1320.

Note.—The Appendix to Subpart A is removed.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning, and Construction. The regulations implementing Excutive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

List of Subjects in 23 CFR Part 645

Grant programs—transportation, Highways and roads, Reporting and recordkeeping requirements, Utilities—adjustments, relocations, and reimbursement.

Issued on: May 8, 1985.

L.P. Lamm,

Deputy Federal Highway Administrator, Federal Highway Administration.

In consideration of the foregoing, and under the authority of 23 U.S.C. 123, 315 and 49 CFR 1.48(b), the FHWA hereby revises Subpart A of Part 645 of Title 23 of the Code of Federal Regulations to read as set forth below.

PART 645—UTILITIES

Subpart A—Utility Relocations, Adjustments, and Reimbursement

Sec.

* * * * *

Subpart A—Utility Relocations, Adjustments, and Reimbursement

Authority: 23 U.S.C. 123 and 315; 49 CFR 1.48(b).

§ 645.101 Purpose.

To prescribe the policies, procedures, and reimbursement provisions for the adjustment and relocation of utility facilities on Federal-aid and direct Federal projects.

§ 645.103 Applicability.

(a) The provisions of this regulation apply to reimbursement claimed by a State highway agency (SHA) for costs incurred under an approved and properly executed highway agency (HA)/utility agreement and for payment of costs incurred under all Federal Highway Administration (FHWA)/utility agreements.

(b) Procedures on the accommodation of utilities are set forth in 23 CFR Part 645, Subpart B, Accommodation of Utilities.

(c) When the lines or facilities to be relocated or adjusted due to highway construction are privately owned, located on the owner's land, devoted exclusively to private use and not directly or indirectly serving the public, the provisions of the FHWA's right-of-way procedures in 23 CFR Chapter I, Subchapter H, Right-of-Way and Environment, apply. When applicable, under the foregoing conditions, the provisions of this regulation may be used as a guide to establish a cost-to-cure.

(d) The FHWA's reimbursement to the SHA will be governed by State law (or State regulation) or the provisions of this regulation, whichever is more restrictive. When State law or regulation differs from this regulation, a determination shall be made by the SHA subject to the concurrence of the FHWA as to which standards will govern, and the record documented accordingly, for each relocation encountered.

(e) For direct Federal projects, all references herein to the SHA or HA are inapplicable, and it is intended that the FHWA be considered in the relative position of the SHA or HA.

§ 645.105 Definitions.

For the purposes of this regulation, the following definitions shall apply:

(a) *Authorization*—for Federal-aid projects authorization to the SHA by the FHWA, or for direct Federal projects authorization to the utility by the FHWA, to proceed with any phase of a project. The date of authorization establishes the date of eligibility for Federal funds to participate in the costs incurred on that phase of work.

(b) *Betterment*—any upgrading of the facility being relocated that is not attributable to the highway construction and is made solely for the benefit of and at the election of the utility.

(c) *Cost of relocation*—the entire amount paid by or on behalf of the utility properly attributable to the relocation after deducting from that amount any increase in value of the new facility, and any salvage derived from the old facility.

(d) *Cost of Removal*—the amount expended to remove utility property including the cost of demolishing, dismantling, removing, transporting, or otherwise disposing of utility property and of cleaning up to leave the site in a neat and presentable condition.

(e) *Cost of salvage*—the amount expended to restore salvaged utility property to usable condition after its removal.

(f) *Direct Federal projects*—highway projects such as projects under the Federal Lands Highways Program which are under the direct administration of the FHWA.

(g) *Highway agency* (HA)—that department, commission, board, or official of any State or political subdivison thereof, charged by its law with the responsibility for highway administration.

(h) *Indirect or overhead costs*—those costs which are not readily identifiable with one specific task, job, or work order. Such costs may include indirect labor, social security taxes, insurance, stores expense, and general office expenses. Costs of this nature generally are distributed or allocated to the applicable job or work orders, other accounts and other functions to which they relate. Distribution and allocation is made on a uniform basis which is reasonable, equitable, and in accordance with generally accepted cost accounting practices.

(i) *Relocation*—the adjustment of utility facilities required by the highway project. It includes removing and reinstalling the facility, including necessary temporary facilities, acquiring necessary right-of-way on the new location, moving, rearranging or changing the type of existing facilities and taking any necessary safety and protective measures. It shall also mean constructing a replacement facility that is both functionally equivalent to the existing facility and necessary for continuous operation of the utility service, the project economy, or sequence of highway construction.

(j) *Salvage value*—the amount received from the sale of utility property that has been removed or the amount at which the recovered material is charged to the utility's accounts, if retained for reuse.

(k) *State highway agency*—the highway agency of one of the 50 States, the District of Columbia, or Puerto Rico.

(l) *Use and occupancy agreement*—the document (written agreement or permit) by which the HA approves the use and occupancy of highway right-of-way by utility facilities or private lines.

(m) *Utility*—a privately, publicly, or cooperatively owned line, facility or system for producing, transmitting, or distributing communications, cable television, power, electricity, light, heat, gas, oil, crude products, water, steam, waste, storm water not connected with highway drainage, or any other similar commodity, including any fire or police signal system or street lighting system, which directly or indirectly serves the public. The term utility shall also mean the utility company inclusive of any wholly owned or controlled subsidiary.

(n) *Work order system*—a procedure for accumulating and recording into separate accounts of a utility all costs to the utility in connection with any change in its system or plant.

§ 645.107 Eligibility.

(a) When requested by the SHA, Federal funds may participate, at the pro rata share applicable, in an amount actually paid by an HA for the costs of utility relocations. Federal participation is subject to the provisions of § 645.103(d) of this part and may be made under one or more of the following conditions when:

(1) the SHA certifies that the utility has the right of occupancy in its existing location because it holds the fee, an easement, or other real property interest, the damaging or taking of which is compensable in eminent domain,

(2) the utility occupies privately or publicly owned land, including public road or street right-of-way, and the SHA certifies that the payment by the HA is made pursuant to a law authorizing such payment in conformance with the provisions of 23 U.S.C. 123, and/or

(3) The utility occupies publicy owned land, including public road and street right-of-way, and is owned by a public agency or political subdivision of the State, and is not required by law or agreement to move at its own expense, and the SHA certifies that the HA has the legal authority or obligation to make such payments.

(b) On projects which the SHA has the authority to participate in project costs, Federal funds may not participate in payments made by a political subdivision for relocation of utility facilities when State law prohibits the SHA from making payment for relocation of utility facilities.

(c) On projects which the SHA does not have the authority to participate in project costs, Federal funds may participate in payments made by a political subdivision for relocation of utility facilities when the SHA certifies that such payment is based upon the provisions of § 645.107(a) of this part and does not violate the terms of a use

and occupancy agreement, or legal contract, between the utility and the HA.

(d) Federal funds are not eligible to participate in any costs for which the utility contributes or repays the HA, except for utilities owned by the political subdivision on projects which qualify under the provisions of § 645.107(c) of this part in which case the costs of the utility are considered to be costs of the HA.

(e) The FHWA may deny Federal fund participation in any payments made by a HA for the relocation of utility facilities when such payments do not constitute a suitable basis for Federal fund participation under the provisions of Title 23, U.S.C.

(f) The rights of any public agency or political subdivision of a State under contract, franchise, or other instrument or agreement with the utility, pertaining to the utility's use and occupancy of publicly owned land, including public road and street right-of-way, shall be considered the rights of the SHA in the absence of State law to the contrary.

(g) In lieu of the individual certifications required by § 645.107(a) and (c), the SHA may file a statement with the FHWA setting forth the conditions under which the SHA will make payments for the relocation of utility facilities. The FHWA may approve Federal fund participation in utility relocations proposed by the SHA under the conditions of the statement when the FHWA has made an affirmative finding that such statement and conditions form a suitable basis for Federal fund participation under the provisions of 23 U.S.C. 123.

(h) Federal funds may not participate in the cost of relocations of utility facilities made solely for the benefit or convenience of a utility, its contractor, or a highway contractor.

(i) When the advance installation of new utility facilities crossing or otherwise occupying the proposed right-of-way of a planned highway project is underway, or scheduled to be underway, prior to the time such right-of-way is purchased by or under control of the HA, arrangements should be made for such facilities to be installed in a manner that will meet the requirements of the planned highway project. Federal funds are eligible to participate in the additional cost incurred by the utility that are attributable to, and in accommodation of, the highway project provided such costs are incurred subsequent to authorization of the work by the FHWA. Subject to the other provisions of this regulation, Federal participation may be approved under the foregoing circumstances when it is demonstrated that the action taken is necessary to protect the public interest and the adjustment of the facility is necessary by reason of the actual construction of the highway project.

(j) Federal funds are eligible to participate in the costs of preliminary engineering and allied services for utilities, the acquisition of replacement right-of-way for utilities, and the physical construction work associated with utility relocations. Such costs must be incurred by or on behalf of a utility after the date the work is included in an approved program and after the FHWA has authorized the SHA to proceed in accordance with 23 CFR 630, Subpart A, Federal-Aid Programs Approval and Project Authorization.

(The information collection requirements in paragraph (g) of this section have been approved under OMB control No. 2125-0515)

§ 645.109 Preliminary engineering.

(a) As mutually agreed to by the HA and utility, and subject to the provisions of paragraph (b) of this section, preliminary engineering activities associated with utility relocation work may be done by:

(1) The HA's or utility's engineering forces;

(2) An engineering consultant selected by the HA, after consultation with the utility, the contract to be administered by the HA; or,

(3) An engineering consultant selected by the utility, with the approval of the HA, the contract to be administered by the utility.

(b) When a utility is not adequately staffed to pursue the necessary preliminary engineering and related work for the utility relocation, Federal funds may participate in the amount paid to engineers, architects, and others for required engineering and allied services provided such amounts are not based on a percentage of the cost of relocation. When Federal participation is requested by the SHA in the cost of such services, the utility and its consultant shall agree in writing as to the services to be provided and the fees and arrangements for the services. Federal funds may participate in the cost of such services performed under existing written continuing contracts when it is demonstrated that such work is performed regularly for the utility in its own work and that the costs are reasonable. Prior approval by the FHWA of consulting services is necessary, except the FHWA may forgo preaward review and/or approval of any proposed consultant contract which is not expected to exceed $10,000.

(c) The procedures in 23 CFR Part 172, Administration of Negotiated Contracts, may be used as a guide for reviewing proposed consultant contracts.

§ 645.111 Right-of-way.

(a) Federal participation may be approved for the cost of replacement right-of-way provided:

(1) The utility has the right of occupancy in its existing location beause it holds the fee, an easement, or another real property interest, the damaging or taking of which is compensable in eminent domain, or the acquisition is made in the interest of project economy or is necessary to meet the requirements of the highway project, and

(2) There will be no charge to the project for that portion of the utility's existing right-of-way being transferred to the HA for highway purposes.

(b) The utility shall determine and make a written valuation of the replacement right-of-way that it acquires in order to justify amounts paid for such right-of-way. This written valuation shall be accomplished prior to negotiation for acquisition.

(c) Acquisition of replacement right-of-way by the HA on behalf of a utility or acquisition of nonoperating real property from a utility shall be in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601 *et seq.*) and applicable right-of-way procedures in 23 CFR Chapter I, Subchapter H, Right-of-Way and Environment.

(d) When the utility has the right-of-occupancy in its existing location because it holds the fee, an easement, or another real property interest, and it is not necessary by reason of the highway construction to adjust or replace the facilities located thereon, the taking of and damage to the utility's real property, including the disposal or removal of such facilities, may be considered a right-of-way transaction in accordance with provisions of the applicable right-of-way procedures in 23 CFR Chapter I, Subchapter H, Right-of-Way and Environment.

§ 645.113 Agreements and authorizations.

(a) On Federal-aid and direct Federal projects involving utility relocations, the utility and the HA shall agree in writing on their separate responsibilities for financing and accomplishing the relocation work. When Federal participation is requested, the agreement shall incorporate this regulation by reference and designate the method to be used for performing the work (by contract or force account) and for developing relocation costs. The method

proposed by the utility for developing relocation costs must be acceptable to both the HA and the FHWA. The preferred method for the development of relocation costs by a utility is on the basis of actual direct and related indirect costs accumulated in accordance with a work order accounting procedure prescribed by the applicable Federal or State regulatory body.

(b) When applicable, the written agreement shall specify the terms and amounts of any contribution or repayments made or to be made by the utility to the HA in connection with payments by the HA to the utility under the provisions of § 645.107 of this regulation.

(c) The agreement shall be supported by plans, specifications when required, and itemized cost estimates of the work agreed upon, including appropriate credits to the project, and shall be sufficiently informative and complete to provide the HA and the FHWA with a clear description of the work required.

(d) When the relocation involves both work to be done at the HA's expense and work to be done at the expense of the utility, the written agreement shall state the share to be borne by each party.

(e) In the event there are changes in the scope of work, extra work or major changes in the planned work covered by the approved agreement, plans, and estimates, Federal participation shall be limited to costs covered by a modification of the agreement, a written change, or extra work order approved by the HA and the FHWA.

(f) When the estimated cost to the HA of proposed utility relocation work on a project for a specific utility company is $25,000 or less, the FHWA may approve an agreement between the HA and the utility for a lump-sum payment without later confirmation by audit of actual costs. Lump-sum agreements in excess of $25,000 may be approved when the FHWA finds that this method of developing costs would be in the best interest of the public.

(g) Except as otherwise provided by § 645.113(h), authorization by the FHWA to the SHA to proceed with the physical relocation of a utility's facilities may be given after:

(1) The utility relocation work, or the right-of-way, or physical construction phase of the highway construction work is included in an approved program.

(2) The appropriate environmental evaluation and public hearing procedures required by 23 CFR Part 771, Environmental Impact and Related Procedures, have been satisfied.

(3) The FHWA has reviewed and approved the plans, estimates, and proposed or executed agreements for the utility work and is furnished a schedule for accomplishing the work.

(h) The FHWA may authorize the physical relocation of utility facilities before the requirements of § 645.113(g)(2) are satisfied when the relocation or adjustment of utility facilities meets the requirements of § 645.107(i) of this regulation.

(i) Whenever the FHWA has authorized right-of-way acquisition under the hardship and protective buying provisions of 23 CFR Part 712, the Acquisition Functions, the FHWA may authorize the physical relocation of utility facilities located in whole or in part on such right-of-way.

(j) When all efforts by the HA and utility fail to bring about written agreement of their separate responsibilities under the provisions of this regulation, the SHA shall submit its proposal and a full report of the circumstances to the FHWA. Conditional authorizations for the relocation work to proceed may be given by the FHWA to the SHA with the understanding that Federal funds will not be paid for work done by the utility until the SHA proposal has been approved by the FHWA.

(k) The FHWA will consider for approval any special procedure under State law, or appropriate administrative or judicial order, or under blanket master agreements with the utilities, that will fully accomplish all of the foregoing objectives and accelerate the advancement of the construction and completion of projects.

§ 645.115 Construction.

(a) Part 635, Subpart B, of this title, Force Account Construction (justification required for force account work), states that it is cost-effective for certain utility adjustments to be performed by a utility with its own forces and equipment, provided the utility is qualified to perform the work in a satisfactory manner. This cost-effectiveness finding covers minor work on the utility's existing facilities routinely performed by the utility with its own forces. When the utility is not adequately staffed and equipped to perform such work with its own forces and equipment at a time convenient to and in coordination with the associated highway construction, such work may be done by:

(1) A contract awarded by the HA or utility to the lowest qualified bidder based on appropriate solicitation,

(2) Inclusion as part of the HA's highway construction contract let by the HA as agreed to by the utility,

(3) An existing continuing contract, provided the costs are reasonable, or

(4) A contract for low-cost incidental work, such as tree trimming and the like, awarded by the HA or utility without competitive bidding, provided the costs are reasonable.

(b) When it has been determined under Part 635, Subpart B, that the force account method is not the most cost-effective means for accomplishing the utility adjustment, such work is to be done under competitive bid contracts as described in § 645.115(a) (1) and (2) or under an existing continuing contract provided it can be demonstrated this is the most cost-effective method.

(c) Costs for labor, materials, equipment, and other services furnished by the utility shall be billed by the utility directly to the HA. The special provisions of contracts let by the utility or the HA shall be explicit in this respect. The costs of force account work performed for the utility by the HA and of contract work performed for the utility under a contract let by the HA shall be reported separately from the costs of other force account and contract items on the highway project.

§ 645.117 Cost development and reimbursement.

(a) *Developing and recording costs.* (1) All utility relocation costs shall be recorded by means of work orders in accordance with an approved work order system except when another method of developing and recording costs, such as lump-sum agreement, has been approved by the HA and the FHWA. Except for work done under contracts, the individual and total costs properly reported and recorded in the utility's accounts in accordance with the approved method for developing such costs, or the lump-sum agreement, shall constitute the maximum amount on which Federal participation may be based.

(2) Each utility shall keep its work order system or other approved accounting procedure in such a manner as to show the nature of each addition to or retirement from a facility, the total costs thereof, and the source or sources of cost. Separate work orders may be issued for additions and retirements. Retirements, however, may be included with the construction work order provided that all items relating to retirements shall be kept separately from those relating to construction.

(b) *Direct labor costs.* (1) Salaries and wages, at actual or average rates, and

related expenses paid by the utility to individuals for the time worked on the project are reimbursable when supported by adequate records. This includes labor associated with preliminary engineering, construction engineering, right-of-way, and force account construction.

(2) Salaries and expenses paid to individuals who are normally part of the overhead organization of the utility may be reimbursed for the time worked directly on the project when supported by adequate records and when the work performed by such individuals is essential to the project and could not have been accomplished as economically by employees outside the overhead organization.

(3) Amounts paid to engineers, architects and others for services directly related to projects may be reimbursed.

(c) *Labor surcharges.* (1) Labor surcharges include worker compensation insurance, public liability and property damage insurance, and such fringe benefits as the utility has established for the benefit of its employees. The cost of labor surcharges will be reimbursed at actual cost to the utility, or, at the option of the utility, average rates which are representative of actual costs may be used in lieu of actual costs if approved by the SHA and the FHWA. These average rates should be adjusted at least once annually to take into account known anticipated changes and correction for any over or under applied costs for the preceding period.

(2) When the utility is a self-insurer, there may be reimbursement at experience rates properly developed from actual costs. The rates cannot exceed the rates of a regular insurance company for the class of employment covered.

(d) *Overhead and indirect construction costs.* (1) Overhead and indirect construction costs not charged directly to work order or construction accounts may be allocated to the relocation provided the allocation is made on an equitable basis. All costs included in the allocation shall be eligible for Federal reimbursement, reasonable, and actually incurred by the utility.

(2) Costs not eligible for Federal reimbursement include, but are not limited to, the costs associated with advertising, sales promotion, interest on borrowings, the issuance of stock, bad debts, uncollectible accounts receivable, contributions, donations, entertainment, fines, penalties, lobbying, and research programs.

(3) The records supporting the entries for overhead and indirect construction costs shall show the total amount, rate, and allocation basis for each additive, and are subject to audit by representatives of the State and Federal Government.

(e) *Material and supply costs.* (1) Materials and supplies, if available, are to be furnished from company stock except that they may be obtained from other sources near the project site when available at a lower cost. When not available from company stock, they may be purchased either under competitive bids or existing continuing contracts under which the lowest available prices are developed. Minor quantities of materials and supplies and proprietary products routinely used in the utility's operation and essential for the maintenance of system compatibility may be excluded from these requirements. The utility shall not be required to change its existing standards for materials used in permanent changes to its facilities. Costs shall be determined as follows:

(i) Materials and supplies furnished from company stock shall be billed at the current stock prices for such new or used materials at time of issue.

(ii) Materials and supplies not furnished from company stock shall be billed at actual costs to the utility delivered to the project site.

(iii) A reasonable cost for plant inspection and testing may be included in the costs of materials and supplies when such expense has been incurred. The computation of actual costs of materials and supplies shall include the deduction of all offered discounts, rebates, and allowances.

(iv) The cost of rehabilitating rather than replacing existing utility facilities to meet the requirements of a project is reimbursable, provided this cost does not exceed replacement costs.

(2) Materials recovered from temporary use and accepted for reuse by the utility shall be credited to the project at prices charged to the job, less a considertion for loss in service life at 10 percent. Materials recovered from the permanent facility of the utility that are accepted by the utility for return to stock shall be credited to the project at the current stock prices of such used materials. Materials recovered and not accepted for reuse by the utility, if determined to have a net sale value, shall be sold to the highest bidder by the HA or utility following an opportunity for HA inspection and appropriate solicitation for bids. If the utility practices a system of periodic disposal by sale, credit to the project shall be at the going prices supported by records of the utility.

(3) Federal participation may be approved for the total cost of removal when either such removal is required by the highway construction or the existing facilities cannot be abandoned in place for aesthetic or safety reasons. When the utility facilities can be abandoned in place but the utility or highway constructor elects to remove and recover the materials, Federal funds shall not participate in removal costs which exceed the value of the materials recovered.

(4) The actual and direct costs of handling and loading materials and supplies at company stores or material yards, and of unloading and handling recovered materials accepted by the utility at its stores or material yards are reimbursable. In lieu of actual costs, average rates which are representative of actual costs may be used if approved by the SHA and the FHWA. These average rates should be adjusted at least once annually to take into account known anticipated changes and correction for any over or under applied costs for the preceding period. At the option of the utility, 5 percent of the amounts billed for the materials and supplies issued from company stores and material yards or the value of recovered materials will be reimbursed in lieu of actual or average costs for handling.

(f) *Equipment costs.* The average or actual costs of operation, minor maintenance, and depreciation of utility-owned equipment may be reimbursed. Reimbursement for utility-owned vehicles may be made at average or actual costs. When utility-owned equipment is not available, reimbursement will be limited to the amount of rental paid (1) to the lowest qualified bidder, (2) under existing continuing contracts at reasonable costs, or (3) as an exception by negotiation when paragraph (f) (1) and (2) of this section are impractical due to project location or schedule.

(g) *Transportation costs.* (1) The utility's cost, consistent with its overall policy, of necessary employee transportation and subsistence directly attributable to the project is reimbursable.

(2) Reasonable cost for the movement of materials, supplies, and equipment to the project and necessary return to storage including the associated cost of loading and unloading equipment is reimbursable.

(h) *Credits.* (1) Credit to the highway project will be required for the cost of any betterments to the facility being

replaced or adjusted, and for the salvage value of the materials removed.

(2) Credit to the highway project will be required for the accrued depreciation of a utility facility being replaced, such as a building, pumping station, filtration plant, power plant, substation, or any other similar operational unit. Such accrued depreciation is that amount based on the ratio between the period of actual length of service and total life expectancy applied to the original cost. Credit for accrued depreciation shall not be required for a segment of the utility's service, distribution, or transmission lines.

(3) No betterment credit is required for additions or improvements which are:

(i) Required by the highway project,

(ii) Replacement devices or materials that are of equivalent standards although not identical,

(iii) Replacement of devices or materials no longer regularly manufactured with next highest grade or size,

(iv) Required by law under governmental and appropriate regulatory commission code, or

(v) Required by current design practices regularly followed by the company in its own work, and there is a direct benefit to the highway project.

(4) When the facilities, including equipment and operating facilities, described in § 645.117(h)(2) are not being replaced, but are being rehabilitated and/or moved, as necessitated by the highway project, no credit for accrued depreciation is needed.

(5) In no event will the total of all credits required under the provisions of this regulation exceed the total costs of adjustment exclusive of the cost of additions or improvements necessitated by the highway construction.

(i) *Billings.* (1) After the executed HA/utility agreement has been approved by the FHWA, the utility may be reimbursed through the SHA by progress billings for costs incurred. Cost for materials stockpiled at the project site or specifically purchased and delivered to the utility for use on the project may also be reimbursed on progress billings following approval of the executed HA/utility agreement.

(2) The utility shall provide one final and complete billing of all costs incurred, or of the agreed-to lump-sum, at the earliest practicable date. The final billing to the FHWA shall include a certification by the SHA that the work is complete, acceptable, and in accordance with the terms of the agreement.

(3) All utility cost records and accounts relating to the project are subject to audit by representatives of the State and Federal Government for a period of 3 years from the date final payment has been received by the utility.

(4) Reimbursement for a final utility billing shall not be approved until the HA furnishes evidence that it has paid the utility from its own funds.

(The information collection requirements in paragraph (i) of this section have been approved under OMB Control Number 2125-0159.)

§ 645.119 Alternate procedure.

(a) This alternate procedure is provided to simplify the processing of utility relocations or adjustments under the provisions of this regulation. Under this procedure, except as otherwise provided in paragraph (b) of this section, the SHA is to act in the relative position of the FHWA for reviewing and approving the arrangements, fees, estimates, plans, agreements, and other related matters required by this regulation as prerequisites for authorizing the utility to proceed with and complete the work.

(b) The scope of the SHA's approval authority under the alternate procedure includes all actions necessary to advance and complete all types of utility work under the provisions of this regulation except in the following instances:

(1) Utility relocations and adjustments involving major transfer, production, and storage facilities such as generating plants, power feed stations, pumping stations and reservoirs.

(2) Utility relocations falling within the scope of § 645.113 (h), (i), and (j), and § 645.107(i) of this regulation.

(c) Each SHA is encouraged to adopt the alternate procedure and file a formal application for approval by the FHWA. The application must include the following:

(1) The SHA's written policies and procedures for administering and processing Federal-aid utility adjustments. Those policies and procedures must make adequate provisions with respect to the following:

(i) Compliance with the requirements of this regulation, except as otherwise provided by § 645.119(b), and the provisions of 23 CFR Part 645, Subpart B, Accommodation of Utilities.

(ii) Advance utility liaison, planning, and coordination measures for providing adequate lead time and early scheduling of utility relocation to minimize interference with the planned highway construction.

(iii) Appropriate administrative, legal, and engineering review and coordination procedures as needed to establish the legal basis of the HA's payment; the extent of eligibility of the work under State and Federal laws and regulations; the more restrictive payment standards under § 645.103(d) of this regulation; the necessity of the proposed utility work and its compatibility with proposed highway improvements; and the uniform treatment of all utility matters and actions, consistent with sound management practices.

(iv) Documentation of actions taken in compliance with SHA policies and the provisions of this regulation, shall be retained by the SHA.

(2) A statement signed by the chief administrative officer of the SHA certifying that:

(i) Federal-aid utility relocations will be processed in accordance with the applicable provisions of this regulation, and the SHA's utility policies and procedures submitted under § 645.119(c)(1).

(ii) Reimbursement will be requested only for those costs properly attributable to the proposed highway construction and eligible for participation under the provisions of this regulation.

(d) The SHA's application and any changes to it will be submitted to the FHWA for review and approval.

(e) After the alternate procedure has been approved, the FHWA may authorize the SHA to proceed with utility relocation on a project in accordance with the certification, subject to the following conditions:

(1) The utility work must be included in an approved program.

(2) The SHA must submit a request in writing for such authorization. The request shall include a list of the utility relocations to be processed under the alternate procedure, along with the best available estimate of the total costs involved.

(f) The FHWA may suspend approval of the alternate procedure when any FHWA review discloses noncompliance with the certification. Federal funds will not participate in relocation costs incurred that do not comply with the requirements under § 645.119(c)(1).

(The information collection requirements in paragraph (c) of this section have been approved under OMB control number 2125-0533.

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23 CFR Part 645

[FHWA Docket No. 80-4, Notice 3]

Accommodation of Utilities

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule.

SUMMARY: The FHWA is amending its regulation on the accommodation of utility facilities and private lines on the right-of-way of Federal-aid and direct Federal highway projects. The final rule clarifies existing provisions and eliminates unnecessary and duplicate requirements.

EFFECTIVE DATE: June 14, 1985. Incorporation by reference approved by the Director of the Office of the Federal Register on June 14, 1985.

FOR FURTHER INFORMATION CONTACT: James A. Carney, Office of Engineering, 202-426-0450 or Michael J. Laska, Office of the Chief Counsel, 202-426-0762, Federal Highway Administration, 400 Seventh Street SW., Washington, D.C. 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday.

SUPPLEMENTARY INFORMATION:

Background

An advance notice of proposed rulemaking (ANPRM) was published on September 27, 1976 (41 FR 42220), to request comments on a proposed updating of FHWA's regulation dealing with the accommodation of utility facilities on the right-of-way of Federal and Federal-aid highway projects (23 CFR Part 645, Subpart B). Two comments were received on the ANPRM, one from a utility company and the other from the American Association of State Highway and Transportation Officials (AASHTO).

A notice of proposed rulemaking (initial NPRM), FHWA Docket 80-4 (45 FR 26280, April 17, 1980), presented the FHWA's proposals for updating its current regulations dealing with the utility facility and private line use and occupancy of the right-of-way of Federal-aid and direct Federal highway projects. There were 83 comments submitted to FHWA regarding the initial NPRM. Comments were received from State highway agencies, utility companies, public interest groups, safety organizations, the Rural Electrification Administration, and the American Society of Civil Engineers. Based on further review and on the nature and extent of the comments to the initial NPRM, FHWA issued a second NPRM, FHWA Docket No. 80-4, Notice 2 (49 FR 1219, January 10, 1984), presenting additional proposed revisions of FHWA's utility accommodation regulation and soliciting additional public input prior to preparation of a final rule.

Discussion of Comments

There were 69 comments received on the second NPRM. Comments were submitted by two State governors, 19 State highway agencies, and one State agency. Also, one county highway agency and two cities presented comments. From the utility industry, comments were submitted by 30 utility companies, three utility associations and an attorney representing several utility companies. Six Federal agencies, a safety organization and three individuals also submitted comments.

The following discussion addresses significant issues raised in comments to the second NPRM:

Right-of-Way Requirements

The FHWA's authority for allowing utility use and occupancy of the right-of-way of Federal-aid and direct Federal highway projects is contained in 23 CFR 1.23. Under the provisions of § 1.23, the State must acquire right-of-way which is adequate not only for the construction of the highway facility but also for its operation and maintenance. The right-of-way must be devoted exclusively to public highway purposes. However, § 1.23(c) permits certain nonhighway uses of the right-of-way which are found to be in the public interest provided such uses do not impair the highway or interfere with the free and safe flow of traffic thereon. Section 645.205(a) of the current regulation provides for this public interest finding with respect to use and occupancy of right-of-way by utility facilities.

There exists a direct relationship between the § 1.23 requirements of adequacy of right-of-way to be acquired and the provisions for permitted nonhighway uses. Proposed nonhighway uses cannot be of a nature which would negate the general requirement regarding the adequacy of the right-of-way. Therefore, implicit in the public interest finding for utility use of the right-of-way of Federal-aid or direct Federal projects is that there is adequate space available to locate the utility facilities in a manner which does not interfere with the safe and efficient operations of the highway.

Consequently, when a State intends to permit utilities to use and occupy public highway right-of-way, such potential use should be a consideration in determining the extent and adequacy of the right-of-way needed for the project. Failure to recognize the impact of such use as well as other uses on private property located adjacent to the public highway right-of-way on the safe and efficient operations of the highway may result in the acquisition of right-of-way which is inadequate to meet the needs of the highway and the traveling public. For example, little would be gained by acquiring restricted right-of-way and denying its use to certain utilities if such utilities could locate their facilities on private property adjacent to the restricted right-of-way with substantially the same impact on the highway and its user. Therefore, the issue of adequate accommodation of utilities is a legitimate consideration in the development of highway projects. This is particularly true of land service facilities where the highway user and utility consumer tend to be one and the same.

This concept of considering potential utility uses in the determination of right-of-way needs was proposed in section 645.209(a). It was generally endorsed by several highway and utility commenters who specifically addressed the issue and as a result this provision has been retained in the final rule.

Several commenters addressed the issue of the use of highway funds for the acquisition of utility right-of-way. When a State or locality routinely dedicates or permits a portion of the road and street right-of-way for use by utilities in accordance with established standard criteria pursuant to State law, ordinance or administrative practice, such right-of-way may be considered eligible for Federal-aid funding reimbursement as an integral part of the project right-of-way. For example, it is common to acquire in urban areas a border strip behind the curbs for sidewalk and utility accommodation purposes. These border strips as well as the roadsides on rural sections provide space for necessary road construction, drainage, road maintenance activities, and clear recovery areas. The border strips also provide sufficient offsets to adjacent private land uses as appropriate to provide a safe and efficient operating environment for the highway facility. These border strips and roadsides serve multiple purposes and it is appropriate to consider these varied purposes in establishing the right-of-way requirements for a project. However, since utility use is not considered to be a highway purpose, Federal-aid highway funds are not eligible to participate in right-of-way acquired solely for the purpose of accommodating utility facilities in excess of that normally acquired in accordance with standard criteria and procedures. When unique utility installations are proposed which

may warrant additional space, these types of accommodations are best handled under a joint development concept with the benefiting parties bearing their share of the cost. The FHWA believes that existing regulations provide sufficient latitude and flexibility to address the issues of Federal participation in the acquisition of adequate right-of-way for Federal-aid or direct Federal projects and as a consequence these matters are not addressed in the final rule.

Private Lines

Private lines, as defined within the regulation, are privately owned facilities which convey or transmit commodities but are devoted exclusively to private use. A question has arisen as to the extent FHWA's utility accommodation regulations are intended to apply to private line use or occupancy of highway right-of-way. It is FHWA's intent that the utility accommodation regulations may be applied to private lines which cross the right-of-way of Federal-aid or direct Federal highway projects. However, longitudinal use of such right-of-way by private lines is to be addressed under the provisions of 23 CFR 1.23(c). This matter has been clarified in the final rule.

Clear Recovery Area

Some of the commenters expressed concern as to how an appropriate clear recovery area is to be established for a highway project. Under the regulation, the highway agency is to establish the clear recovery area. Recognizing that clear recovery areas may vary depending on the type of highway, terrain traversed, and overall road geometric and operating conditions, the regulation has not attempted to define specific clear recovery area criteria or standards. Clear recovery area should be viewed as an essential and integral design feature of a highway project. As such, this particular feature should be evaluated and its impact considered as part of the overall project development process. In doing so, the appropriateness of a particular clear recovery area design may become a legitimate area for discussion and input by the various parties involved in the project. The resulting designation of the clear recovery area should be appropriately described or delineated in the project documents to assure its continued maintenance and to facilitate compliance with the provisions of this regulation.

Breakaway Design

Section 645.209(b) of the proposed regulation placed emphasis on the use of an "approved breakaway design" if a new utility facility is to be installed within the clear recovery area. Numerous commenters, representing both the highway and utility communities, indicated it is unclear what constitutes an approved breakaway design and what approval action would be necessary. Further, questions arise as to whether tested and accepted breakaway design features are readily available for much of the typical above ground utility facilities.

Upon further consideration, FHWA agrees that some modification of § 645.209(b) is in order. The final rule has revised § 645.209(b) and places primary emphasis on keeping the established clear recovery area free of new above ground utility facilities. In addition, emphasis is placed on undergrounding of new utility facilities which have to be located within the clear recovery area. Basically, new above ground utility installations within the designated clear recovery area should be considered only if other alternatives are not available. It is expected that such installations will be infrequent and approved only where clearly warranted. If new above ground utility facilities must be placed within the clear recovery area, then appropriate countermeasures to reduce hazards should be employed. Use of breakaway features is treated as one of several possible countermeasures which should be considered.

Utilities Along Freeways

Proposed § 645.209(c) discussed longitudinal utility use of freeway right-of-way. There were numerous comments on this section and the intent of the FHWA proposal.

A basic principle in the design and operation of the freeway system is full control of access. Access control has been recognized as one of the most significant design factors contributing to safety of a freeway system and is considered an essential element in preserving the traffic carrying capacity of these important highways. Because control of access can be materially affected by the extent and manner in which nonhighway type facilities are permitted to use freeway right-of-way, these nonhighway uses, including longitudinal utility use, are allowed only in special circumstances.

At the initiation of the Interstate freeway program, a policy decision was made to limit and restrict utility use of Interstate right-of-way to the maximum extent possible under the full control of access principles. The need for this policy has been recognized and supported by the highway community. The American Association of State Highway and Transportation Officials (AASHTO) has issued several policy statements over the years reaffirming the principles of this policy. Implementation of this policy required extensive adjustment and relocation of utility facilities during the development of the Interstate system.

Utility proposals to longitudinally use freeway right-of-way must be viewed in the context of the longstanding national policy to minimize longitudinal utility installation within the control of access limits of the Interstate System. The implementation of this policy has been costly to both highway authorities and the utility industry. It would not be logical to subvert the purpose and the accomplishments of this national policy by now permitting new utility installations on completed Interstate facilities which are inconsistent with this policy, thus negating the substantial public expenditure made in accord with this policy and the benefits derived.

The FHWA's intent is to permit longitudinal utility use of freeway right-of-way within the access control limits only when such use is clearly justified due to special and unique circumstances and when denial of such use would result in undue or exceptional hardship on utility consumers or others. To facilitate the determination of public interest, which is also required by Item 2 of the 1982 AASHTO publication entitled "A Policy on the Accommodation of Utilities Within Freeway Right-of-Way" (AASHTO Policy), proposals for such installations should be supported by a showing as to why the location within the access control lines is essential and why it constitutes the most feasible and prudent location available. Care must be exercised to assure that when such installations are permitted they are consistent with prior policy application.

In reviewing utility requests to longitudinally use freeway right-of-way within the access control limits, there are three key tests FHWA uses to determine if an exception to policy should be considered. They are:

(1) Alternate locations (outside freeway right-of-way) are extremely difficult to implement.

(2) Alternate locations are unreasonably costly to the utility consumer.

(3) Alternate locations adversely impact productive agricultural land (reference 23 U.S.C. 109(l)).

Even if one of the above tests can be met, before longitudinal utility use of freeway right-of-way will be approved it must be demonstrated the utility

installation on the freeway right-of-way will not adversely affect the design, construction, stability, traffic safety, or operation of the freeway and that the utility can be serviced without access from the through-traffic roadways or ramps.

The FHWA policy on longitudinal utility use of freeways and the exceptions to be allowed is in general accord with that developed by AASHTO and presented in the AASHTO Policy.

Section 645.209(c) of the final rule has been rewritten to clarify FHWA's policy in regard to longitudinal utility use of freeway right-of-way. In addition, a question was raised as to whether a State highway agency could adopt a policy even more restrictive than FHWA's. For example, could the State highway agency prohibit any longitudinal utility use of freeway right-of-way regardless of the circumstances involved. The final rule indicates that the option to enforce a more restrictive policy is available to the States.

An additional point raised was if an exception is to be granted and a utility allowed within the access control line of a freeway, what is meant by the inward relocation of the access control line and what is to be done with the existing fence. The final rule has provided additional information to help clarify this issue.

Use of AASHTO Publications

In the second NPRM, the FHWA proposed to incorporate by reference in the final rule the following AASHTO publications: "A policy on the Accommodation of Utilities Within Freeway Right-of-Way," 1982; "A Guide for Accommodating Utilities Within Highway Right-of-Way," 1981; and "Guide for Selecting, Locating, and Designing Traffic Barriers," 1977.

Numerous comments on the use of the AASHTO publications were received with viewpoints varying considerably. One commenter felt the AASHTO publications provide the highway agencies too much flexibility and thus would result in inadequate controls on safety. Several other commenters felt the AASHTO policy regarding longitudinal use of freeways by utilities was too restrictive.

It is FHWA's assessment that the three referenced AASHTO publications present reasonable guidance for use in determining appropriate utility use of highway right-of-way. The three publications are being incorporated by reference in the final rule subject to the one modification noted below.

Several commenters, mainly representing the utility industry, discussed the requirements regarding access to utility facilities found in the AASHTO Policy. Under Item 2, "New Utility Installations Along Freeways," of the AASHTO Policy, it appears that access to construct utility facilities would not be allowed from the through roadways or ramps. As several utility companies pointed out, if a special case exception regarding longitudinal utility use at areas where interchanges were encountered was approved under Item 2, the alignment of the utility facilites might have to be changed considerably to circumvent the interchange if access from the ramps to construct the facility were denied. Further, under Item 7, "Access for Servicing Utilities," of the AASHTO Policy, it is stated that access from the through roadways and ramps may be allowed in special cases under permits issued by the highway agency. The FHWA agrees that there appears to be some inconsistency regarding access allowed at the time a utility facility is constructed versus when it is to be serviced.

As a consequence, the final rule has provided some modification and will consider the possibility of access from the through roadways or ramps to construct utility facilities allowed as special case exceptions within interchange areas. However, such access will only be allowed if controlled by permits issued by the highway agency which set forth the conditions for policing and other controls to protect highway users.

Agricultural Land

Several commenters disagreed that impact on agricultural land is a factor to be taken into account when evaluating utility use of highway right-of-way. There was also concern that this requirement places a considerable burden on the State highway agencies.

First, it is noted that the need to evaluate impact on agricultural land is a requirement found in Federal law (23 U.S.C. 109(l)). However, this evaluation need only be done if the utility's use of the right-of-way of a Federal-aid or direct Federal highway project may be denied and then only if the denial is to be based on provisions found in this regulation. In other words, a State highway agency may deny a utility's request to occupy highway right-of-way based on State law, regulations or ordinances, or State policies or practices and in this case no evaluation of impact on agricultural land is necessary. However, if the FHWA regulations are to be cited as the basis for denying a utility's request to occupy highway right-of-way, then this evaluation must be prepared before final action is taken.

The final rule does not specify who prepares the evaluation of impact on agricultural land. This would be a matter for the State highway agency to determine.

Traffic Control

Certain commenters interpreted proposed § 645.209(j) to imply that the utility would be preparing the traffic control plan and that the highway agency would have little input or control over what was prepared. This is an incorrect interpretation. Under § 645.209(j) the highway agency clearly maintains control over the process of providing proper traffic control devices in work zones. Designation of who is to prepare a traffic control plan and who is to provide the necessary traffic control devices is to be determined by the highway agency under the procedures it establishes.

Wetland Drainage

Several commenters expressed concern that the utility regulation would be used as a basis of authority for allowing placement within highway right-of-way of structures to drain adjacent wetlands. Section 645.209(l) was specifically added in the second NPRM (January 10, 1984) to address this issue. Section 645.209(l) clearly states that installation of private lines on the right-of-way of Federal-air or direct Federal highway projects to drain adjacent wetlands is inconsistent with Executive Order 11990 and is to be prohibited. The final rule has incorporated this position.

Regulatory Impact

The revised regulation updates and clarifies FHWA policies and procedures for accommodating utilities facilities and private lines on the right-of-way of Federal-aid and direct Federal highway projects. Specifically, clarifications are provided regarding the application of the regulation to private line installations; placement of new utility facilities on highway right-of-way; longitudinal use of freeway right-of-way; corrective measures to address safety hazards associated with existing utility facilities located on highway right-of-way; and need for traffic control plans. In addition, the regulation provides implementing procedures for accommodation of utilities as required by 23 U.S.C. 109(l).

The FHWA has determined that this document contains neither a major rule under Executive Order 12291 nor a significant regulation under Department of Transportation's regulatory policies and procedures. A final Regulatory

Evaluation and Regulatory Flexibility Analysis have been prepared and are available for inspection in the public docket and may be obtained by contacting Mr. James A. Carney at the address provided under the heading "For Further Information Contact."

The benefits provided by this final rule include reduced accident costs resulting from clarifying and implementing a clear roadside policy, and cost savings produced by simplifying or removing certain administrative requirements. This final rule will impose some costs on utility companies which have to relocate their facilities from hazardous roadside locations. The actual costs to the States, utilities, and consumers from implementing a utility accommodation policy will ultimately depend on how the regulations are implemented by the State highway agencies. However, the costs are not expected to exceed the benefits derived from eliminating hazardous utility sites.

With regard to the assessment of the impact this rule will have on small entities pursuant to the Regulation Flexibility Act (Pub. L. 96-354), the reasons for, objectives, and legal basis of this action have been previously explained in this notice. This rule does not impose any additional reporting, recordkeeping, or other compliance requirements on small entities and does not duplicate, overlap, or conflict with any other Federal rules. This rule does not appear to have an adverse or disproportionate effect on a substantial number of small entities.

The joint use of public right-of-way avoids the additional cost of acquiring separate right-of-way for the exclusive accommodation of utilities. Utilities occupying highway right-of-way must make contractual agreements with highway authorities which acknowledge joint responsibilities for future modifications or relocations of their installations when necessitated by highway operations. The cost to small utilities and political subdivisions of relocating utilities from hazardous locations has historically been minimized by including the relocation as part of other highway improvements. For the above reasons and under the criteria of the Regulatory Flexibility Act, the FHWA certifies that this action will not have a significant economic impact on a substanial number of small entities.

The rulemaking contains two information collection requirements. These items have been approved by the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.). The development and submission of utility accommodation policies required by §§ 645.211 and 645.215 has been approved by OMB (OMB No. 2125-0514) and expires January 31, 1986, unless renewed prior to that date pursuant to 5 CFR Part 1320. The requirement to issue and have on file utility use and occupancy agreements (permits) required by §§ 645.211 and 645.213 has been approved by OMB (OMB No. 2125-0522) and expires January 31, 1987, unless renewed prior to that date pursuant to 5 CFR Part 1320.

Note.—Appendix A to Part 645 is removed.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning, and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation of Federal programs and activities apply to this program)

List of Subjects in 23 CFR Part 645

Grant Programs—Transportation, Highways and roads, Incorporation by reference, Reporting and recordkeeping requirements, Utilities.

Issued on: May 7, 1985.

L.P. Lamm,

Deputy Federal Highway Administrator, Federal Highway Administration.

In consideration of the foregoing and under the authority of 23 U.S.C. 109 and 116; 23 CFR 1.23, 1.27; and 49 CFR 1.48(b), the FHWA hereby revises Subpart B of Part 645 of Title 23 of the Code of Federal Regulations as set forth below.

PART 645—UTILITIES

* * * * *

Subpart B—Accommodation of Utilities

Sec.

Authority: 23 U.S.C. 109, 116; 23 CFR 1.23 and 1.27; 49 CFR 1.48(b); Executive Order 11990, 42 FR 26961 (May 24, 1977).

Subpart B—Accommodation of Utilities

§ 645.201 Purpose.

To prescribe policies and procedures for accommodating utility facilities and private lines on the right-of-way of Federal-aid or direct Federal highway projects.

§ 645.203 Applicability.

This subpart applies to:

(a) New utility installations within the right-of-way of Federal-aid or direct Federal highway projects,

(b) Existing utility facilities which are to be retained, relocated, or adjusted within the right-of-way of active projects under development or construction when Federal-aid or direct Federal highway funds are either being or have been used on the involved highway facility. When existing utility installations are to remain in place without adjustments on such projects the highway agency and utility are to enter into an appropriate agreement as discussed in § 645.213 of this part,

(c) Existing utility facilities which are to be adjusted or relocated under the provisions of § 645.209(k), and

(d) Private lines which may be permitted to cross the right-of-way of a Federal-aid or direct Federal highway project pursuant to State law and regulations and the provisions of this subpart. Longitudinal use of such right-of-way by private lines is to be handled under the provisions of 23 CFR 1.23(c).

§ 645.205 Policy.

(a) Pursuant to the provisions of 23 CFR 1.23, it is in the public interest for utility facilities to be accommodated on the right-of-way of a Federal-aid or direct Federal highway project when such use and occupancy of the highway right-of-way do not adversely affect highway or traffic safety, or otherwise impair the highway or its aesthetic quality, and do not conflict with the provisions of Federal, State or local laws or regulations.

(b) The manner is which utilities cross or otherwise occupy the right-of-way of a direct Federal or Federal-aid highway project can materially affect the highway, its safe operation, aesthetic quality, and maintenance. Therefore, it is necessary that such use and occupancy, where authorized, be regulated by highway agencies in a manner which preserves the operational safety and the functional and aesthetic quality of the highway facility. This subpart shall not be construed to alter the basic legal authority of utilities to install their facilities on public highways pursuant to law or franchise and reasonable regulation by highway agencies with respect to location and manner of installation.

(c) When utilities cross or otherwise occupy the right-of-way of a direct Federal or Federal-aid highway project on Federal lands, and when the right-of-way grant is for highway purposes only, the utility must also obtain and comply

with the terms of a right-of-way or other occupancy permit for the Federal agency having jurisdiction over the underlying land.

§ 645.207 Definitions.

For the purpose of this regulation, the following definitions shall apply:

(a) *Aesthetic quality*—those desirable characteristics in the appearance of the highway and its environment, such as harmony between or blending of natural and manufactured objects in the environment, continuity of visual form without distracting interruptions, and simplicity of designs which are desirably functional in shape but without clutter.

(b) *Clear recovery area*—that portion of the roadside, within the highway right-of-way as established by the highway agency, free of nontraversable hazards and fixed objects. The purpose of such areas is to provide drivers of errant vehicles which leave the traveled portion of the roadway a reasonable opportunity to stop safely or otherwise regain control of the vehicle. The clear recovery area may vary with the type of highway, terrain traversed, and road geometric and operating conditions. The American Association of State Highway and Transportation Officials (AASHTO) "Guide for Selecting, Locating, and Designing Traffic Barriers," 1977, should be used as a guide for establishing clear recovery areas for various types of highways and operating conditions. [This publication is incorporated by reference and is on file at the Office of the Federal Register in Washington, D.C. It is available for inspection from the FHWA Washington Headquarters and all FHWA Division and Regional Offices as prescribed in 49 CFR Part 7, Appendix D. Copies of current AASHTO publications are available for purchase from the American Association of State Highway and Transportation Officials, Suite 225, 444 North Capitol Street, NW., Washington, D.C. 20001.]

(c) *Clear roadside policy*—that policy employed by a highway agency to provide a clear recovery area in order to increase safety, improve traffic operations, and enhance the aesthetic quality of highways by designing, constructing and maintaining highway roadsides as wide, flat, and rounded as practical and as free as practical from natural or manufactured hazards such as trees, drainage structures, nonyielding sign supports, highway lighting supports, and utility poles and other ground-mounted structures. The policy should address the removal of roadside obstacles which are likely to be associated with accident or injury to the highway user, or when such obstacles are essential, the policy should provide for appropriate countermeasures to reduce hazards. Countermeasures include placing utility facilities at locations which protect out-of-control vehicles, using breakaway features, using impact attenuation devices, or shielding. In all cases full consideration shall be given to sound engineering principles and economic factors.

(d) *Direct Federal highway projects*—those active or completed highway projects such as projects under the Federal Lands Highways Program which are under the direct administration of the Federal Highway Administration (FHWA).

(e) *Federal-aid highway projects*—those active or completed highway projects administered by or through a State highway agency which involve or have involved the use of Federal-aid highway funds for the development, acquisition of right-of-way, construction or improvement of the highway or related facilities, including highway beautification projects under 23 U.S.C. 319, Landscaping and Scenic Enhancement.

(f) *Freeway*—a divided arterial highway with full control of access.

(g) *Highway agency*—that department, agency, commission, board, or official of any State or political subdivision thereof, charged by its law with the responsibility for highway administration.

(h) *Highway*—any public way for vehicular travel, including the entire area within the right-of-way and related facilities constructed or improved in whole or in part with Federal-aid or direct Federal highway funds.

(i) *Private lines*—privately owned facilities which convey or transmit the commodities outlined in paragraph (m) of this section, but devoted exclusively to private use.

(j) *Right-of-way*—real property, or interests therein, acquired, dedicated or reserved for the construction, operation, and maintenance of a highway in which Federal-aid or direct Federal highway funds are or have been involved in any stage of development. Lands acquired under 23 U.S.C. 319 shall be considered to be highway right-of-way.

(k) *State highway agency*—the highway agency of one of the 50 States, the District of Columbia, or Puerto Rico.

(l) *Use and occupancy agreement*—the document (written agreement or permit) by which the highway agency approves the use and occupancy of highway right-of-way by utility facilities or private lines.

(m) *Utility facility*—privately, publicly or cooperatively owned line, facility, or system for producing, transmitting, or distributing communications, cable television, power, electricity, light, heat, gas, oil, crude products, water, steam, waste, storm water not connected with highway drainage, or any other similar commodity, including any fire or police signal system or street lighting system which directly or indirectly serves the public. The term utility shall also mean the utility company inclusive of any wholly owned or controlled subsidiary.

§ 645.209 General requirements.

(a) *Safety.* Highway safety and traffic safety are of paramount, but not of sole, importance when accommodating utility facilities within highway right-of-way. Utilities provide an essential public service to the general public. Traditionally, as a matter of sound economic public policy and law, utilities have used public road right-of-way for transmitting and distributing their services. However, due to the nature and volume of highway traffic, the effect of such joint use on the traveling public must be carefully considered by highway agencies before approval of utility use of the right-of-way of Federal-aid or direct Federal highway projects is given. Adjustments in the operating characteristics of the utility or the highway or other special efforts may be necessary to increase the compatibility of utility-highway joint use. The possibility of this joint use should be a consideration in establishing right-of-way requirements for highway projects. In any event, the design, location, and manner in which utilities use and occupy the right-of-way of Federal-aid or direct Federal highway projects must conform to the clear roadside policies for the highway involved and otherwise provide for a safe traveling environment as required by 23 U.S.C. 109 (l)(1).

(b) *New Above Ground Installations.* On Federal-aid or direct Federal highway projects, new above ground utility installations, where permitted, shall be located as far from the traveled way as possible, preferably along the right-of-way line. No new above ground utility installations are to be allowed within the established clear recovery of the highway unless a determination has been made by the highway agency that placement underground is not technically feasible or is unreasonably costly and there are no feasible alternate locations. In exceptional situations when it is essential to locate such above ground utility facilities within the established clear recovery area of the highway, appropriate countermeasures to reduce hazards shall be used. Countermeasures include

placing utility facilities at locations which protect or minimize exposure to out-of-control vehicles, using breakaway features, using impact attenuation devices, using delineation, or shielding.

(c) *Installations Within Freeways.* Since the preservation of the control of access feature of freeways is essential to the safe and efficient use of such highways, longitudinal utility use of freeway right-of-way within the access control lines will not be permitted unless such use is clearly justified due to special and unique circumstances and when denial of such use would result in undue or exceptional hardship on utility consumers or others. Utility installations on freeway right-of-way shall conform to the provisions of the AASHTO publication, "A Policy on the Accommodation of Utilities Within Freeway Right-of-Way," 1982, except as modified herein. (This publication is incorporated by reference and is on file at the Office of the Federal Register in Washington, D.C. It is available for inspection from the FHWA Washington Headquarters and all FHWA Division and Regional Offices as prescribed in 49 CFR Part 7, Appendix D. Copies of current AASHTO publications are available for purchase from the American Association of State Highway and Transportation Officials, Suite 225, 444 North Capitol Street, NW., Washington, D.C. 20001.) New utilities will not be permitted to be installed longitudinally within the access control lines of a Federal-aid freeway except (1) for those instances warranted under the provisions of 23 U.S.C. 109 (l)(1) (B) and (C) to mitigate damage to agricultural lands, provided (a) there is adequate right-of-way available which is not needed for planned highway expansion, and (b) such use does not adversely affect highway safety, highway operations or otherwise impair the highway, its aesthetic quality, or its maintenance, and (c) it can be shown that the installation on the freeway right-of-way is the most feasible and prudent location available; or (2) for those special cases warranted under Item 2, New Utility Installations Along Freeways, of the aforementioned AASHTO policy. However, in applying the criteria of Item 2 of the AASHTO policy, the FHWA may allow utility facilities to be located within interchange areas and may allow construction and/or servicing of such facilities from the through roadways or ramps provided conditions A, C, and D of Item 2 are satisfied and provided such access is by permits issued by the highway agency to the utility owner setting forth the conditions for policing and other controls to protect highway users. When longitudinal installations are proposed within existing access control lines, a utility strip shall be established by locating a utility access control line between the proposed utility facility and the through roadway and ramps. Existing fences should be retained and, except along sections of freeways having frontage roads, planned fences should be located at the freeway right-of-way line. Nothing in this part shall be construed as prohibiting a highway agency from adopting a more restrictive policy than that contained herein with regard to longitudinal utility installations along freeway right-of-way and access for constructing and/or servicing such installations.

(d) *Uniform Policies and Procedures.* For a highway agency to fulfill its responsibilities to control utility use of Federal-aid highway right-of-way within the State and its political subdivisions, it must exercise or cause to be exercised, adequate regulation over such use and occupancy through the establishment and enforcement of reasonably uniform policies and procedures for utility accommodation.

(e) *Private Lines.* Because there are circumstances when private lines may be allowed to cross or otherwise occupy the right-of-way of Federal-aid projects, highway agencies shall establish uniform policies for properly controlling such permitted use. When permitted, private lines must conform to the provisions of this part and the provisions of 23 CFR 1.23(c) for longitudinal installations.

(f) *Direct Federal Highway Projects.* On direct Federal highway projects, the FHWA will apply, or cause to be applied, utility and private line accommodation policies similar to those required on Federal-aid highway projects. When appropriate, agreements will be entered into between the FHWA and the highway agency or other government agencies to ensure adequate control and regulation of use by utilities and private lines of the right-of-way on direct Federal highway projects.

(g) *Projects Where State Lacks Authority.* On Federal-aid highway projects where the State highway agency does not have legal authority to regulate highway use by utilities and private lines, the State highway agency must enter into formal agreements with those local officials who have such authority. The agreements must provide for a degree of protection to the highway at least equal to the protection provided by the State highway agency's utility accommodation policy approved under the provisions of § 645.215(b) of this part. The project agreement between the State highway agency and the FHWA on all such Federal-aid highway projects shall contain a special provision incorporating the formal agreements with the responsible local officials.

(h) *Scenic Areas.* New utility installations, including those needed for highway purposes, such as for highway lighting or to serve a weigh station, rest area or recreation area, are not permitted on highway right-of-way or other lands which are acquired or improved with Federal-aid or direct Federal highway funds and are located within or adjacent to areas of scenic enhancement and natural beauty. Such areas include public park and recreational lands, wildlife and waterfowl refuges, historic sites as described in 23 U.S.C. 138, scenic strips, overlooks, rest areas and landscaped areas. The State highway agency may permit exceptions provided the following conditions are met:

(1) New underground or aerial installations may be permitted only when they do not require extensive removal or alteration of trees or terrain features visible to the highway user or impair the aesthetic quality of the lands being traversed.

(2) Aerial installations may be permitted only when:

(i) Other locations are not available or are unusually difficult and costly, or are less desirable from the standpoint of aesthetic quality,

(ii) placement underground is not technically feasible or is unreasonably costly, and

(iii) the proposed installation will be made at a location, and will employ suitable designs and materials, which give the greatest weight to the aesthetic qualities of the area being traversed. Suitable designs include, but are not limited to, self-supporting armless, single-pole construction with vertical configuration of conductors and cable.

(3) For new utility installations within freeways, the provisions of paragraph (c) of this section must also be satisfied.

(i) *Joint Use Agreements.* When the utility has a compensable interest in the land occupied by its facilities and such land is to be jointly occupied and used for highway and utility purposes, the highway agency and utility shall agree in writing as to the obligations and responsibilities of each party. Such joint-use agreements shall incorporate the conditions of occupancy for each party, including the rights vested in the highway agency and the rights and privileges retained by the utility. In any event, the interest to be acquired by or

vested in the highway agency in any portion of the right-of-way of a Federal-aid or direct Federal highway project to be vacated, used or occupied by utilities or private lines, shall be adequate for the construction, safe operation, and maintenance of the highway project.

(j) *Traffic Control Plan.* Whenever a utility installation, adjustment or maintenance activity will affect the movement of traffic or traffic safety, the utility shall implement a traffic control plan and utilize traffic control devices as necessary to ensure the safe and expeditious movement of traffic around the work site and the safety of the utility work force in accordance with procedures established by the highway agency. The traffic control plan and the application of traffic control devices shall conform to the standards set forth in the "Manual on Uniform Traffic Control Devices" (MUTCD) and 23 CFR Part 30, Subpart J. (This publication is incorporated by reference and is on file at the Office of the Federal Register in Washington, D.C. It is available for inspection and copying from the FHWA Washington Headquarters and all FHWA Division and Regional Offices as prescribed in 49 CFR Part 7, Appendix D.)

(k) *Corrective Measures.* When the highway agency determines that existing utility facilities are likely to be associated with injury or accident to the highway user, as indicated by accident history or safety studies, the highway agency shall initiate or cause to be initiated in consultation with the affected utilities, corrective measures to provide for a safer traffic environment. The corrective measures may include changes to utility or highway facilities and should be prioritized to maximum safety benefits in the most cost-effective manner. The scheduling of utility safety improvements should take into consideration planned utility replacement or upgrading schedules, accident potential, and the availability of resources. It is expected that the requirements of this paragraph will result in an orderly and positive process to address the identified utility hazard problems in a timely and reasonable manner with due regard to the effect of the corrective measures on both the utility consumer and the road user. The type of corrective measures are not prescribed. Any requests received involving Federal participation in the cost of adjusting or relocating utility facilities pursuant to this paragrpah shall be subject to the provisions of 23 CFR Part 645, Subpart A, Utility Relocations, Adjustments and Reimbursement, and 23 CFR Part 924, Highway Safety Improvement Program.

(l) *Wetlands.* The installation of privately owned lines or conduits on the right-of-way of Federal-aid or direct Federal highway projects for the purpose of draining adjacent wetlands onto the highway right-of-way is considered to be inconsistent with Executive Order 11990, Protection of Wetlands, dated May 24, 1977, and shall be prohibited.

§ 645.211 State highway agency accommodation policies.

The FHWA shall use the AASHTO publications, "A Guide for Accommodating Utilities Within Highway Right-of-Way," 1981, and "Guide for Selecting, Locating and Designing Traffic Barriers," 1977, to assist in the evaluation of adequacy of State highway agency utility accommodation policies. (These publications are incorporated by reference and are on file at the Office of the Federal Register in Washington, D.C. They are available for inspection from the FHWA Washington Headquarters and all FHWA Division and Regional Offices as prescribed in 49 CFR Part 7, Appendix D. Copies of current AASHTO publications are available for purchase from the American Association of State Highway and Transportation Officials, Suite 225, 444 North Capitol Street, NW., Washington, D.C. 20001). As a minimum, such policies shall make adequate provisions with respect to the following:

(a) Utilities must be accommodated and maintained in a manner which will not impair the highway or adversely affect highway or traffic safety.

(b) Consideration shall be given to the effect of utility installations in regard to safety, aesthetic quality, and the costs or difficulty of highway and utility construction and maintenance.

(c) The State highway agency's standards for regulating the use and occupancy of highway right-of-way by utilities must include, but are not limited to, the following:

(1) The horizontal and vertical location requirements and clearances for the various types of utilities must be clearly stated. These must be adequate to ensure compliance with the clear roadside policies for the particular highway involved.

(2) The applicable provisions of government or industry codes required by law or regulation must be set forth or appropriately referenced, including highway design standards or other measures which the State highway agency deems necessary to provide adequate protection to the highway, its safe operation, aesthetic quality, and maintenance.

(3) Specifications for and methods of installation; requirements for preservation and restoration of highway facilities, appurtenances, and natural features and vegetation on the right-of-way; and limitations on the utility's activities within the right-of-way including installation within areas set forth by § 645.209(h) of this part should be prescribed as necessary to protect highway interests.

(4) Measures necessary to protect traffic and its safe operation during and after installation of facilities, including control-of-access restrictions, provisions for rerouting or detouring traffic, traffic control measures to be employed, procedures for utility traffic control plans, limitations on vehicle parking and materials storage, protection of open excavations, and the like must be provided.

(5) A State highway agency may deny a utility's request to occupy highway right-of-way based on State law, regulation, or ordinances or the State highway agency's policy. However, in any case where the provisions of this part are to be cited as the basis for disapproving a utility's request to use and occupy highway right-of-way, measures must be provided to evaluate the direct and indirect environmental and economic effects of any loss of productive agricultural land or any impairment of the productivity of any agricultural land that would result from the disapproval. The environmental and economic effects on productive agricultural land together with the possible interference with or impairment of the use of the highway and the effect on highway safety must be considered in the decision to disapprove any proposal by a utility to use such highway right-of-way.

(d) Compliance with applicable State laws and approved State highway agency utility accommodation policies must be assured. The responsible State highway agency's file must contain evidence of the written arrangements which set forth the terms under which utility facilities are to cross or otherwise occupy highway right-of-way. All utility installations made on highway right-of-way shall be subject to written approval by the State highway agency. However, such approval will not be required where so provided in the use and occupancy agreement for such matters as utility facility maintenance, installation of service connections on highways other than freeways, or emergency operations.

(The information collection requirements in paragraphs (a), (b) and (c) of this section have been approved under OMB control number 2125–0522; the information collection requirements in paragraph (d) of this section have been approved under OMB control number 2125–0514.)

§ 645.213 Use and occupancy agreements (permits).

The written arrangements, generally in the form of use and occupancy agreements setting forth the terms under which the utility is to cross or otherwise occupy the highway right-of-way, must include or incorporate by reference:

(a) The highway agency standards for accommodating utilities. Since all of the standards will not be applicable to each individual utility installation, the use and occupancy agreement must, as a minimum, describe the requirements for location, construction, protection of traffic, maintenance, access restriction, and any special conditions applicable to each installation.

(b) A general description of the size, type, nature, and extent of the utility facilities being located within the highway right-of-way.

(c) Adequate drawings or sketches showing the existing and/or proposed location of the utility facilities within the highway right-of-way with respect to the existing and/or planned highway improvements, the traveled way, the right-of-way lines and, where applicable, the control of access lines and approved access points.

(d) The extent of liability and responsibilities associated with future adjustment of the utilities to accommodate highway improvements.

(e) The action to be taken in case of noncompliance with the highway agency's requirements.

(f) Other provisions as deemed necessary to comply with laws and regulations.

(The information collection requirements in this section have been approved under OMB control number 2125–0522)

§ 645.215 Approvals.

(a) Each State highway agency shall submit a statement to the FHWA on the authority of utilities to use and occupy the right-of-way of State highways, the State highway agency's power to regulate such use, and the policies the State highway agency employs or proposes to employ for accommodating utilities within the right-of-way Federal-aid highways under its jurisdiction. Statements previously submitted and approved by the FHWA need not be resubmitted provided the statement adequately addresses the requirements of this part. When revisions are deemed necessary the changes to the previously approved statement may be submitted separately to the FHWA for approval. The State highway agency shall include similar information on the use and occupancy of such highways by private lines where permitted. The State shall identify those areas, if any, of the Federal-aid highway system within its borders where the State highway agency is without legal authority to regulate use by utilities. The statement shall address the nature of the formal agreements with local officials required by § 645.209(g) of this part. It is expected that the statements required by this part or necessary revisions to previously submitted and approved statements will be submitted to FHWA within 1 year of the effective date of this regulation.

(b) Upon determination by the FHWA that a State highway agency's policies satisfy the provisions of 23 U.S.C. 109 and 116, and 23 CFR 1.23 and 1.27, and meet the requirements of this regulation, the FHWA may approve their use on Federal-aid highway projects in that State.

(c) Any changes, additions or deletions the State highway agency proposes to the approved policies are subject to FHWA approval.

(d) When a utility files a notice or makes an individual application or request to a State highway agency to use or occupy the right-of-way of a Federal-aid highway project, the State highway agency is not required to submit the matter to the FHWA for prior concurrence, except under the following circumstances:

(1) The proposed installation is not in accordance with this regulation or the State highway agency's utility accommodation policy approved by the FHWA for use on Federal-aid highway projects.

(2) Longitudinal installations on Federal-aid freeways involving special case exceptions, as described in the AASHTO publication, "A Policy on the Accommodation of Utilities Within Freeway Right-of-Way," 1982, and § 645.209(c) of this part.

(3) Longitudinal installations of private lines.

(e) The State highway agency's practices under the policies or agreements approved under § 645.215(b) of this part shall be periodically reviewed by the FHWA.

(The information collection requirements in paragraph (a) of this section have been approved under OMB control number 2125–0514)

[FR Doc. 85-11621 Filed 5-14-85; 8:45 am]
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federal register

Wednesday
May 15, 1985

Part III

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 866

Denial of Request To Change Classification of the Antimicrobial Susceptibility Test Disc; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 866

[Docket No. 83N-0197]

Denial of Request To Change Classification of the Antimicrobial Susceptibility Test Disc

AGENCY: Food and Drug Administration.

ACTION: Notice; final rule-related.

SUMMARY: The Food and Drug Administration (FDA) is issuing an order denying three requests for a change in the classification of the antimicrobial susceptibility test disc from class II (performance standards) into class I (general controls). FDA will continue the procedure to establish a performance standard for the device.

FOR FURTHER INFORMATION CONTACT: Charles S. Furfine, Center for Devices and Radiological Health (HFZ-84), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4874.

SUPPLEMENTARY INFORMATION:

History of the Proceedings

In the **Federal Register** of November 9, 1982 (47 FR 50814), under section 513 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360c), FDA published a regulation (21 CFR 866.1620) classifying the antimicrobial susceptibility test disc into class II. An antimicrobial susceptibility test disc is a device that consists of antimicrobic-impregnated paper discs used to measure by a disc-agar diffusion technique or a disc-broth elution technique the in vitro susceptibility of most clinically important bacterial pathogens to antimicrobial agents. In the disc-agar diffusion technique, bacterial susceptibility is ascertained by directly measuring the magnitude of a zone of bacterial inhibition around the disc on an agar surface. The disc-broth elution technique is associated with an automated rapid susceptibility test system and employs a fluid medium in which susceptibility is ascertained by photometrically measuring changes in bacterial growth resulting when antimicrobial material is eluted from the disc into the fluid medium. Test results are used to determine the antimicrobial agent of choice in the treatment of bacterial diseases.

Section 514(b)(1) of the act (21 U.S.C. 360(b)(1)), § 860.132(a) of the regulations providing procedures for the reclassification of medical devices (21 CFR 860.132(a)), and § 861.20(a) of the regulations providing procedures for performance standards development (21 CFR 861.20(a)) require that a proceeding for the establishment of a performance standard for a device classified into class II be initiated by publication in the **Federal Register** of a notice providing interested persons an opportunity to submit to the agency, within 15 days of the date of publication of the notice, a request for a change in the classification of the device based on new information relevant to its classification. Accordingly, to initiate a proceeding to establish a performance standard for the antimicrobial susceptibility test disc, FDA published a notice in the **Federal Register** of July 8, 1983 (48 FR 31390) to allow interested persons an opportunity under section 514(b)(2) of the act to request, in accordance with section 513(e) of the act, reclassification of the device from class II into class I or class III (premarket approval).

In response to the July notice, the College of American Pathologists, Skokie, IL 60077; the Cleveland Clinic Foundation, Cleveland, OH 44106; and the Pharmaceutical Manufacturers Association, Washington, DC 20005, each submitted to FDA timely reclassification petitions requesting FDA to change the classification of the antimicrobial susceptibility test disc from class II into class I.

The Legal Standard Governing Reclassification

Section 514(b) of the act requires any reclassification petition submitted in response to a notice issued under section 514(b) to set forth new information relevant to the classification of the device. The term "new information" comprehends information developed as a result of reevaluation of the data before the agency when a device was classified, as well as information not presented, not available, or not developed at the time. See, e.g., *Holland-Rantos* v. *United States Department of Health, Education, and Welfare*, 587 F.2d 1173, 1174, n.1 (D.C. Cir. 1978); *Upjohn* v. *Finch*, 422 F.2d 944 (6th Cir. 1970); *Bell* v. *Goddard*, 366 F.2d 177 (7th Cir. 1966). The "new information" on which any reclassification of a device is based is required to consist of "valid scientific evidence" as defined in section 513(a)(3) of the act and § 860.7. As specified in § 860.7(c), FDA relies only upon such evidence to determine whether there is reasonable assurance that a device is safe and effective.

In addition, the valid scientific evidence upon which the agency relies for the purpose of reclassification is required by section 520(c) of the act (21 U.S.C. 360j(c)) to be publicly available, i.e., the evidence may not be trade secret or confidential commercial information in (1) any premarket approval application (PMA) for a device or (2) any other reports obtained by the agency under any of the sections of the act that are specified in section 520(c) of the act.

The Panel's Recommendation

FDA referred the petitions to the Microbiology Devices Panel (then the Microbiology Device Section of the Immunology and Microbiology Devices Panel), an FDA advisory committee, for its consideration and recommendation on the change in classification requested by the petitioners. During an open public meeting on September 9, 1983, the Panel considered the petitions and recommended that the antimicrobial susceptibility test disc remain classified in class II.

After reviewing the petitions and the Panel recommendation, FDA determined that none of the petitions provided sufficient new, publicly available, valid scientific evidence to show (1) why the device should not remain in class II and (2) that class I would provide reasonable assurance of the safety and effectiveness of the device. Therefore, the antimicrobial susceptibility test disc will remain in class II.

FDA'S Conclusions

The following is a summary of the petitions, the Panel's considerations, and FDA's conclusions with respect to the information and views on which the petitioners relied as grounds for their requests that the agency change the classification of the device.

Labeling Requirements

1. Two petitioners claimed that the labeling requirements of § 809.10 of FDA's regulations governing in vitro diagnostic products for human use (21 CFR 809.10) are sufficient to provide reasonable assurance of the safety and effectiveness of the antimicrobial susceptibility test disc. Under § 809.10(b), manufacturers are required to identify, where appropriate, performance characteristics of the device (i.e., accuracy, precision, sensitivity, and specificity), and this information is adequate for users to evalute the test results, according to the two petitioners.

The Panel disagreed that the labeling requirements of § 809.10 are sufficient to provide reasonable assurance of the safety and effectiveness of the device. The Panel noted that it based its original recommendation that the antimicrobial

susceptibility test disc be classified into class II on the variability in the performance of the device (45 FR 27211; April 22, 1980). This problem persists, as the Panel determined from data submitted by two of the petitioners (Refs. 1 and 2). For example, these data show that for some drugs, notably methicillin, nafcillin, and clindamycin, the results obtained in 1982 from different laboratories testing the same specimen agreed less than 80 percent of the time. The Panel noted that little improvement had occurred in the performance of the device since 1980, when the Panel recommended classification into class II. The Panel concluded that the labeling requirements of § 809.10 were not sufficient, and that a performance standard is necessary to provide reasonable assurance of the safety and effectiveness of the antimicrobial susceptibility test disc.

FDA agrees with the Panel and disagrees with the petitioners. Accurate and complete labeling for the antimicrobial susceptibility test disc provides useful information, but labeling alone does not provide reasonable assurance of the safety and effectiveness of the device. Labeling does not solve the problem of variability in the performance of different manufacturers' antimicrobial susceptibility test disc products, ensure the accuracy of individual test results, or ensure the sensitivity or specificity of the device. A device for which there is otherwise no reasonable assurance of safety and effectiveness is not made safe and effective by merely warning the user of that fact in the device's labeling.

Class I Controls Other Than Labeling

2. Two petitioners argued that the other general controls, in addition to labeling requirements discussed in paragraph 1 of this notice, are sufficient to provide reasonable assurance of the safety and effectiveness of the antimicrobial susceptibility test disc. Specifically, the petitioners argued that establishment inspections conducted by FDA under section 704 of the act (21 U.S.C 374) ensure that quality control and device distribution procedures are followed and that manufacturers comply with the current good manufacturing practice (CGMP) regulations (21 CFR Part 820). The two petitioners pointed out that FDA no longer requires certification for antimicrobial susceptibility test disc products, which the petitioner cites as evidence that the devices' manufacturers comply with the CGMP regulations. The petitioners contended that such compliance ensures the accuracy, precision, potency, purity, and stability of antimicrobial susceptibility test discs and is adequate to assure their safety and effectiveness. Further, FDA's authority under section 304(g)(1) of the act (21 U.S.C.334(g)(1)) to detain devices and FDA's authority under section 516 of the act (21 U.S.C. 360f) to make devices banned devices enable the agency to ensure that dangerous or ineffective products are removed from the marketplace, according to the two petitioners.

The Panel acknowledged that antimicrobial susceptibility test discs may be manufactured in accordance with the CGMP regulations, but noted that other parameters besides disc content, such as inoculum size and incubation conditions, can affect the test result. The Panel noted that data submitted by two petitioners (Refs. 1 and 2) demonstrate that, even with compliance with the CGMP regulations, there continues to be variability in the performance of the device (see paragraph 1 of this notice).

FDA disagrees with the petitioners. To reclassify a device under section 513(e) of the act, the act and the regulations require that the new, publicly available, valid scientific evidence of safety and effectiveness show (1) why the device should not remain in its present classification and (2) that the proposed reclassification will provide reasonable assurance of the safety and effectiveness of the device. For a class II device to be reclassified into class I, the act and the regulations require such evidence of safety and effectiveness to show (1) why the device should not remain in class II and (2) that general controls will provide reasonable assurance of the safety and effectiveness of the device. The general controls are those authorized by or under sections 501 (adulteration), 502 (misbranding), 510 (registration, listing, and premarket notification), 516 (banned devices), 518 (notification and other remedies), 519 (records and reports), and 520 (general provisions, including current good manufacturing practice requirements) of the act (21 U.S.C. 351, 352, 360, 360f, 360h, 360i, and 360j). If the general controls are not sufficient to provide reasonable assurance of the safety and effectiveness of a device, the device may not be reclassified into class I (see section 513(a)(1)(A) of the act).

Although FDA recognizes that general controls are useful in the regulation of the antimicrobial susceptibility test disc, the agency has concluded that these controls by themselves do not provide reasonable assurance of the safety and effectiveness of the device. FDA has already concluded that the rejection rate of antibiotic susceptibility disc products submitted for certification is sufficiently low that batch-by-batch testing by the agency is not necessary to ensure the safety and effectiveness of the products (see 47 FR 39155; September 7, 1982). FDA agrees with the Panel, however, that other parameters contribute to the quality of the test result obtained using the antibiotic susceptibility test disc. As discussed is paragraph 1 of this notice, data submitted by two of the petitioners show that there still is a problem with variability in the performance of different manufacturers' antimicrobial susceptibility test disc products. Compliance with the CGMP regulations under section 520(f) of the act and Part 820 ensures that a device conforms to its specifications. However, neither the CGMP regulations nor establishment inspections under section 704 of the act provide the data to ensure that the specifications are adequate to provide reasonable assurance of the safety and effectiveness of the device. Furthermore, although compliance with the CGMP regulations reduces the problem of lot-to-lot variability for a given manufacturer, such compliance cannot address, much less reduce, the problem of manufacturer-to-manufacturer variability.

Administrative detention under section 304(g)(1) of the act and § 800.55 of the regulations (21 CFR 800.55) is of little use in assuring the continued safety and effectiveness of a device. Section 304(G)(1) of the act merely provides for the temporary detention of a device, encountered during inspection, that an authorized FDA employee has reason to believe is adulterated or misbranded, until FDA has had time to consider what further action it should take concerning the device and to initiate judicial enforcement action, if appropriate (see section 304(g)(1) of the act; § 800.55(a)). Similarly, making a device a banned device under section 516 of the act and Part 895 of the regulations (21 CFR Part 895) is of limited use; FDA may make a device a banned device only after the agency has detemined that the device presents substantial deception or an unreasonable and substantial risk of illness or injury (section 516(a) of the act; § 895.1).

3. One petitioner argued that FDA's regulations governing premarket notification procedures (21 CFR Part 807, Subpart E) ensure that FDA is advised of the proposed introduction of a new device and permit FDA to determine whether such a device is substantially equivalent to a preamendments device (i.e., a device in commercial distribution

before May 28, 1976, the enactment date of the Medical Device Amendments of 1976 (Pub. L. 94-295)) or to a postamendments device (i.e., a device that was not in commercial distribution before that date) that has been reclassified into class I or class II.

FDA's review of premarket notification submissions under section 510(k) of the act and Subpart E of Part 807 is intended to permit the agency to determine the status of a postamendments device under section 513(f)(1) of the act, which classifies into class III and requires premarket approval or reclassification of any postamendments device that is not substantially equivalent to a preamendments or reclassified device. In determining whether a postamendments device is substantially equivalent to a preamendments or reclassified device, FDA considers whether the device presents risks and benefits not materially different from those of the preamendments or reclassified device. For a postamendments device to be found substantially equivalent, its intended use may not differ from, and its materials, design, and energy source, among other things, may not differ materially from, those of the preamendments or reclassified device. See H.R. Rept. No. 94-853, 94th Cong., 2d Sess. 36 (1976). In addition, any variation between the postamendments and the preamendments or reclassified device may not materially affect safety or effectiveness. See *id.* at 36-37. Congress did not intend or authorize FDA to review a premarket notification submission for the purpose of determining whether the postamendments device that is the subject of the submission is safe or effective, nor to determine whether the preamendments device to which substantial equivalence is claimed is safe or effective. Rather, the premarket notification submission only permits FDA to determine whether the postamendments device is no less safe and effective than the preamendments device. Thus, a determination by FDA that a postamendments device is "substantially equivalent" is not a determination that the device is not adulterated or misbranded or that it is otherwise safe or effective; therefore, review of premarket notification submissions cannot provide reasonable assurance of the safety or effectiveness of a device.

For these reasons and the reasons discussed in paragraphs 1 and 2 of this notice, FDA concludes that class I controls are not sufficient to provide reasonable assurance of the safety and effectiveness of the antimicrobial susceptibility test disc, and that it has not been shown that a performance standard is not needed to provide such assurance.

Miscellaneous

4. One petitioner stated that the test result is not the sole basis of a diagnosis and that the physician's role in the use of the test result should not be underestimated. The petitioner stated that the test performance is enhanced and given meaning by the interpretative judgment of the pathologists and attending physicians and that good medical practice calls for repeating a laboratory test if unexpected or unsupported results are obtained. Therefore, the petitioner argued, the risks to the health of the patient from an erroneous test result are reduced. Consequently, according to the petitioner, the Panel an FDA did not assess these risks correctly.

The Panel acknowledged that physicians may repeat a laboratory test if unexpected or unsupported results are obtained. The Panel noted, however, that a period of time may pass before the clinician is made aware of problems associated with a poorly performing device. The Panel concluded that a standard is needed to ensure that the antimicrobial susceptibility test disc performs in a safe and effective manner.

FDA agrees with the petitioner that the physician's role in the interpretation of the antimicrobial susceptibility test disc results should be considered. FDA advises, however, that the physician's role was considered by the Panel and the agency when the device was proposed for classification into class II in that the Panel based its recommendation, in part, on its clinical experience with the device (see 45 FR 27211). None of the petitions contains any new information that establishes that either the Panel or FDA underestimated the physician's role in the interpretation of test results. In any event, FDA is responsible for ensuring that the device that furnishes the test result to the physician is both safe and effective. Nothing in any of the petitions establishes that the physician's role will in any way compensate for the variability in the performance of the antimicrobial susceptibility test disc such that the device can be considered safe and effective.

5. All three petitioners argued that proficiency testing is an alternative to performance standards because device problems are identified and inadequate devices are subsequently eliminated from the marketplace. The petitioners also argued that voluntary standards exist which provide adequate control over the variables which have an impact on the quality of the test result.

The Panel noted that proficiency testing is done primarily to measure laboratory competence and not to examine reagent performance. Moreover, data submitted by two of the petitioners (Ref. 2) from studies performed in 1982 demonstrate that less than 80 percent of the laboratories testing the same specimen containing the organism *S. aureus* obtained the correct result regarding the susceptibility of this organism to any one of three different drugs (methicillin, nafcillin, and clindamycin).

FDA agrees with the Panel and concludes that the petitioners have not provided sufficient valid scientific evidence showing why the antimicrobial susceptibility test disc should not remain in class II or that the general controls provided by class I will provide reasonable assurance of the safety and effectiveness of the antimicrobial susceptibility test disc. Moreover, even if the data submitted by the petitioners demonstrated improved performance of the device, that alone would not demonstrate that the general controls of the act are sufficient to provide reasonable assurance of safety and effectiveness of the device, because the petitioners have not demonstrated that the improved performance is satisfactory and would continue through the application of general controls only. As stated in paragraphs 1, 2, and 3 of this notice, FDA believes that the safety and effectiveness of the antimicrobial susceptibility test disc cannot reasonably be assured by the general controls alone.

FDA notes that the existence of a voluntary standard, even if the standard is adequate and adhered to, is not a legally defensible basis for reclassifying a device into class I or a basis for not establishing a performance standard under section 514 of the act for a device classified in class II. The act does not permit reclassification of a device into class I based on a determination by FDA that adherence to an adequate voluntary standard, together with application of the general controls, will provide reasonable assurance of the safety and effectiveness of the device. The existence of an adequate, adhered to voluntary standard may, however, be a factor in FDA's establishment of priorities for establishing performance standards for class II devices.

References

A copy of the petitions, the transcript of the Panel meeting, and the following references are on public file under Docket No. 83N–0197 and are available for inspection in the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, where they may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. College of American Pathologists, "DATA ReCAP 1970–1980," edited by Elevitch, F. R., and P. S. Noce, pp. 265–273, 1981.

2. College of American Pathologists, "Special Bacteriology Survey," Set 1982 D–A, pp. 8–15; Set 1982 D–B, pp. 9–17; Set 1982 D–C, pp. 9–13; Set 1982 D–D, pp. 7–15, 1983

Order

For the reasons set out above, FDA is issuing an order under section 514(b)(2) of the act denying the petitioners' requests for reclassification of the antimicrobial susceptibility test disc from class II into class I.

In accordance with § 861.20(c), FDA will continue the procedure by which a performance standard for the antimicrobial susceptibility test disc may be established. In a future issue of the **Federal Register**, the agency will publish a notice under section 514(c) of the act inviting the submission of proposed standards.

Dated: May 1, 1985.

Joseph P. Hile,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 85–11657 Filed 5–14–85; 8:45 am]

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Federal Register

Wednesday
May 15, 1985

Part IV

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 866

Denial of Request To Change Classification of the Rheumatoid Factor Immunological Test System; Rule-Related Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

21 CFR Part 866

[Docket No. 83N-0199]

Denial of Request To Change Classification of the Rheumatoid Factor Immunological Test System

AGENCY: Food and Drug Administration.

ACTION: Notice; final rule-related.

SUMMARY: The Food and Drug Administration (FDA) is issuing an order denying five requests for a change in the classification of the rheumatoid factor immunological test system from class II (performance standards) into class I (general controls). FDA will continue the procedure to establish a performance standard for the device.

FOR FURTHER INFORMATION CONTACT: Charles S. Furfine, Center for Devices and Radiological Health (HFZ-84), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4874.

SUPPLEMENTARY INFORMATION:

History of the Proceedings

In the **Federal Register** of November 9, 1982 (47 FR 50814), under section 513 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360c), FDA published a regulation (21 CFR 866.5775) classifying the rheumatoid factor immunological test system into class II. A rheumatoid factor immunological test system is a device that consists of the reagents used to measure by immunochemical techniques the rheumatoid factor (antibodies to immunoglobulins) in serum, other body fluids, and tissues. Measurement of rheumatoid factor may aid in the diagnosis of rheumatoid arthritis.

Section 514(b)(1) of the act (21 U.S.C. 360d(b)(1)), § 860.132(a) of the regulations providing procedures for the reclassification of medical devices (21 CFR 860.132(a)), and § 861.20(a) of the regulations providing procedures for performance standards development (21 CFR 861.20(a)) require that a proceeding for the establishment of a performance standard for a device classified into class II be initiated by publication in the **Federal Register** of a notice providing interested persons an opportunity to submit to the agency, within 15 days of the date of publication of the notice, a request for a change in the classification of the device based on new information relevant to its classification. Accordingly, to initiate a proceeding to establish a performance standard for the rheumatoid factor immunological test system, FDA published a notice in the **Federal Register** of July 8, 1983 (48 FR 31389) to allow interested persons an opportunity under section 514(b)(2) of the act to request, in accordance with section 513(e) of the act, reclassification of the device from class II into class I or class III (premarket approval).

In response to the July 8 notice, the College of American Pathologists, Skokie, IL 60077; Carter-Wallace, Inc., Cranbury, NJ 08512; the Health Industry Manufacturers Association, Washington, DC 20005; the Pharmaceutical Manufacturers Association, Washington, DC 20005; and EM Science, Gibbstown, NJ 08027, each submitted to FDA timely reclassification petitions requesting FDA to change the classification of the rheumatoid factor immunological test system from class II into class I.

The Legal Standard Governing Reclassification

Section 514(b) of the act requires any reclassification petition submitted in response to a notice issued under section 514(b) to set forth new information relevant to the classification of the device. The term "new information" comprehends information developed as a result of reevaluation of the data before the agency when a device was classified, as well as information not presented, not available, or not developed at that time. See, e.g., *Holland-Rantos* v. *United States Department of Health, Education, and Welfare*, 587 F.2d 1173, 1174, n.1 (D.C. Cir. 1978); *Upjohn* v. *Finch*, 422 F.2d 944 (6th Cir. 1970); *Bell* v. *Goddard*, 366 F.2d 177 (7th Cir. 1966). The "new information" on which any reclassification of a device is based is required to consist of "valid scientific evidence" as defined in section 513(a)(3) of the act and § 860.7. As specified in § 860.7(c), FDA relies only upon such evidence to determine whether there is reasonable assurance that a device is safe and effective.

In addition, the valid scientific evidence upon which the agency relies for the purpose of reclassification is required by section 520(c) of the act (21 U.S.C. 360j(c)) to be publicly available, i.e., the evidence may not be trade secret or confidential commercial information in (1) any premarket approval application (PMA) for a device or (2) any other reports obtained by the agency under any of the sections of the act that are specified in section 520(c) of the act.

The Panel's Recommendation

FDA referred the petitions to the Immunology Devices Panel (then the Immunology Device Section of the Immunology and Microbiology Devices Panel), an FDA advisory committee, for its consideration and recommendation on the change in classification requested by the petitioners. During an open public meeting on September 16, 1983, the Panel considered the petitions and recommended that the rheumatoid factor immunological test system remain classified in class II.

After reviewing the petitions and the Panel recommendations FDA determined that none of the petitions provided sufficient new, publicly available, valid scientific evidence to show (1) why the device should not remain in class II and (2) that class I would provide reasonable assurance of the safety and effectiveness of the device. Therefore, the rheumatoid factor immunological test system will remain in class II.

FDA's Conclusions

The following is a summary of the petitions, the Panel's considerations, and FDA's conclusions with respect to the information and views on which the petitioners relied as grounds for their requests that the agency change the classification of the device.

Labeling Requirements

1. Four petitioners claimed that the labeling requirements of § 809.10 of FDA's regulations governing in vitro diagnostic products for human use (21 CFR 809.10) are sufficient to provide reasonable assurance of the safety and effectiveness of the rheumatoid factor immunological test system. Under § 809.10(b), manufacturers are required to identify, where appropriate, performance characteristics of the device (i.e., accuracy, precision, sensitivity, and specificity), and this information is adequate for users to evaluate the test results, according to the petitioners.

The Panel disagreed that the labeling requirements of § 809.10 are sufficient to provide reasonable assurance of the safety and effectiveness of the device. The Panel noted that it based its original recommendation that the rheumatoid factor immunological test system be classified into class II on the variability in the performance of the device (45 FR 27353; April 22, 1980). This problem persists, as the Panel determined from data submitted by two of the petitioners (Refs. 1 and 2) As an example of the variable performance of the device, these data demonstrate that there were very large differences in the amount of rheumatoid factor reported to be present when several laboratories tested the

same sample. The Panel noted that these data demonstrate that little improvement had occurred in the performance of the device since the Panel recommended that the device be classified into class II in 1980. The Panel concluded that the labeling requirements of § 809.10 were not sufficient, and that a performance standard is necessary to provide reasonable assurance of the safety and effectiveness of the rheumatoid factor immunological test system.

FDA agrees with the Panel and disagrees with the petitioners. Accurate and complete labeling for the rheumatoid factor immunological test system provides useful information, but labeling alone does not provide reasonable assurance of the safety and effectiveness of the device. Labeling does not solve the problem of variability in the performance of different manufacturers' rheumatoid factor immunological test system products, ensure the accuracy of individual test results, or ensure the sensitivity or specificity of the device. A device for which there is otherwise no reasonable assurance of safety and effectiveness is not made safe and effective by merely warning the user of that fact in the labeling.

Class I Controls Other Than Labeling

2. All five petitioners argued that the other general controls, in addition to labeling requirements discussed in paragraph 1 of this notice, are sufficient to provide reasonable assurance of the safety and effectiveness of the rheumatoid factor immunological test system. Specifically, the petitioners argued that establishment inspections conducted by FDA under section 704 of the act (21 U.S.C. 374) ensure that quality control and device distribution procedures are followed and that manufacturers comply with the current good manufacturing practice (CGMP) regulations (21 CFR Part 820). Further, FDA's authority under section 304(g)(1) of the act (21 U.S.C. 334(g)(1)) to detain devices and FDA's authority under section 516 of the act (21 U.S.C. 360f) to make devices banned devices enable the agency to ensure that dangerous or ineffective products are removed from the marketplace, according to the petitioners. Two petitioners stated that the Panel was unaware of the full impact of controls available under class I and, therefore, could not determine that the rheumatoid factor immunological test can be regulated adequately in class I.

FDA disagrees with the petitioners. To reclassify a device under section 513(e) of the act, the act and the regulations require that the new, publicly available, valid scientific evidence of safety and effectiveness show (1) why the device should not remain in its present classification and (2) that the proposed reclassification will provide reasonable assurance of the safety and effectiveness of the device. For a class II device to be reclassified into class I, the act and the regulations require such evidence of safety and effectiveness to show (1) why the device should not remain in class II and (2) that general controls will provide reasonable assurance of the safety and effectiveness of the device. The general controls are those authorized by or under sections 501 (adulteration), 502 (misbranding), 510 (registration, listing, and premarket notification), 516 (banned devices), 518 (notification and other remedies), 519 (records and reports), and 520 (general provisions, including current good manufacturing practice requirements) of the act (21 U.S.C. 351, 352, 360, 360f, 360h, 360i, and 360j). If the general controls are not sufficient to provide reasonable assurance of the safety and effectiveness of a device, the device may not be reclassified into class I (see section 513(a)(1)(A) of the act).

Although FDA recognizes that general controls are useful in the regulation of the rheumatoid factor immunological test system, the agency has concluded that these controls by themselves do not provide reasonable assurance of the safety and effectiveness of the device. Compliance with the CGMP regulations under section 520(f) of the act and Part 820 ensures that a device conforms to its specifications. However, neither the CGMP regulations nor establishment inspections under section 704 of the act provide the data to ensure that the specifications are adequate to provide reasonable assurance of the safety and effectiveness of the device. Furthermore, although compliance with the CGMP regulations reduces the problem of lot-to-lot variability for a given manufacturer, such compliance cannot address, much less reduce, the problem of manufacturer-to-manufacturer variability.

Administrative detention under section 304(g)(1) of the act and § 800.55 of the regulations (21 CFR 800.55) is of little use in assuring the continued safety and effectiveness of a device. Section 304(g)(1) of the act merely provides for the temporary detention of a device, encountered during inspection, that an authorized FDA employee has reason to believe is adulterated or misbranded, until FDA has had time to consider what further action it should take concerning the device and to initiate judicial enforcement action, if appropriate (see section 304(g)(1) of the act; § 800.55(a)). Similarly, making a device a banned device under section 516 of the act and Part 895 of the regulations (21 CFR Part 895) is of limited use; FDA may make a device a banned device only after the agency has determined that the device presents substantial deception or an unreasonable and substantial risk of illness or injury (section 516(a) of the act § 895.1).

3. One petitioner argued that FDA's regulations governing premarket notification procedures (21 CFR Part 807, Subpart E) ensure that FDA is advised of the proposed introduction of a new device and permit FDA to determine whether such a device is substantially equivalent to a preamendments device (i.e., a device in commercial distribution before May 28, 1976, the enactment date of the Medical Device Amendments of 1976 (Pub. L. 94–295)) or to a postamendments device (i.e., a device that was not in commercial distribution before that date) that has been reclassified into class I or class II.

FDA's review of premarket notification submissions under section 510(k) of the act and Subpart E of Part 807 is intended to permit the agency to determine the status of a postamendments device under section 513(f)(1) of the act, which classifies into class III and requires premarket approval or reclassification of any postamendments device that is not substantially equivalent to a preamendments or reclassified device. In determining whether a postamendments device is substantially equivalent to a preamendments or reclassified device, FDA considers whether the device presents risks and benefits not materially different from those of the preamendments or reclassified device. For a postamendments device to be found substantially equivalent, its intended use may not differ from, and its materials, design, and energy source, among other things, may not differ materially from, those of the preamendments or reclassified device. See H.R. Rept. No. 94–853, 94th Cong., 2d Sess. 36 (1976). In addition, any variation between the postamendments and the preamendments or reclassified device may not materially affect safety or effectiveness. See *id.* at 36–37. Congress did not intend or authorize FDA to review a premarket notification submission for the purpose of determining whether the postamendments device that is the subject of the submission is safe or

effective, nor to determine whether the preamendments device to which substantial equivalence is claimed is safe and effective. Rather, the premarket notification submission only permits FDA to determine whether the postamendments device is no less safe and effective than the preamendments device. Thus a determination by FDA that a postamendments device is "substantially equivalent" is not a determination that the device is not adulterated or misbranded or that it is otherwise safe or effective; therefore, review of premarket notification submissions cannot provide reasonable assurance of the safety or effectiveness of a device.

For these reasons and the reasons discussed in paragraphs 1 and 2 of this notice, FDA concludes that class I controls are not sufficient to provide reasonable assurance of the safety and effectiveness of the rheumatoid factor immunological test system, and that it has not been shown that a performance standard is not needed to provide such assurance.

Miscellaneous

4. Four petitioners stated that the test result is not the sole basis of a diagnosis and that the physician's role in the use of the test result should not be underestimated. The petitioners stated that the test performance is enhanced and given meaning by the interpretive judgment of the pathologists and attending physicians and that good medical practice calls for repeating a laboratory test if unexpected or unsupported results are obtained. Therefore, the petitioners argued, the risks to the health of the patient from an erroneous test result are reduced. Consequently, according to the petitioners, the Panel and FDA did not assess these risks correctly.

The Panel did not address this issue.

Although FDA agrees with the petitioners that the physicians' role in the interpretation of test results should be considered, in the case of a differential diagnosis of rheumatoid arthritis, the rheumatoid factor immunological test can be an important element. An erroneous test result (false-negative) may lead to a failure to detect rheumatoid arthritis that could lead to a delay in initiating appropriate management of the patient. An erroneous test result (false-positive) in patients with infectious mononucleosis, lupus erythematosus, or Sjogren syndrome may cause a misdiagnosis and inappropriate therapy. Additionally, FDA notes that the physician's role in the interpretation of tests results was considered by the Panel and the agency when the device was proposed for classification into class II in that the Panel based its recommendation, in part, on its clinical experience with the device (see 45 FR 27353). None of the petitions contains any new information that establishes that either the Panel or FDA underestimated the physician's role in the interpretation of test results.

5. Two petitioners claimed that proficiency testing is an alternative to performance standards for identifying and eliminating unsafe or ineffective devices. One petitioner argued that voluntary standards exist which contribute significantly to the quality of test results obtained with these devices.

The Panel acknowledged the existence of voluntary standards, but noted that data submitted by the petitioners were from a proficiency survey performed in 1982 by the College of American Pathologists (Ref. 2) which demonstrated very large differences in the results of tests performed on the same specimen using the rheumatoid factor immunological test system. The Panel noted that proficiency testing is done primarily to measure laboratory competence and not to examine reagent peformance. The Panel concluded that the proficiency data reflect significant differences in interlaboratory agreement as well as in the performance of various manufacturers' rheumatoid factor immunological test systems.

FDA agrees with the comments made by the Panel. Moreover, even if the data submitted by the petitioners demonstrated improved proficiency of the device, that alone would not demonstrate that the general controls of the act are sufficient to provide reasonable assurance of safety and effectiveness of the device, because the petitioners have not demonstrated that device performance has improved sufficiently or that satisfactory device performance would continue with the application of general controls only. As stated in paragraph 2 of this notice, FDA believes that the safety and effectiveness of the rheumatoid factor immunological test system cannot reasonably be assured by the general controls alone.

FDA notes that the existence of a voluntary standard, even if the standard is adequate and adhered to, is not a legally defensible basis for reclassifying a device into class I or a basis for not establishing a performance standard under section 514 of the act for a device classified in class II. The act does not permit reclassification into class I unless the general controls, by themselves, are adequate to provide reasonable assurance of the safety and effectiveness of the device.

6. One petitioner commented that there probably are few reports of problems with the rheumatoid factor immunological test in FDA's Device Experience Network (DEN).

The petitioner did not provide any data to support its allegations. In any case, based on its experience, FDA does not believe that voluntarily submitted adverse experience reports, including those reported to DEN, are an accurate reflection of the actual levels of adverse experiences with devices (see the preamble to FDA's final rule on medical device reporting (49 FR 36326 at 36328; September 14, 1984)).

Reference

A copy of the petitions, the transcript of the Panel meeting, and the following references are on public file under Docket No. 83N-0199 and are available for inspection in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, where they may be seen by interested persons between 9 a.m., and 4 p.m. Monday through Friday.

1. College of American Pathologists, "DATA ReCAP 1970-1980," edited by Elevitch, F.R., and P.S. Noce, p. 306, 1981.

2. College of American Pathologists, "Special Diagnostic Immunology Survey," Set 1982 S-A, S-B, S-C, S-D, 1983.

Order

For the reasons set out above, FDA is issuing an order under section 514(b)(2) of the act denying the petitioners' requests for reclassification of the rheumatoid factor immunological test system from class II into class I.

In accordance with § 861.20(c), FDA will continue the procedure by which a performance standard for the rheumatoid factor immunological test system may be established. In a future issue of the **Federal Register**, the agency will publish an invitation for standards under section 514(c) of the act.

Dated: April 29, 1985.

Joseph P. Hile,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 85-11661 Filed 5-14-85; 8:45 am]

BILLING CODE 4160-01-M

federal register

Wednesday
May 15, 1985

Part V

Environmental Protection Agency

21 CFR Part 561
40 CFR Part 180
Cyromazine; Pesticide Tolerance Final Rules; Determination Concerning Conditional Registration; Notice

ENVIRONMENTAL PROTECTION AGENCY

21 CFR Part 561

[FAP 2H5355/R753; FRL-2836-8]

Pesticide Tolerance for Cyromazine

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes a feed additive regulation to permit residues of the insecticide cryromazine in or on poultry feed. This regulation to establish the maximum permissible level for residues of cyromazine in or on the commodity was requested by Ciba-Geigy Corp.

EFFECTIVE DATE: Effective on May 15, 1985.

ADDRESS: Written objections, identified by the document control number [PP 2H5355/R753], may be submitted to the: Hearing Clerk (A-110), Environmental Protection Agency, Rm. 3708, 401 M St. SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT:

Timothy A. Gardner, Product Manager (PM) 17, Registration Division (TS-767C), Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

Office location and telephone number: Rm. 207, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703-557-2690).

SUPPLEMENTARY INFORMATION: On April 20, 1984, EPA issued a notice, published in the **Federal Register** of April 27, 1984 (49 FR 18120), which proposed that a feed additive regulation be established, under section 409 of the Federal Food Drug and Cosmetic Act (FFDCA), permitting residues of the insecticide cyromazine (*N*-cyclopropyl-1,3,5-triazine-2,4,6-triamine) in poultry feed at 5.0 parts per million (ppm).

Comments on the Federal Register Proposal

The Agency's proposals to (1) Issue a conditional registration, (2) issue tolerances on certain agricultural commodities, and (3) issue a feed additive regulation for cyromazine (Larvadex®) published in the **Federal Register** on April 27, 1984, requested comments from interested parties, including the general public.

Eighty-five different commenters responded favorably to the conditional registration of Larvadex® and/or the establishment of tolerances for cyromazine, which is the active ingredient in Larvadex®. Of this number, 76 responded favorably to the conditional registration, 11 responded favorably to the establishment of the proposed feed additive regulation (section 409) and six responded favorably to the proposed establishment of a tolerance in or on certain raw agricultural commodities (section 408).

Thirty-one different commenters responded in opposition to the conditional registration of Larvadex®. Seven of these same commenters indicated that they also opposed the establishment of tolerances and/or a food additive regulation for cyromazine.

For the Agency's response to the comments received, see the companion notice on conditional registration appearing elsewhere in this issue of the **Federal Register.**

Agency Decision

Based on the Agency's review of the data and comments submitted in response to the April 27, 1984 proposal, the Agency has concluded that cyromazine can be safely used in the prescribed manner when such use is in accordance with the labeling, which is registered pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act amended (FIFRA) (7 U.S.C. 136 et seq.). Therefore, the feed additive regulation is established as set forth below.

Elsewhere in this issue of the **Federal Register,** the Agency has issued: (1) A final rule establishing tolerances for residues of cyromazine in or on eggs and poultry (chicken layer hens only) meat, fat, and meat by-products, and (2) a notice of the Agency's determination to issue a conditional registration for cyromazine for use as a 0.3-percent premix feed-through to control fly larvae in poultry manure.

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

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

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-534, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 21 CFR Part 561

Feed additives, Pesticides and pests.

Dated: May 9, 1985.

J.A. Moore,

Assistant Administrator for Pesticides and Toxic Substances.

PART 561—[AMENDED]

Therefore, 21 CFR Part 561 is amended as follows:

1. The authority citation for Part 561 is revised to read as set forth below and the authority citations following all the sections in Part 561 are removed.

Authority: 21 U.S.C. 348.

2. Part 561 is amended by adding § 561.99 to read as follows:

§ 561.99 Cyromazine.

The additive cyromazine (*N*-cyclopropyl-1,3,5-triazine-2,4,6-triamine) may be safely used in accordance with the following prescribed conditions:

(a) It is used as a feed additive in feed for chicken layer hens at the rate of not more than 0.01 pound of cyromazine per ton of poultry feed.

(b) It is used for control of flies in manure of treated chicken layer hens.

(c) Feeding of cyromazine treated feed must stop at least 3 days (72 hours) before slaughter. If the feed is formulated by any person other than the end user, the formulator must inform the end user, in writing, of the 3 day (72 hours) pre-slaughter interval.

(d) To ensure safe use of the additive, the labeling of the pesticide formulation containing the feed additive shall conform to the labeling which is registered by the U.S. Environmental Protection Agency, and the additive shall be used in accordance with this registered labeling.

(e) Residues of cyromazine are not to exceed 5.0 parts per million (ppm) in poultry feed.

[FR Doc. 85-11841 Filed 5-14-85; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 180

[PP 2F2707/R752; FRL-2836-9]

Pesticide Tolerances for Cyromazine

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes tolerances for residues of the insect growth regulator cyromazine in or on certain raw agricultural commodities. This regulation to establish the maximum permissible level for residues of cyromazine in or on these commodities was requested by Ciba-Geigy Corp.

EFFECTIVE DATE: Effective on May 15, 1985.

ADDRESS: Written objections, identified by the document control number [PP 2F2707/R752], may be submitted to the: Hearing Clerk (A-110), Environmental Protection Agency, Rm. 3708, 401 M St. SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT:
Timothy A. Gardner, Product Manager (PM) 17, Registration Division (TS-767C), Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.
Office location and telephone number: Rm. 207, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703-557-2690).

SUPPLEMENTARY INFORMATION: On April 20, 1984, EPA issued a notice, published in the **Federal Register** of April 27, 1984 (49 FR 18130), which proposed that a tolerance of 0.4 part per million (ppm) be established for residues of the insecticide cyromazine (*N*-cyclopropyl-1,3,5-triazine-2,4,6-triamine) in or on eggs and poultry meat, fat, and meat by-products from chicken layer hens.

Comments on the Federal Register Proposal

The Agency's proposals to: (1) Issue a conditional registration, (2) issue tolerances on certain agricultural commodities, and (3) issue a feed additive regulation for cyromazine (Larvadex®) published in the **Federal Register** on April 27, 1984, requested comments from interested parties, including the general public.

Eighty-five different commenters responded favorably to the conditional registration of Larvadex® and/or the establishment of tolerances for cyromazine, which is the active ingredient in Larvadex®. Of this number, 76 responded favorably to the conditional registration, 11 responded favorably to the establishment of the proposed food additive regulation (section 409), and 6 responded favorably to the proposed establishment of a tolerance in or on certain raw agricultural commodities (section 408).

Thirty-one different commenters responded in opposition to the conditional registration of Larvadex®. Seven of these same commenters indicated that they also opposed the establishment of tolerances and/or a food additive regulation for cyromazine.

For the Agency's response to the comments received see the companion notice on conditional registration appearing elsewhere in this issue of the **Federal Register.**

Agency Decision

Based on the Agency's review of the data and comments submitted in response to the April 27, 1984 proposal, the Agency has concluded that, if good management practices are followed, the requested tolerances of 0.4 ppm for residues of cyromazine in or on eggs and poultry meat, fat, and meat by-products (from chicken layer hens only) are unnecessarily high. Based on the data reviewed, the Agency, has determined that tolerances of 0.25 ppm for combined residues of cyromazine and its metabolite melamine in or on eggs and 0.05 ppm each for residues of cyromazine and its metabolite melamine in or on poultry meat, fat, and meat by-products (from chicken layer hens only) with a 3 day (72 hours) pre-slaughter interval (PSI) are appropriate and that these levels will protect the public health. Therefore, the tolerances are established as set forth below.

The proposal was designated as 40 CFR 180.418. To maintain numerical integrity in the CFR, the final rule is being issued as 40 CFR 180.414.

Elsewhere in this issue of the **Federal Register,** the Agency has issued: (1) A final rule for establishing a feed additive regulation to permit residues of the insecticide cyromazine in or on poultry feed and (2) a notice of the Agency's determination to issue a conditional registration for cyromazine for use as a 0.3-percent pre-mix feed-through to control fly larvae in poultry manure.

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

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

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-534, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice procedure, Agricultural commodities; Pesticides and pests.

Dated: May 9, 1985.

J.A. Moore,

Assistant Administrator for Pesticides and Toxic Substances.

PART 180—[AMENDED]

Therefore, 40 CFR Part 180 is amended as follows:

1. The authority citation for Part 180 is revised to read as set forth below and the authority citations following all the sections in Part 180 are removed.

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

2. Part 180 is amended by adding § 180.414 to read as follows:

§ 180.414 Cyromazine; tolerances for residues.

(a) Tolerances are established for combined residues of the insecticide cyromazine (*N*-cyclopropyl-1,3,5-triazine-2,4,6-triamine) and its metabolite, melamine (1,3,5-triazine-2,4,6-triamine), in or on the following raw agricultural commodities:

Commodities	Parts per million
Eggs	0.25

(b) Tolerances are established for residues of the insecticide cyromazine (*N*-cyclopropyl-1,3,5-triazine-2,4,6-triamine) in or on the following raw agricultural commodities:

Commodities	Parts per million
Fat, poultry (from chicken layer hens only)	0.05
Meat, poultry (from chicken layer hens only)	0.05
Meat byproducts (from chicken layer hens only)	0.05

(c) Tolerances are established for residues of the cyromazine metabolite, melamine (1,3,5-triazine-2,4,6-triamine), in or on the following raw agricultural commodities:

Commodities	Parts per million
Fat, poultry (from chicken layer hens only)	0.05
Meat, poultry (from chicken layer hens only)	0.05
Meat byproducts (from chicken layer hens only)	0.05

[FR Doc. 85-11840 Filed 5-14-85; 8:45 am]

BILLING CODE 6560-50-M

ENVIRONMENTAL PROTECTION AGENCY

[OPP-30080A; FRL- 2837-1]

Cyromazine; Determination Concerning Conditional Registration

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Conditional Registration.

SUMMARY: This notice sets forth the Agency's determination to issue a conditional registration, pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), for the insect growth regulator cyromazine for use as a 0.3 percent premix feed-through to control fly larvae in poultry manure. The Agency has determined that the benefits of use outweigh the risks of the conditional registration, and the issuance of the conditional registration is in the public interest. Elsewhere in this issue of the **Federal Register**, EPA issued final rules establishing tolerances and permitting residues of cyromazine in certain agricultural commodities and poultry feed.

EFFECTIVE DATE: Effective on May 15, 1985.

FOR FURTHER INFORMATION CONTACT:

Timothy A. Gardner, Product Manager (PM) 17, Registration Division, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

Office location and telephone number: Rm. 207, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703-557-2690).

SUPPLEMENTARY INFORMATION: On April 20, 1984, EPA issued a notice, published in the **Federal Register** of April 27, 1984 (49 FR 18172), in which the Agency proposed to issue a conditional registration, pursuant to section 3(c)(7)(C) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), for the insect growth regulator cyromazine[1], for use as a 0.3 percent premix feed-through to control fly larvae in poultry manure. A conditional registration was proposed on the basis that: (1) Product performance studies relative to the minimum effective dosage, the effective dosage range, and the performance of the product when used in intermittent dosing management programs be submitted by February 1, 1985; (2) residue data derived from the various treatment regimes along with a poultry feeding study to determine whether cyromazine and melamine have plateaued by 28 days in both meat and eggs and how fast the residues decline after the cessation of dosing to be submitted by May 1, 1985; and (3) a long-term field dissipation study on melamine to be submitted by November 1, 1985. The disposition of these data requirements is discussed below.

Based on a review of the data and comments submitted in response to the Agency's April 27, 1984, proposal, EPA has decided to issue a conditional registration for the use of cyromazine. The registration is conditional on the submission of feed mill mixers exposure information by December 31, 1985. The Agency has determined that for the conditional registration these are the only data missing. In addition, the Agency has determined that the statutory requirements for a conditional registration have been met, in that: (1) The required data are not part of the data base under 40 CFR Part 158, i.e., not data that the registrant should have known to produce earlier and (2) a finding of public interest has been made since the significant benefits of use of cyromazine outweigh any risk of use of the conditional registration. The Agency also has decided to issue tolerances to cover residues of cyromazine in poultry and eggs.

The Agency's decision to permit use of cyromazine is based on an evaluation of a comprehensive toxicological data base. Cyromazine has been extensively studied and a complete data set exists on which to evaluate the potential toxicity of both cyromazine and its major metabolite, melamine.

The data base includes two oncogenicity studies on cyromazine itself and four oncogenicity studies on melamine. The Agency also has reviewed a number of ancillary studies that provide insight on the biological processes associated with the development of bladder stones. With the exception of one study, all oncogenicity studies on both cyromazine and melamine were negative. The one positive study showed that bladder tumors occurred in some male rats fed the highest dose of melamine. The evidence is consistent with the hypothesis that an intergral element in the development of these bladder tumors is the formation of bladder stones consisting of pure melamine; these stones were found to occur only at high doses. Although it is possible that very high doses of melamine could cause bladder tumors to occur by some mechanism not involving stones, the Agency believes this is unlikely given the lack of any oncogenic effect at lower doses and the close correspondence between the occurrence of stones and tumors.

Because all oncogenicity studies on cyromazine itself were negative, because the bladder tumors were only found at the highest dose in one study on melamine, and because of the very low human exposure levels that would result from this use of cyromazine, the Agency has concluded that the weight of evidence strongly supports the thesis that the oncogenic risk to man is nonexistent or, at worst, extremely low. The Agency does not believe that the doses of melamine to which any human is likely to be exposed will lead to the formation of either bladder stones or bladder tumors.

Data Received Since the April 27, 1984 Federal Register Proposal

As a result of comments on the April 27, 1984 **Federal Register** notice, the Agency reevaluated the original rat and rabbit teratology studies on cyromazine. The Agency found the rat study to be acceptable, but indications of fetotoxic effects were found in the rabbit study at the lowest dose tested (10 mg/kg/day). Ciba-Geigy submitted a new rabbit teratology study using dose levels of 5, 10, 30, and 60 mg/kg/day. In its review of this second rabbit study, the Agency determined that cyromazine was teratogenic with a no-observed-effect level (NOEL) of 5 mg/kg/day. The Agency also determined that there is a margin of safety (MOS) factor of at least 1,600 for dietary exposure to the general population.

The Agency has also considered the teratogenic risk that may be posed to feed mill mixers working with Larvadex®. Since large operations are heavily mechanized and automated, and since most small operations are also mechanized, any exposure which may occur to the mixer is expected to be negligible. In addition, cyromazine will be distributed only as a premix, further limiting exposure to cyromazine. Nevertheless, as a condition of registration, the Agency is requiring Ciba-Geigy to provide actual exposure information to assess the risk to feed mill mixers.

The Agency, despite its findings of nonexistent or extremely low risk associated with exposure to cyromazine, has carefully analyzed the available data in light of the requirements of section 409 of the Federal Food Drug and Cosmetic Act. The Agency has determined that the setting of a food additive tolerance for melamine is consistent with section 409, for the

[1] Cyromazine is the accepted American National Standards Institute name for the chemical *N*-cyclopropyl-1,3,5-triazine-2,4,6-triamine. The trade name for cyromazine as a poultry feed-through product is Larvadex®.

reasons set forth in this document and the April 27, 1984 proposal.

The April 27, 1984 **Federal Register** notice stated that a long term field dissipation study showing that melamine residues will not leach into the lower depth of soil and contaminate groundwater was being required by the Agency as a condition of registration. The notice stated that the requirement could be satisfied either by actual field data or data showing that concentrations of melamine residues will be below detection limits of an analytical method for melamine residues in soil.

Ciba-Geigy Corporation has provided the Agency an assessment of the potential for melamine residues to be found in groundwater. This assessment, using the PESTAN model developed by EPA, found that melamine residues resulting from surface application (5 tons per acre) of manure from poultry fed feed treated with Larvadex® at 5.0 parts per million (ppm) would not be detectable at 6.4 feet even if the method sensitivity was 1.0 part per billion (ppb). The available analytical method for melamine residues in soil has a limit of detection of 0.05 ppm (50.0 ppb). At this level of sensitivity no melamine residue would be detectable in soil from the proposed chicken feed use of Larvadex®.

Based on the information provided by Ciba-Geigy Corporation showing that concentrations of melamine residues in soil will be below the reported limit of detection of the available analytical method, EPA has concluded that a long term field monitoring study is not necessary for 0.3 percent premix feed-through to control fly larvae in poultry manure.

Ciba-Geigy Corporation has provided the Agency data on the mode of action of Larvadex®, the mimimum effective dosage for Larvadex®, information on product performance when used in intermittent dosing management programs, and information documenting soldier fly larvae as a pest. The Agency's review of these data is summarized below.

Mode of Action

Although the specific mode of action for Larvadex® has not been fully determined, the data do indicate that Larvadex® can act as a contact insecticide against fly larvae and that the main site of penetration is the cuticle. The site of action appears to be at the point where the cuticle and epidermal tissues join.

Minimum Effective Dosage

The data submitted consisted of 4 studies, 2 by Ciba-Geigy and 2 by the U.S.D.A. Ciba-Geigy used rates of 0.5, 1.0, 2.5, and 5.0 ppm Larvadex® in feed fed to birds in testing against the house fly and litle house fly in one study and in the other study 1.5 and 3.0 ppm Larvadex® in feed fed to birds in testing against the house fly. U.S.D.A. used rates of 1.25, 2.5, and 5.0 ppm Larvadex® in feed fed to hens in testing against the house fly and little house fly in one study and in the other study 1.5, 3.25, and 5.0 ppm Larvadex® in feed fed to birds in testing against the house fly. The data for 1 ppm (one test by Ciba-Geigy) and 1.25 ppm (one test by the U.S.D.A.) indicated that these rates were effective for house fly control. While the data submitted do not establish the minimum effective dosage for house fly control at 1.5 ppm Larvadex® in feed, without additional testing effectiveness cannot be confirmed for rates below 1.5 ppm for house fly control. The data do, however, establish the minimum effective dosage for control of the little house fly at 5.0 ppm.

Product Performance in Intermittent Dosing Programs

The data establish that Larvadex® 0.3% premix is effective for fly control at the proposed label dosages and that the 0.3% premix can be used successfully in fly control as a poultry feed through insecticide in intermittent dosing management programs and support Ciba-Geigy's proposal for interrupted/alternate feeding in a program of sanitation and manure management based on an initial 4 to 6 week feeding period followed by monitoring for maggot activity and resumption of continuous 4 to 6 week feeding if maggot activity increases.

The data support a 5 to 7 day on and 5 to 7 day off Larvadex® feeding schedule in conjunction with a program of sanitation, manure management and monitoring for maggot activity after 4 to 6 weeks of continuous Larvadex® feeding. The Ciba-Geigy proposal for initial 4 to 6 weeks of continuous feeding followed by a 5 to 7 day on, 5 to 7 day off feeding schedule (with a maximum of 7 days without feeding) in conjunction with a sanitation program when maggot activity cannot be monitored should be modified to include some form of fly population monitoring with resumption of 4 to 6 week continuous feeding if fly populations increase.

The data on egg production, feed consumption and egg quality are limited but indicate no adverse effects from Larvadex® feeding.

Soldier Fly (Family Stratiomyidae) Larvae as a Pest

The information submitted consisted of reprints of papers by Dr. R.C. Axtell of North Carolina State University, a letter from H.W. Myers, Jr., the North Carolina State University Extension agent, and a letter and a publication from the I.F.A.S. of the University of Florida submitted by Professor P.G. Koehler, Extension Entomologist.

The North Carolina information indicates that the soldier fly causes manure to liquify (become semi-liquid). This may result in overflow and contamination, including contamination of walkways, litter, birds, and eggs. In addition the liquid manure is difficult to handle and causes an odor problem. Also there have been increasing numbers of complaints from homeowners about adult soldier flies which have developed from larvae in infested manure spread in adjacent crop and/or pasture areas.

The Florida information indicates that the soldier fly is a major pest in that state and that there have been instances when health departments have been concerned relative to manure running on walkways, filth dissemination by migrating larvae and numbers of larvae being stepped on on walkways and the resulting walkway conditions. Based on a poultry producer questionnaire in Plant City, Florida in 1977, 34% of the producers indicated that the soldier fly was a fly problem.

The Agency concludes that the information submitted does establish that soldier flies are an important pest in poultry production in certain areas.

Ciba-Geigy has also provided the Agency data on residue derived from the various treatment regimes along with a poultry feeding study to determine whether cyromazine and melamine have plateaued by 28 days in both meat and eggs and how fast the residues decline after the cessation of dosing.

In this poultry feeding study, 120 laying hens (one control and three treatment groups of 30 birds each) were maintained on poultry feed containing 5 ppm cyromazine for 56 days. The dosed feeding period was followed by 14 days on untreated feed (depletion period). Birds were sacrificed at 14-day intervals, during the 56-day treatment period and at 1, 3, and 7 days after cessation of the treatment period. Tissue samples were taken and analyzed for residues of the parent compound cyromazine and and its metabolite melamine. Egg samples were collected at 0, 1, 3, 7, 14, 28, 42, and 56 days during

feeding with treated feed and at 1 thru 7 days, 10, and 14 days during the depletion period. The whites and yolks were separated from the shell, pooled, and the shell discarded. Analyses were performed on the pooled samples for residues of cyromzine and melamine.

No detectable residues (<0.05 ppm) of cyromazine were noted in the fat or skin at any time during the feeding period or the depletion period. Cyromazine was noted in lean meat (<0.05–0.08 ppm) and liver (0.06–0.13 ppm) throughout the feeding period. No detectable residues (<0.05 ppm) of cyromazine were noted in any tissues during the depletion period. No detectable residues (0.05 ppm) of melamine were noted in poultry tissues (lean meat, liver, fat, skin) at any time.

Detectable residues of cyromazine were first noted in eggs on day-3 of feeding. These residues were 0.09–0.11 ppm. Overall residues of cyromazine during the feeding period were <0.05–0.11 ppm. During the depletion period, residues of cyromazine were 0.08–0.11 ppm on day-1. No detectable residues (<0.05 ppm) were noted beyond depletion day-1. No detectable melamine residues (0.05 ppm) were noted at any time.

Residues of cyromazine and melamine were determined by the analytical procedure method AG–417 and AG–417A.

The Agency has completed its evaluation of the data submitted by Ciba-Geigy. The Agency has also reviewed current practices for the care of laying hens ("Farm Poultry Management," USDA, Farmers' Bulletin Number 2197, revised June 1977), and contacted various poultry egg producers and feed mill operators and has made the following conclusions:

1. Residues of cyromazine and melamine do plateau by 28 days in both meat and eggs and that the residues decline to non-detectable levels after the birds have been removed from the treated feed for one day.

2. Current layer hen feeding practices and equipment permit the removal of treated feed at least 72 hours (3 days) before slaughter. As a result, the imposition of a pre-slaughter interval (PSI) is reasonable and practical.

3. The imposition of a 3 day (72 hours) PSI would result in lower cyromazine residue levels in poultry tissues. The maximum levels are as follows:

Cyromazine	0.05 ppm in poultry tissues
Melamine	<0.05 ppm in poultry tissues

4. The residue level in eggs does not change since eggs are collected on a daily basis for human consumption, and the imposition of a PSI would not affect residue deposition in eggs. The residue level in eggs is 0.25 ppm for combined residues of cyromazine and melamine.

5. An adequate analytical method is available for enforcement of the tolerances for cyromazine and its metabolite melamine.

Comments on the April 27, 1984 Federal Register Proposal

The Agency's proposals to: (1) Issue a conditional registration, (2) issue tolerances on certain agricultural commodities, and (3) issue a feed additive regulation for cyromazine (Larvadex®) was published in the Federal Register on April 27, 1984, and requested comments from interested parties, including the general public.

Eighty-five different commenters responded favorably to the conditional registration of Larvadex® and/or the establishment of tolerances for cyromazine, which is the active ingredient in Larvadex®. Of this number, seventy-six responded favorably to the conditional registration, eleven responded favorably to the establishment of the proposed feed additive regulation (section 409), and six responded favorably to the proposed establishment of a tolerance (section 408). Several commenters commented on more than one document. The following groups favored conditional registration: thirty-four poultry growers; twelve individuals (who complained of an unreasonable fly population arising from poultry farms close to their dwellings); seven feed supply companies; Kentucky Department of Agriculture; New York Department of Agriculture and Markets; Georgia Department of Human Resources; North Carolina Department of Agriculture; Maine Department of Agriculture, Food and Rural Resources; United States Department of Agriculture; the Cooperative Extention Services from Missouri, Utah, South Carolina (Clemson), Idaho, New Hampshire and California; North Carolina State University, School of Agriculture; Hart County (Ga.) Health Center; The Grocery Manufactures of America Inc.; Tysons Food Inc.; Board of Supervisors Sullivan County, New York; Board of Supervisors Lake County, Florida; New York State Electric and Gas Company; Southeastern Poultry and Egg Association; Texas Poultry Federation; Missouri Egg Merchandizing Council; Indiana State Poultry Association; Maine Poultry Federation; Georgia Poultry Federation; Idaho Poultry Industry Federation; Arkansas Farm Bureau Federation; Michigan Farm Bureau; California Farm Bureau Federation; American Cyanamid Company; and Ciba-Geigy Corporation.

All the above commenters for various reasons supported the conditional registration. The reason given most often was that the product is very efficacious and very much needed to control severe fly infestations surrounding caged layer operations. Several commenters also believed that the data did not support the contention that melamine is an oncogen.

Thirty-one different commenters responded in opposition to the conditional registration of Larvadex®. Seven of these same commenters indicated that they also opposed the establishement of tolerances and/or a food additive regulation for cyromazine.

There were twenty-three private citizens or groups of citizens who opposed the conditional registration, tolerances, and food additive regulation. The individuals' reasons for opposing the conditional registration of Larvadex® was that they did not want the eggs and poultry meat they eat contaminated with another cancer causing chemical.

Eleven commenters opposed to the Agency's proposals in part or in toto commented on the substance of the Agency's rationale for the proposals. These included Sterling Drug, Inc.; State of California Department of Health Services; Texas Department of Agriculture (Agricultural and Environmental Services Program); Natural Resources Defense Council (NRDC); United Food and Commercial Workers International Union (UFCW); State of California Department of Food and Agriculture; South Dakota State University; the Public Citizen Litigation Group; Ciba-Geigy Corporation; American Cyanamid Company; and The Grocery Manufacturers of America Inc. Their concerns are listed below.

Comment: Sterling Drug, Inc., the United Food and Commercial Workers International Union (UF&CWIU), and the Texas Department of Agriculture claimed generally and without qualification that the Delaney clause in section 409 of the Federal Food Drug and Cosmetic Act (FFDCA) bars approval of carcinogens as food additives.

Response: These commenters failed to note the presence in the statute of the so-called "DES proviso" which forms the basis for the Food and Drug Administration (FDA) position (set forth at 44 FR 17070, March 20, 1979) and upon which EPA's proposed rule was explicitly based. The DES proviso is an explicit exception to the Delaney clause. While the meaning of the proviso may be a proper issue for debate, its existence is not.

Comment: The Natural Resources Defense Council Inc. (NRDC) and the Public Citizen Litigation Group commented that EPA should not adopt the reasoning in the 1979 FDA document concerning the meaning of the DES proviso without first conducting a rulemaking concerning the appropriateness of the FDA approach.

Response: EPA has not adopted the FDA approach as a general matter, only for this particular action. In regard to rulemaking, the Agency believes that the notice and comment period provided in this rulemaking action are sufficient.

Comment: The State of California Department of Health Services and NRDC commented that the 1979 FDA document improperly interprets the DES proviso and that the statute should be read as allowing no detectable residues of a carcinogenic feed additive in edible products of livestock.

Response: As stated in the proposed rule (49 FR 18120), EPA agrees with FDA's interpretation of the statute for the reasons set forth by FDA.

Comment: The State of California Department of Health Services stated that because of the positive results in the National Toxicology Program (NTP) bioassay and the lack of knowledge concerning the mechanism of tumor induction, melamine should be regarded as an animal carcinogen and as a potential human carcinogen with no threshhold. The Natural Resources Defense Council commented that whether the mechanism of tumor induction by melamine is direct or indirect is immaterial.

Response: The Agency believes that under the Delaney clause itself, the following questions may not be legally material: (1) What is the mechanism of tumor induction and (2) what is the human threshold. Regarding this action on cyromazine, the Agency is regulating on the basis that those questions are not legally material. The Agency recognizes that the direct/indirect distinction might well be meaningful and material for risk assessment purposes under the DES proviso, given the proper data and circumstances.

Comment: Grocery Manufacturers of America, Ciba-Geigy Corporation, and American Cyanamid Company commented that the data show that cancer occurs only as a result of formation of bladder calculi (stones). Since calculi occur only at high doses and tumors will occur only at those high doses, therefore a threshold exists.

Response: Until more testing is done on mechanisms, all the Agency can do is make informed predictions about whether calculi are prerequisites to tumors. While many scientists would conclude that calculi formation is a prerequisite and that no tumors will result at doses not causing calculi, others are not willing to conclude this from the existing data. Thus, while it is likely that calculi are related to tumor formation, the Agency has not based its regulatory decision solely on this assumption. See the "Discussions and Conclusions" and "Summary of Peer Review Comments" sections of the NTP bioassay (Carcinogenesis Bioassay of Melamine (CAS No. 108–78–1) in F344/N Rats and B6C3F$_1$ Mice (Feed Study), National Toxicology Program, Research Triangle Park, North Carolina [U.S. Department of health and Human Services, Public Health Service National, Institute of Health] (March 1983) NIH Publication No. 83–2501.) See also Hicks, R. M., Multistage Carcinogenesis in the Urinary Bladder, British Medical Bulletin 36(1):39–46 (1980).

Comment: The Natural Resources Defense Council further commented that EPA implies that a threshold exists for exposure to melamine by deriving the ADI from the lowest NOEL from Larvadex® toxicology data.

Response: As stated above, the agency Acknowledged that a threshold for oncogenic efects may exist. However, the agency can not be certain whether a threshold exists at this time. Therefore, the Agency performed the risk assessment as if a threshold did not exist.

Comment: The State of California Department of Food and Agriculture commented that the Agency should get new studies to more clearly delineate the bladder neoplasm problem in rats. They suggested studies using doses of melamine less than those that induced tumors in the NTP study. The study would need to incorporate proper control populations.

Response: The problem of delineating the exact etiology of the bladder neoplasm is confounded by several factors. Reducing the doses in a lifetime feeding study would reduce the power of the test, in which case a negative result may be meaningless. Administration via other routes may change the metabolite production. Proper control selection is problematic. It is an interesting academic problem, but one beyond the regulatory scope. The Agency has data showing an effect from a given dose and, although the mechanism of the effect is debatable, a risk assessment based on that dose/effect relationship can be used to assume the compound is carcinogenic and to regulate the compound accordingly.

Comment: Ciba-Geigy Corporation commented that the Delaney clause only applies where "appropriate" tests show that a substance induces cancer; the NTP bioassay does not satisfy this test.

Response: This comment seems to be based on a misreading of the Delaney clause. The clause comes into play where a food additive is shown to induce cancer either when ingested by animals (as in the NTP bioassay) or "in other appropriate tests".

Comment: Ciba-Geigy Corporation commented that for a substance like melamine (which, if a carcinogen at all surely involves a multistage process), EPA should use a multistage extrapolation model, not a linear model, to calculate risks from low doses.

Response: EPA chose to follow the approach set forth in the 1979 FDA document for reasons of consistency between the agencies in treatment of similar issues. That document concedes that the choice of a linear model is designed to err on the side of overprotection.

Comment: Grocery Manufacturers of America, Ciba-Geigy Corporation, and American Cyanamid Company commented that the Delaney clause and its DES provisio should come into play only when a food additive clearly has been shown to be a carcinogen, and thus need not (indeed may not) be employed with regard to melamine.

Response: Melamine ingestion by test animals at the high dose level in the NTP bioassay clearly did induce cancer in those animals. As explained in the preamble of the Agency's proposed regulation of cyromazine, the Agency is treating melamine as a food additive.

Comment: Ciba-Geigy Corporation commented that because melamine is a trace impurity of cyromazine, not just a metabolite, EPA should use FDA's "constituents policy," which EPA adopted in a separate decision, (see 46 FR 340214, July 27, 1983), not the FDA interpretation of the DES proviso, in analyzing the acceptability of melamine as a food additive.

Response: The "constituents policy" holds that unwanted, nonfunctional impurities of a food additive are not themselves food additives, and thus that the presence of a carcinogenic impurity in a food additive does not necessarily bar approval of the food additive so long as the risk posed by the impurity is insignificant. Although melamine may be a trace impurity of cyromazine, it is also a metabolite and metabolic conversion is responsible for most of the presence of melamine in food that would result from use of Larvadex®. While arguably we could analyze the acceptability of the impurity fraction under the constituents policy, EPA does

not understand FDA's constituents policy as applying to metabolites of the desired components of the food additive, and EPA does not choose to so extend it. Since the bulk of the melamine presence results from metabolism, it would change the analysis but slightly to also analyze the impurity content under the constituents policy, and EPA declines to do so.

Comment: The North Carolina Department of Agriculture and Ciba-Geigy Corporation commented that section 409 of the FFDCA does not provide authority for the setting of an expiration date on a food additive regulation of the sort proposed by EPA.

Response: The FFDCA authorizes the Administrator to prescribe the conditions under which a food additive "may be safely used" (FFDCA sec. 409(c)(1)(A), 409(d)) and gives a non-exclusive list of examples of the types of conditions that may be imposed. The statute also prohibits the Agency from setting a tolerance limitation at a level higher than is reasonably required to accomplish the physical or other technical effect for which the additive is intended (here, control of fly larvae) [FFDCA sec. 409(c)(4)(A)]. The Agency believes it to be reasonable to provide that the food additive regulation expire by its own terms at a time when the Agency will have acquired and evaluated further data concerning, among other things, the possibility of reducing residue levels through different application regimens. The fact that this type of condition may not have been imposed in the past does not mean that it would not be improper here. However, because the Agency received data that permitted a reduction in tolerance levels and needs no additional data on this point, the Agency is not imposing an expiration date on the tolerance.

Comment: The State of California Department of Food and Agriculture asked what effect cooking eggs and meat has on melamine.

Response: Ciba-Geigy has provided the Agency information on the effect of cooking practices on residues of cyromazine and melamine in eggs and chicken tissue. Ciba-Geigy states that they found cyromazine and melamine residues in chicken tissue and eggs to remain basically intact when cooked and that approximately 90% of the cyromazine and melamine was accounted for. This study found that ⅛ to ¼ of the cyromazine and melamine was transferred to the broth during the boiling process. No conversion of cyromazine to melamine was observed.

Comment: The State of California Department of Food and Agriculture also asked what effect Larvadex® has on egg fertility.

Response: Data (two studies) submitted to the Agency by the Poultry Science Departments at North Carolina State University and the University of Florida indicate that Larvadex® has no significant effect on egg fertility.

Comment: Sterling Drug, Inc., and the State of California Department of Food and Agriculture commented that the Agency should not conditionally register cyromazine until all of the requested efficacy data have been reviewed by the Agency and found to be acceptable.

Response: The present policy with respect to the efficacy data waiver provides that the Agency will not routinely require the submission of the efficacy data upon which the label claims are based prior to registration, unless there exists evidence to suggest that the product will be ineffective for those claims. As the Agency was not in possession of any data indicating that the product would not be effective, such data were determined to be unnecessary prior to registration. However, as certain risks have been identified for the subject uses of cyromazine, the Agency requested the submission of not only efficacy data on the proposed uses, but additional data (such as intermittent dosing) that would enable EPA to determine if it is possible to reduce the amount of cyromazine and its metabolites by reducing the dosages used or by treating the chickens on an intermittent basis. The Agency has received and reviewed those data. A summary of the Agency's review of these data can be found in the supplemental information section above. Labeling requirements for the conditional registration of Larvadex® are set forth in the cyromazine label comment section below.

Comment: The State of California Department of Health Services commented that the cost studies associated with the use of Larvadex® at both dosage levels should be made before registration.

Response: Although not detailed in the April 27, 1984 **Federal Register** notices, the Agency did consider the cost-effectiveness of Larvadex® and of alternative means of fly control in its benefits assessment of Larvadex®. The benefits information, including the cost-effectiveness of Larvadex® and alternative fly control methods, gathered in the benefits assessment were used in the Agency's risk/benefit assessment. Comments received from poultry operators who have used Larvadex® substantiate the cost-effectiveness of Larvadex® versus alternative fly control measures available to them. In addition, if the product is not economical at one or both dosage levels, potential users will choose not to use this product.

Comment: The State of California Department of Health Services commented that efficacy tests should be run at both dosage levels to determine minimum and intermittent dosing.

Response: As discussed earlier the Agency has received, and reviewed, not only efficacy data on both dosing levels of the proposed uses of Larvadex® but additional data (such as intermittent dosing) that enable EPA to determine whether it is possible to reduce the amount of cyromazine and its metabolites by reducing the dosages used or by treating the chickens on an intermittent basis. As a matter of fact, the Agency is requiring that intermittent dosing be added to the labeling as a condition for registration.

Comment: The State of California Department of Food and Agriculture commented that efficacy has not been proven against flies of *Fannia* species.

Response: Comments submitted by Cooperative Extension Service, University of California verify that the little house fly [*Fannia canicularis* (Linnaeus)] is a serious pest in California during the wet, cool winter months and indicate that available alternatives, including manure management, are not effective. Several California poultry producers have been taken to court because of problems related to this pest. While cyromazine appears to be the most promising material for the control of *Fannia* species, the University of California has indicated that it cannot recommend its use at this time because of a lack of sufficient information. The University of California indicated that more work was planned in the 1984 season. The Agency notes the finding of the University of California and will carefully scrutinize the data submitted in support of label claims for the control of *Fannia* species to determine whether they are sufficient to support this pattern of use. In the interim, California has stated it will reject the use of Larvadex® within the State to control flies of the Genus *Fannia*. Since there are other areas in the United States where this fly is a problem and those areas have not reported efficacy problems, the Agency will allow label directions for control of *Fannia* fly species. Since California has indicated that they will not use Larvadex®, the level of risk described in the April 27, 1984 **Federal Register** notice will be lowered.

Comment: The State of California Department of Food and Agriculture commented that at higher dosage rates

Larvadex® may not be selective against nontarget organisms in manure.

Response: Scientists in California have informed the Agency that they have data showing no adverse effects to nontarget organisms at the high dosage rate (5 parts per million). These data are currently being forwarded to the Agency by the research entomologist.

Comment: The State of California Department of Health Services and South Dakota State University commented that it would be more desirable to register cyromazine as direct manure spray-on products rather than as feed-through products in order to minimize the residues resulting in food.

Response: The Agency agrees that manure sprays are less likely to result in food residues. However, many poultry houses are constructed in such a manner as to make such applications costly, time consuming, difficult, and less effective. The Agency does not dispute the fact that manure sprays are effective in some situations. In this regard the Agency acknowledges the study by Mulla and Axelrod [Journal of Economic Entomology, 76(3) 520–524, June 1983] submitted by South Dakota State University. However, manure treatments are generally only recommended as spot treatments and selective pressures against manure treatment have been shown to expedite development of resistance. Reports from poultrymen indicate that manure sprays do not work as well as feed-throughs. According to the registrant, Ciba-Geigy Corporation, this is the reason application was made for the feed-through product. The Agency has not received any applications for the use of cyromazine as a manure spray. The information in the **Federal Register** notice only concerns the feed-through uses for which application for registration has been made. See the response below for the Agency's plans regarding a review of feed-through pesticides in general.

Comment: The State of California Department of Health Services commented that the Agency should review feed-through issues before registering Larvadex®.

Response: The Agency had considered developing a statement on the social and technical issues regarding feed-through pesticides in general. However, more recently the Agency has been discussing feed-through products with FDA. Any generic statements of feed-through products must await the outcome of our current discussions with FDA.

Comment: The State of California Department of Health Services commented that Larvadex® is not really a "feed-through" product, since some of the chemical is retained in the eggs and chicken tissue.

Response: The Agency views "feed-through" pesticide products as those that are fed "through" the animals to achieve pest control, rather than being applied externally. All of the pesticide does not have to be excreted for the pesticide to be considered a "feed-through".

Comment: The State of California Department of Health Services commented that there are no data to show human effects of cyromazine and its metabolites.

Response: The Agency neither requires nor encourages the testing of pesticides on humans for any reason. On occasion the Agency may request epidemiological data, but such data are not a routine requirement for pesticide registration, particularly where little use history is possible.

Comment: The State of California Department of Health Services asked if lab methods are accurate for determining residues of cyromazine.

Response: A successful method-try-out (MTO) using the Biorex 9 ion exchange resin in Ciba-Geigy's Method (AG–417) for cyromazine and melamine was completed by EPA, and a successful collaborative study with EPA and the United States Department of Agriculture (USDA) was completed using the same method. However, a letter from FDA indicated that the ion exchange resin, Biorex 9, used in the clean-up column was no longer being produced. Subsequent to the FDA letter Ciba-Geigy substituted Dowex 1–X8 resin for the Biorex 9 resin. EPA has completed a successful MTO on the modified analytical method (AG–417A), using the Dowex 1–X8 ion exchange resin, for determining cyromazine and melamine in poultry tissue and eggs. The only difference between the original method and the modified method is the resins used. The preparation and use of the resins remain exactly the same. There were no problems with the modified method and the recovery in both poultry liver and eggs for cyromazine and melamine are adequate for enforcement purposes.[2]

Comment: Sterling Drug, Inc., the State of California Department of Health Services, and the Natural Resources Defense Council commented that risks may be higher than calculated. They asked what the risk is to children and to members of ethnic groups who eat more eggs than the average and to people who eat eggs from a source that treats feed the year around.

Response: The Agency's oncogenicity risk estimates were calculated several different ways, using twenty-one different estimates of food consumption, including ethnic, age, sex, regional and seasonal estimates for the population. Additionally, estimates for the "high consumers" were made, using (among other data) the data which represented high consumers (95th percentile) for the population. Consumption estimates generated from the EPA Tolerance Assessment System were very close to those found in the USDA Food and Nutrition Service references and were further supported by commodity production estimates of USDA. The estimates include consumption of eggs as an individual food item, as well as eggs in bakery or other food items. All consumption estimates assumed that 47% of the commodity contained the maximum residue throughout the year. If all of the commodity were treated, the risk estimate would only be increased by a factor of 2. No one risk estimate was significantly different from the estimates of risk used in the April 27, 1984, **Federal Register** notice. The data base used was the most current, reputable data base available. They are not "guesses" but are extrapolations from a massive national food consumption survey.

Comment: Sterling Drug, Inc., the State of California Department of Health Services, and the State of California Department of Food and Agriculture commented that there are other sources of cyromazine that may affect the residue levels and risk levels (e.g., temporary tolerances and FIFRA section 18 emergency exemptions).

Response: There are currently in effect no experimental use permits, temporary tolerances, or section 18 exemptions (except for the control of flies where avian flu is a concern). The Agency believes it has taken into account the sources of residues appropriate for the conditional registration of Larvadex® for fly control in the caged layer poultry industry and will evaluate risks from other uses when reviewing applications for those uses.

Comment: The State of California Department of Health Services asked if cyromazine and its metabolites accumulate in foods other than eggs and chicken meat.

Response: When used as a feed-through, cyromazine and its metabolites do not accumulate in other foods. The Larvadex® label places a limitation on the quantity of manure per acre that can

[2] It should be noted by chemists testing for the presence of cyromazine and melamine residues that filter paper may contain melamine and present a false reading.

be used to insure that residues do not accumulate in the crops. The very limited plant residue studies submitted with applications for section 18 exemptions indicate that foliar application of cyromazine to lettuce, tomatoes, celery, and carrots lead to less than 1 to 5 parts per million (ppm) of combined residues of cyromazine and melamine (depending on the crop) at 2 to 4 times the proposed application rates. Up to 50% or more of the total residue is melamine.

Comment: The State of California Department of Food and Agriculture asked whether food tolerances will be established for cake mixes, mayonnaise, etc.

Response: No additional tolerance is required, since the raw egg tolerance covers the processed foods. Many foods are reconstituted by FDA (e.g. dried eggs and cake mixes) before sampling for residue levels in that food item, which means that the residue is not expected to exceed the tolerances in raw eggs. If there are any residues of cyromazine or melamine in mayonnaise, they will be covered by the raw egg tolerance.

Comment: The State of California Department of Health Services asked whether adequate studies have been done on cyromazine and its metabolites in chicken manure after the manure has been applied as a fertilizer to crop land.

Response: The Agency has adequate environmental fate data (which determine the fate of cyromazine and melamine in chicken manure which has been applied as a fertilizer to crop land) to support conditional registration of cyromazine. As indicated above, the applicant has submitted information to satisfy this data requirement.

Comment: The State of California Department of Health Services commented that residue studies should be done for 18 months rather than for 28 days.

Response: The Agency sees no need to require an 18-month study per se. In earlier studies the residues did appear to plateau rapidly. However, the Agency did ask for and has received additional poultry feeding data to determine whether cyromazine and melamine residues have plateaued by 28 days in both chicken meat and eggs and how fast the residues decline after the cessation of dosing. Based on the data from this feeding study and the data from earlier feeding studies the Agency concludes that residues of cyromazine and melamine do plateau by 28 days in both meat and eggs and that the residues in poultry tissue and eggs decline to non-detectable levels (<0.05 ppm) after the birds have been removed from the treated feed for one day and two days, respectively.

Comment: Sterling Drug, Inc., and the State of California Department of Health Services asked if there are, or will be, cyromazine-resistant flies.

Response: The Agency has received data on resistance of flies to cyromazine and that data is currently under review. The Agency would expect that resistance buildup is a possibility with cyromazine, as it is with any insecticide, especially if cyromazine is not used in conjunction with other control measures to circumvent proliferation of a strain of flies which possess genetic characteristics of resistance to cyromazine.

Comment: The State of California Department of Health Services asked whether there are other health hazards possible besides those identified in the studies currently available.

Response: The Agency has no suspicion of any problems and no further toxicological data are required for the registration of Larvadex®.

Comment: Sterling Drug, Inc., the State of California Department of Health Services, the State of California Department of Food and Agriculture, and the Natural Resources Defense Council commented that the teratogenicity NOEL is incorrect, and embryotoxic and fetotoxic effects were not addressed.

Response: As a result of these comments, both the original rat and rabbit teratology studies on cyromazine were re-evaluated. The rat study was found to be acceptable but the rabbit study showed indications of fetotoxic effects at the lowest dose tested. A new rabbit teratogenic study was recently submitted by Ciga-Geigy and reviewed by the Agency. The Agency has determined that positive teratogenic effects were noted at 10 mg/kg/day and that a no-observed-effect level (NOEL) was seen at 5 mg/kg/day. When this NOEL was compared to estimated exposure from single servings of chicken and eggs, the ratio (or margin of safety) was greater than 1,600 for dietary exposure.

Comment: Sterling Drug, Inc. commented that the Agency should consider the risk to the feed mill mixers.

Response: The Agency has considered the risk to the mill mixers. Large operators are heavily mechanized and automated. Any exposure which may occur is expected to be negligible. It is believed that the small operators are mechanized as well and the exposure would be similar to that of the large operators. However, as a condition to registration, the Agency is requiring that exposure information be submitted to more accurately assess the exposure to the mixer.

Comment: The State of California Department of Health Services commented that there is no emergency and therefore no real need for Larvadex® in California; Sterling Drug Inc., the State of California Department of Health Services, and the Natural Resources Defense Council, Inc., commented that there are alternative methods to control flies.

Response: While the Agency provided extensive information on the benefits of cyromazine as background information in the April 27, 1984, **Federal Register** notice, it should be noted that the existence of alternative control methodologies per se cannot legally preclude the conditional registration of cyromazine. Certainly, there are many parts of the country where modern manure management and/or previously registered compounds used as space and residual sprays, including manure treatment and/or baits, will continue to be adequate control measures. For example, the California Department of Health Services said that only 10 percent of California farms present any serious fly problems. This is one of the reasons the Agency speculated that a maximum of 60% of the caged layers would ever actually receive cyromazine treatments. However, as explained in the April 27, 1984, **Federal Register** notice, there are many parts of the country where the most efficient methods of manure management with respect to fly control cannot be practiced due to the age and design of structures or state and local ordinances. Also, some areas are subject to greater infestation pressures due to climate than other parts of the country. Proximity to population centers requires a higher degree of fly control than for poultry operations in rural areas. These reasons all contribute to the fact that the conditional registration of cyromazine will certainly provide relief for those parts of the country where adequate fly control cannot be achieved with other measures. The fact remains that nationwide there have been several cases where poultry operations have been taken to court because of problems with fly management.

Comment: The State of California Department of Health Services asked what monitoring of cyromazine is to be done after registration.

Response: Federal monitoring of cyromazine after registration will be similar to that of other registered pesticides. The Food and Drug Administration and the United States Department of Agriculture will monitor

for residue levels in foods and EPA will investigate any misuse claims that may arise.

Comment: Sterling Drug, Inc., commented that FDA should have the lead for food additives.

Response: Under Reorganization Plan No. 3 of 1970, which created EPA, certain functions of the Secretary of Health, Education, and Welfare under the Federal Food, Drug, and Cosmetic Act were transferred to EPA. The transferred functions relate to the establishment of tolerances for pesticide chemicals in or on raw agricultural commodities and in processed foods.

Comment: The State of California Department of Health Services asked whether cyromazine is a food additive or only a feed additive.

Response: The Agency is treating cyromazine as a food additive.

Comment: The State of California Department of Food and Agriculture commented that they will not register Larvadex® for general use but only for emergency use.

Response: Section 24(a) of the Federal Insecticide, Fungicide, and Rodenticide Act as Amended (FIFRA) provides for a State to regulate the sale or use of any federally registered pesticide or device in the State, so long as the regulation does not permit any sale or use prohibited by FIFRA. Since California has the most serious little house fly control problem, an action that will severally limit use of the higher dosage rate (to control the little house fly) will further lower the risk estimates provided in the April 27, 1984 **Federal Register** notices and thus will increase the margin of safety.

Comment: The United Food and Commercial Workers International Union commented that the sale of eggs and chicken meat will drop if Larvadex® is registered, because of the public concern about its safety due to melamine.

Response: Larvadex® was used under the Agency's Experimental Use Permit (EUP) program from July 1979 until May 1984 and by 28 States under section 18 of FIFRA from 1981 until the fall of 1983 with no apparent effect on the sale of eggs and chicken meat. The Agency does not believe that the issuance of a conditional registration for Larvadex® will have any significant adverse impact on the poultry and egg market.

Comment: The State of California Department of Health Services, the Natural Resources Defense Council, and the State of California Department of Food and Agriculture commented that the comment period should have been longer than 30 days.

Response: Since a significant number of comments covering a broad range of concerns were submitted during the 30-day comment period provided by the April 27, 1984 **Federal Register** notices, the agency believes the comment period was adequate for allowing interested parties to provide comments. In fact, the Agency accepted and included several comments received through June 15, 1984, which actually extended the comment period for an additional 20 days.

Comment: The Natural Resources Defense Council commented that the American Cyanamid studies were not submitted to any scientific peer review.

Response: The American Cyanamid studies were reviewed by both EPA and FDA scientists. A peer review per se is believed to be unnecessary.

Comment: The Natural Resources Defense Council also asked whether EPA found the protocol for the American Cyanamid studies to be adequate and whether there were a sufficient number of animals used.

Response: The protocols were adequate and there were a sufficient number of animals used. The data were accepted by both FDA and EPA.

Comment: The Natural Resources Defense Council commented that EPA determined that melamine does not exceed the RPAR criteria; National Resources Defense Council believes the RPAR criteria have been exceeded.

Response: The agency agrees with National Resources Defense Council and so stated in the April 27, 1984, **Federal Register** notice (49 FR 18172) "The Agency has determined that melamine, a metabolite of cyromazine, meets or exceeds the rebuttable Presumption Against Registration (RPAR) criteria . . ." The Agency then conducted a risk/benefit analysis for cyromazine and its melamine metabolite and determined that the benefits resulting from the registration of cyromazine would exceed the risks.

Other Information

The Agency received comments from the Cooperative Extension Service, University of New Hampshire; Circle 8 Farms, Buford, Georgia; the North Carolina State University Department of Poultry Science; the Department of Entomology, Fisheries and Wildlife at Clemson University; and Sunnymead Ranch of Idalou, Texas, supporting the Agency proposal and indicating that cyromazine was extremely effective for the control of flies in poultry houses. The University of New Hampshire commenter additionally stated that cyromazine was effective in their trials using intermittent dosing. The commenters from Circle 8 Farms, Sunnymeade Ranch, and the University of New Hampshire further indicated that previously used alternatives had been unsatisfactory for fly control. Comments from Sunnymead Ranch indicated that State laws can in some situations preclude the use of the most desirable manure management techniques from the standpoint of fly control.

The North Carolina State University Department of Poultry Science commented that soldier flies (Family Stratiomyidae) are a problem in broiler breeder houses. The Department of Entomology, Fisheries and Wildlife at Clemson University noted just the opposite—that soldier flies, while liquifying the pit waste and making manure management somewhat more difficult, are not a public health nuisance. The applicant has submitted data on the status of soldier flies as a pest. That data indicate that soldier flies cause serious liquification of manure, making it unmanageable in that it can not be handled or removed by conventional means. Therefore, it is appropriate to maintain soldier flies on the label as a pest to be treated.

Comments from Summymead Ranch of Idalou, Texas, and Sterling Drug, Inc., concerned the Agency's estimation of the number of chickens that would be treated with cyromazine. Sunnymead Ranch of Idalou, Texas indicated that the Agency's estimate that a maximum of 60% of the caged layers would be treated with cyromazine was high and that the actual amount would be closer to 40% due to reduced fly activity in parts of the country with colder climates and due to newer facilities with modern manure management programs, such as lagoon systems. Sterling Drug, Inc., was concerned that the actual amount of chickens treated with cyromazine could be considerably higher if the threat of avian influena increased nationally. The Agency feels that the 60% maximum figure is reasonable. While fewer chickens may indeed be treated, it is better to err on the safe side for the purposes of this proposal. As far as avian influenza is concerned, the Agency has no way of predicting the effects of avian influenza, or any other disease, on the use of fly control measures. The Agency will have to evalaute the use of cyromazine at the time such requests are received.

Cyromazine label comments

In addition to other comments, Ciba-Geigy Corporation has submitted a proposed label for Larvadex ® premix and a flyer entitled *Larvadex ® Fly Control For Egg Laying Poultry*. The

latter is supplementary material describing the use of Larvadex®, alternative chemical and non-chemical methods of fly control, mechanisms for monitoring fly populations, and interrupted feeding programs for both monitored and unmonitored situations. Specifically, treatments are recommended as 4 to 6 weeks of feeding for both monitored and unmonitored populations of fly maggots. Retreatment should be initiated when fly maggot activity is again apparent for operations with monitored manure pits. For unmonitored situations, interrupted use of 5 to 7 days on and 7 days off is recommended.

The proposed label for the use of Larvadex® Premix includes a paragraph after the recommendations for continuous feeding which indicates that alternate feeding programs may be utilized. This label, however, recommends a continuous feeding program as the primary option in the directions for use and then gives statements regarding interrupted treatment schedules and fly monitoring and management programs.

As discussed above the Agency has received several comments regarding the success of intermittent feeding programs for cyromazine, but has received no data indicating failures for such dosing techniques when the birds have received an adequate initial treatment (4 to 6 weeks). As this treatment option offers a potential for reducing cyromazine residues in meat and eggs as compared to continuous feeding for the entire fly season, the Agency will require that interrupted method of dosing be incorporated into the directions for use.

The Agency believes that the incorporation of label statements regarding sanitation, the use of alternative treatments, and the monitoring of larval populations, along with the use of interrrupted applications of Larvadex® are all integral parts in reducing the overall amount of cyromazine used and hence the residues of cyromazine destined to appear in the meat and eggs from treated poultry. The currently proposed label does not give sufficient detail concerning these important items and is therefore unacceptable. The Agency therefore, is requiring that the wording in *Larvadex® Fly Control For Egg Laying Poultry* be included in the labeling as part of the directions for use. This presents to the user much greater detail in regards to the range of treatment and management options available according to the type of poultry operation involved, emphasizing the integration of sanitation, adulticiding, and fly monitoring; with interrupted treatments of Larvadex® as the method of use for the subject product. The labeling should also contain a description of the appropriate doses for the pests to be controlled. The phrase, "and continue treatment through the fly season", which appears in the directions for use of the present proposed label must be deleted as a condition for registration.

Agency Decision

Based on a review of the data and comments submitted in response to the Agency's April 27, 1984, proposal, EPA has decided to issue a conditional registration for the use of cyromazine. The conditional registration is being issued on the basis that feed mill mixers exposure information be submitted by December 31, 1985. The Agency determined that the benefits of the use of cyromazine outweigh any risk of use of the conditional registration. The Agency also has decided to issue tolerances to cover residues of cyromazine in poultry and eggs, and a food additive regulation to allow Larvadex® to be sold or used as feed additive. The tolerances for residues in poultry are being set at the level of detection.

Because all oncogenicity studies on cyromazine inself were negative, because the bladder tumors were only found at the highest dose in one study on melamine, and because of the very low exposure levels that would result to man from this use of cyromazine, the Agency has concluded that the weight of evidence strongly supports the thesis that the oncogenic risk to man is nonexistent or, at worse extremely low. The Agency does not believe that the doses of melamine to which any human is likely to be exposed will lead to the formation of either bladder stones or bladder tumors. The Agency also believes that an adequate margin of safety (>1600) for teratogenic effects exists based on a NOEL of 5 mg/kg/day from the rabbit teratology study.

Elsewhere in this issue of the **Federal Register**, the Agency has issued: (1) a final rule establishing tolerances for residues of cyromazine in or on eggs, poultry (chicken layer hens only) meat, fat, and poultry meat by-products and (2) a final rule establishing a feed additive regulation to permit residues of the insecticide cyromazine in or on poultry feed.

As a condition of registration, this notice requires that exposure information to assess the risk to the feed mill mixers must be submitted to the Agency by December 31, 1985.

The Agency has determined that the label must specify:

The front panel must contain the statement:

For fly control in and around caged (chicken) layer operations only.

Note.—Do not feed Larvadex®-treated feed to broiler poultry.

Meat and eggs from breeders treated with Larvadex® are not to be used for food.

Larvadex® use is limited to use as a feed-through in chickens only and may not be fed to any other poultry species.

Manure from chickens fed Larvadex® may be used as a soil fertilizer supplement. Do not apply more than 5 tons of manure per acre per year. Do not apply to small grain crops that will be harvested or grazed.

Incorporate the wording from the Ciba-Geigy Corporation publication "Larvadex® Fly Control for Egg Laying Poultry" into the directions for use section of the labeling.

The larvadex feed formulator must inform the feed user in writing that treated feed must be removed from layers at least 3 days before slaughter. The following label statement is suggested for use on treated feed containers:

This poultry feed is formulated with 5 ppm (0.01 lb./ton) [or 1.5 ppm (0.003 lb./ton) if appropriate] cyromazine. Treated feed must not be fed to layers for a minimum of 3 days (72 hours) before slaughter for food.

Dated: May 9, 1985.

J.A. Moore,

Assistant Administrator for Pesticides and Toxic Substances.

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